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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 257/2023 CM APPL. 66162/2023**
CITICOOL CORPORATION

..... Appellant
Through: Mr. Akhand Pratap Singh Chauhan,
Advocate.

versus

AAIC BUILDING SOLUTIONS LTD. & ANR.

.... Respondents
Through: Mr.S.N.Gautam, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

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22.02.2024

1. The appellant has filed the present appeal impugning an order dated 24.08.2023 passed by the learned Commercial Court in the application filed by the appellant under Section 151 of the Code of Civil Procedure (hereafter 'CPC') seeking leave to file certificate under Section 65B of Indian Evidence Act, 1872 (hereafter 'Indian Evidence Act') which was rejected in terms of the impugned order.

2. The learned Commercial Court had noted that the application was filed belatedly after the evidence was over. The Court also noted that an objection regarding filing of an affidavit in terms of the Section 65B of the Indian Evidence Act was taken by the respondent at the initial stage. The present appeal is not maintainable under Section 13 (1)(A) of the Commercial Courts Act, 2015 as the order impugned in the present appeal is not one of the orders enumerated under Order XXXIII Rule 1, CPC.



3. Undisputedly, an order of this nature is not one of the orders enumerated in order XXXXIII Rule 1 of CPC and therefore, by virtue of Section 13 (1)(A) of the Commercial Court Act, 2015, an appeal against the said order is not maintainable. This question is no longer *res integra* in view of the decision in ***Kandla Export Corporation & Anr. v. OCI Corporation & Anr.: (2018) 14 SCC 715; Odeon Builders Pvt. Ltd. v. NBCC (India) Ltd.: 2021 SCC OnLine Del 4390 and H P Cotton Textile Mills Limited. v. Oriental Insurance Company Limited.: (2023) SCC OnLine Del 511.***
4. The appeal is, accordingly, dismissed. Pending applications stand closed.
5. It is clarified that all the rights and contentions of the parties are left open.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

FEBRUARY 22, 2024

g.joshi

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