

IN THE HIGH COURT AT CALCUTTA
Commercial Appellate Division
Original Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Prasenjit Biswas

APOT 160 of 2025
With
EC-COM 9 of 2025
IA No. GA-COM 2 of 2025
Alok Saraf and Ors.
Vs.

Shyam Sundar Nangalia and Ors.

For Appellant : Mr. Ishaan Saha, Adv.
 Ms. Rishika Goyal, Adv.

For the Respondent : Mr. Rudraman Bhattacharyya, Sr. Adv.
 Mr. Saptarshi Banerjee , Adv.
 Ms. Amrita Panja Moulick, Adv.

Hearing Concluded on : August 12, 2025
 Judgment on : September 18, 2025

DEBANGSU BASAK, J.:-

1. Appellants have assailed the judgment and order dated May 20, 2025 passed in EC-COM/9/2025 with IA No. GA-COM/1/2025.
2. By the impugned judgment and order, learned Single Judge has dismissed an execution petition by which the appellant sought

to execute a memorandum of settlement arrived at between the parties as an award.

3. Learned advocate appearing for the appellants has submitted that, the parties to the appeal entered into an understanding to settle their disputes and differences. The parties to the appeal had entered into an memorandum of settlement dated September 10, 2024 settling their disputes by way of conciliation.

4. Learned advocate for the appellants has submitted that, the memorandum of settlement dated September 10, 2024 partakes the character of an award in terms of the Arbitration and Conciliation Act, 1996. He has referred to the various provisions of the Act of 1996 and contended that, since, the parties agreed to settle their disputes by way of conciliation, and entered into the settlement in writing, the same can be executed as an award.

5. Learned advocate appearing for the appellants has contended that, since, the memorandum of settlement dated September 10, 2024 is an award within the meaning of the Act of 1996, the same is executable. The appellants therefore had put the same into execution on the respondents failing to adhere and comply with the memorandum of settlement dated September 10, 2024.

6. Learned advocate appearing for the appellants has contended that, by the impugned judgment and order learned Single Judge has held that the memorandum of settlement dated September 10, 2024 cannot be enforced by the executing Court under Section 36 of the Act of 1996. He has submitted that, the learned executing Court in effect set aside an award within the meaning of the Act of 1996. According to him, since, the learned executing Court has refused to execute the memorandum of settlement dated September 10, 2024 as an award, the same tantamounts to setting aside of an award. Consequently, the provisions of Section 34 of the Act of 1996 and Section 37 thereof stands attracted. Therefore, according to him, under the provisions of Section 13 of the Commercial Courts Act, the present appeal is maintainable.

7. Learned advocate appearing for the appellants has relied upon 2021 **SCC Online Cal 3065 (Damodar Valley Corporation vs. Reliance Infrastructure Ltd.)**, order dated July 8, 2024 passed in **APOT 244 of 2024 (R. Piyarelall Iron & Steel Pvt. Ltd. vs. Ram Prasad Agarwala & Ors.)** and **2024 SCC OnLine Cal 8835 (Kolkata Metropolitan Development Authority vs. Dagcon (India) Pvt. Ltd.)** in support of the contention that the appeal is maintainable.

8. Learned Senior Advocate appearing for the respondents has contended that, the appeal is not maintainable in view with the provisions of Section 13 of the Commercial Courts Act, 2015. According to him, the learned executing Court did not set aside the award and could not have done so as an executing Court. Therefore, the provisions of Section 34 and 37 of the Act of 2026 have no manner of application. He has contended that, the learned executing Court has passed the impugned judgment and order on an execution petition and not on a petition under Section 34 of the Act of 1996.

9. With regard to the maintainability of the appeal, learned Senior Advocate appearing for the respondents has relied upon **2018 Volume 14 Supreme Court Cases 715 (Kandla Export Corporation & Anr. vs. OCI Corporation & Anr.)**, **2020 Volume 4 Supreme Court Cases 234 (BGS SGS Soma JV vs. NHPL Ltd.)**, **2017 SCC OnLine Bom 360 (Sushila Singhania & Ors. vs. Bharat Hari Singhania & Ors.)**, **2011 Volume 8 Supreme Court Cases 333 (Fuerst Day Lawson Ltd. vs. Jindal Exports Ltd.)** and **2010 Volume 1 Mh.L.J. (R. S. Jiwani (M/s.), Mumbai vs. Ircon International Ltd., Mumbai)** to contend that the appeal is not maintainable.

10. By the impugned judgment and order, learned Single Judge has found an award arrived at in a conciliation amongst parties, to be not executable. Learned Single Judge did not consider any application under Section 34 of the Arbitration and Conciliation Act, 1996 while disposing of the application for execution.

11. In ***Damodar Valley Corporation (supra)*** the learned Single Judge had passed an order in an application for stay of the arbitral award, in a proceeding for setting aside of the Arbitration and Conciliation Act, 1996. In such context, the Co-ordinate Bench has decided the issue as to whether any appeal lay under Section 13 of the Commercial Courts Act, 2015 or not. Co-ordinate Bench has held that, an appeal will lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order 43 of the Code of Civil Procedure, 1908 as amended by the Commercial Courts Act, 2015 and the Arbitration and Conciliation Act, 1996. It has also held that, when a particular class of order in execution has been specified to be appealable, beyond question, any other order passed in execution in a commercial matter would not be appealable.

12. ***Damodar Valley Corporation (supra)*** has held that, Court should carefully and purposively scrutinize the type, nature and depth of the order that fall in the ambit of the provision of Section

37 of the Act of 1996 rather than taking a microscopic view based on the Section on which the application is made and the Section under which the order is described to have been passed. It has held that, just because an application is filed as having been made under Section 36 of the Act of 1996, it does not follow that all orders passed thereunder must have been made strictly within the four corners of Section 36 of the Act of 1996. One has to penetrate the order, dissect it and examine its effect. In the facts of that case, the Co-ordinate Bench has found that, the order impugned before it was a mandatory order of injunction which is appealable under Section 37 (1)(b) read with Section 9(1)(ii)(d) of the Act of 1996.

13. R. Piyarelall Iron & Steel Pvt. Ltd. (supra) has considered an issue as to whether, an award passed in execution in a commercial matter was appealable under Section 13 of the Act of 2015 or not. It has noticed **Damodar Valley Corporation (supra)** and **2024 SCC OnLine Cal 2530 (Sabri Properties Pvt. Ltd. and Others vs. Forstees Exports (India) Pvt. Ltd.)**. It has held that, the nature, purport and scope of the order under appeal have to be read and adjudged by the Court and whether it is appealable under the Act of 2015 or not. In the facts of that case, it has held that, if there is a failure to exercise jurisdiction under

the Act of 2015, the order may cease to be one in exercise of that jurisdiction and hence appealable under Clause 15 of the Letters Patent of 1865 or an appeal or an order under exercise of the Court's civil jurisdiction.

14. In *Dagcon (India) Pvt. Ltd. (supra)* the Co-ordinate Bench has held that, one should decide the appealability of an order from the substance of the order. In the facts of that case, the Co-ordinate Bench has observed that, in the event, the appellant had succeeded in its application before the learned Single Judge with regard to adjustment of a part of the award, it would have resulted in reduction by setting off of the counter claim against the award. In such an event, a part of the award would have stood set aside which would have made the order appealable under Section 37 of the Act of 1996 read with Section 13 of the Act of 2015.

15. *BGS SGS Soma JV (supra)* has noted the inter play between Section 37 and the Act of 1996 and Section 13 of the Act of 2015. It has noticed that, there is no independent right of appeal under Section 13 of the Act of 2015 and that, parameters of Section 37 of the Act of 1996 have to be considered in order to determine whether the appeal was maintainable or not.

16. *Fuerst Day Lawson Ltd. (supra)* has held that, no Letters Patent appeal would lie against an order refusing to enforce a foreign award in view of Section 50 of the Act of 1996.

17. The Bombay High Court in *Sushila Singhania & Ors. (supra)* has held that, an application for execution of an award passed under the Act of 1996 is not appealable under Section 13 of the Act of 2015.

18. The Bombay High Court in *R. S. Jiwani (M/s.), Mumbai (supra)* has held that, an award can be set aside only if conditions of sub-clause (a) and (b) of sub-section (2) of Section 34 are satisfied.

19. In the facts and circumstances of the present case, as noted above the appellant filed an application for execution of an award claimed to be arrived at in a conciliation proceeding. Learned Single Judge has declined to execute the award on the ground that, it is yet to attain finality.

20. Learned Single Judge has acted as an executing Court while deciding an execution petition. It cannot be said that, the learned Single Judge as the executing Court has set aside the award. Learned Single Judge as the Executing Court has exercised powers under Section 47 of the Code of Civil Procedure, 1908, which it is entitled to do so in an execution proceeding. Learned

Single Judge has held that, the award is not executable by exercising powers under Section 47 of the Code of Civil Procedure, 1908. Learned Single Judge has given reasons as to why the award is not executable. Learned Single Judge has found that, the award put into execution is yet to attain finality and that, it is subject to further arbitration proceedings.

21. Since, the learned Single Judge has not set aside the award and cannot be held to have done so on the anvil of the principle that an executing Court cannot go behind the decree, it cannot be held that, the executing Court has set aside the award.

22. The Act of 2015 has amended various provisions of the general law in order to streamline the disposal of proceedings governed by the Act of 2015 in a time bound manner. The Act of 2015 has endeavoured to specify timeline within which a proceeding governed by the Act of 2015 is to be disposed of. In streamlining and specifying timelines for disposal, the Act of 2015 has regulated appeals in the manner as enunciated in Section 13 thereof.

23. Section 13 of the Act of 2015 is as follows:-

“13. Appeals from decrees of Commercial Courts and Commercial Divisions.- [(1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a

District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(1-A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and Section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.”

24. Section 13(1) and Section 13(1-A) of the Act of 2015 has specified time limits for preferring an appeal. It has also identified the appeal forum for appeals against judgment and order of the designated Court.

25. Proviso to Section 13(1-A) of the Act of 2014 has stipulated that, an appeal shall lie from orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order 43 of the Code of Civil Procedure, 1908 as amended by the Act of 2015 and Section 37 of the Act of 1996.

26. Section 13(2) of the Act of 2015 has specified that, notwithstanding anything contained in any other law for the time being in force, or Letters Patent of a High Court, no appeal shall lie from an order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provision of the Act of 2015.

27. Therefore, reading Section 13(1-A) proviso and Section 13(2) of the Act of 2015 together, an appeal shall lie only when, the order assailed in the appeal is enumerated under Order XLIII of the Code of Civil Procedure, 1908 as amended by the Act of 2015 or under Section 37 of the Act of 1996. In other words, the order appealed against must fall within the four corners of Order XLIII of the Code of Civil Procedure, 1908 as amended by the Act of 2015 or under Section 37 of the Act of 1996, as the case may be.

28. Maintainability of the appeal governed by the Act of 2015 is therefore, to be tested on the anvil of Section 13 of the Act of 2015. In other words, the appellant has to establish that, in order to maintain the appeal, that, the judgment and order impugned, falls within the four corners of proviso to Section 13(1-A) of the Act of 2015.

29. In the facts and circumstances of the present case, appellants before us have failed to establish the same. An order of

the executing Court refusing to execute an award has not been established to be appealable under Section 13 of the Act of 2015.

30. In such circumstances, we hold that, the instant appeal is not maintainable.

31. APOT 160 of 2025 along with all connected applications are dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

32. I agree.

[PRASENJIT BISWAS, J.]