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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 21.08.2024+ **FAO(OS) (COMM) 43/2023
CONTAINER CORPORATION OF INDIA LIMITED**

.....Appellant

**Through: Mr Vivek Singh, Mr C P Rajwar, Mr
Savyasachi Rawat, Mr Rohan
Chgandra and Ms Ananay Mago,
Advocates.****Versus****M/S SHIVALAYA CONSTRUCTION
COMPANY PRIVATE LIMITED & ANR.**

.....Respondents

**Through: Mr Kiran Suri, Sr Advocate with Mr
Hitendra Nath Rath, Ms Laxmi and
Ms Vidushi Garg, Advocates for R1.
Ms Eshna Kumar and Ms Jasleen
Singh Saudha, Advocates for R2.****CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J.**

1. The appellant has filed the present appeal impugning an order dated 16.11.2022 (hereafter *the impugned order*) passed by the learned Single Judge in CS (COMM) No.4/2019 whereby the application filed by the appellant (arrayed as defendant no.1 in the suit) under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereafter *the CPC*), was rejected.
2. The appellant had filed the said application claiming that the suit preferred by the respondent (plaintiff in the suit) was barred by limitation.
3. The principal question that arises at the threshold is regarding the maintainability of the present appeal.



4. An order rejecting the application under Order VII Rule 11 of the CPC is not one of the orders that has been enumerated under Order XLIII Rule 1 of the CPC. Therefore, in terms of Section 13(1A) of the Commercial Courts Act, 2015 (hereafter *the Act*) the present appeal is not maintainable.

5. The Supreme Court in ***Kandla Export Corporation & Another v. OCI Corporation & Another: (2018) 14 SCC 715***, had examined the proviso to Section 13(1A) of the Act and held as under:-

“14. The proviso goes on to state that an appeal shall lie from such orders passed by the Commercial Division of the High Court that are specifically enumerated under Order 43 of the Code of Civil Procedure Code, 1908, and Section 37 of the Arbitration Act. It will at once be noticed that orders that are not specifically enumerated under Order 43 of the CPC would, therefore, not be appealable, and appeals that are mentioned in Section 37 of the Arbitration Act alone are appeals that can be made to the Commercial Appellate Division of a High Court.”

6. The learned counsel for the appellant referred to the decision of the Supreme Court in ***Shah Babulal Khimji v Jayaben D Kania & Anr.: AIR 1981 SC 1786*** and submits that the appeal would be maintainable under the Letters Patent notwithstanding that the impugned order is not appealable under Order XLIII Rule 1 of the CPC. The said contention is unmerited.

7. The Coordinate Bench of this Court in ***Odeon Builders Private Limited v. NBCC (India) Limited: 2021 SCC OnLine Del 4390*** following the decision of the Supreme Court in ***Kandla Export Corporation & Another v. OCI Corporation & Another (supra)*** has rejected a similar contention. This Court had held that the recourse to Letters Patent would



not be maintainable in view of the non-obstante provision under Section 13(2) of the Act.

8. A similar view has been expressed by this Court in *H.P. Cotton Textile Mills Limited v Oriental Insurance Company Limited: 2023 SCC OnLine Del 511* and *Arrena Overseas Private Limited v. Batra Art Press: 2023 SCC OnLine Del 6479*.

9. In *Bhushan Oil and Fats Private Limited v. Mother Dairy Fruit and Vegetables Private Limited: 2023 SCC OnLine Del 227*, a Division Bench of this Court rejected the appeal filed against the order of the learned Single Judge dismissing the application filed under VII Rule 11 of the CPC on the ground of non-maintainability in view of Section 13(1A) of the Act. The said decision squarely covers the issue regarding maintainability of the present appeal.

10. The present appeal is, accordingly, dismissed as non-maintainable.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 21, 2024

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[Click here to check corrigendum, if any](#)