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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**COMMERCIAL APPEAL FROM ORDER NO. 13 OF 2024
WITH
INTERIM APPLICATION NO. 12445 OF 2024**

Iqbal Dalla

.. Appellant

Versus

**Life Insurance Corporation
India Limited & Anr.**

.. Respondents

Mr. Harish Pandya i/by Kalpesh Nansi for appellant.

Mr. Roop Basu i/by M/s. The Law Point for respondent no.1.

**CORAM: ALOK ARADHE, CJ. &
 BHARATI DANGRE, J.**

DATE: 7th FEBRUARY, 2025

P.C.:

- 1.** With the consent of the learned counsel for the parties, appeal is heard finally.
- 2.** In this appeal under Section 13 (1-A) of the Commercial Courts Act, 2015, the appellant has assailed the validity of the order dated 6th December, 2023 by which Notice of Motion for Judgment and Decree under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC) has been rejected.
- 3.** Facts giving rise to filing of this appeal briefly state are that the respondent no.1 has filed Commercial Suit for seeking recovery of an amount of Rs.49,24,532/-. In the aforesaid suit, the appellant filed a counter claim seeking recovery of the commission withheld and appropriated by the respondent no.1.

4. According to the appellant, the written statement filed on behalf of respondent no.1 as well as written statement to the counter claim filed by the respondent no.1 contained an admission with regard to claim of the appellant made in the counter claim. The appellant thereupon filed a Notice of Motion for Judgment under Order XII Rule 6 of CPC. The Commercial Court by an order dated 6th December, 2023 has rejected the aforesaid Notice of Motion. Hence, this appeal.

5. Learned counsel for the appellant submitted that the Notice of Motion preferred by the appellant under Order XII Rule 6 of CPC has been decided on irrelevant considerations in as much as learned Judge of the Commercial Court has held that without recording evidence it is not possible to deal with the application preferred by the appellant under Order XII Rule 6 of the CPC.

6. On the other hand, learned counsel for the respondent no.1 has submitted that this appeal is not maintainable as it is directed against an order passed by the Commercial Court and appeal could only against an order passed by the Commercial Court is appealable under Order XLIII Rule 1 of CPC.

7. We have considered the submissions made by the learned counsel for the parties and perused the record.

8. The issue with regard to maintainability of the appeal need not detain us as Section 13(1-A) of the Commercial Courts Act, 2015 provides for an appeal against Judgment as well as an order. The impugned order passed by the Commercial Court amounts to judgment as the same finally

adjudicates the rights of the party. In so far as the application under Order XII Rule 6 of CPC, the appellant is seeking decree on the basis of admission which according to him has been made in the plaint as well as in the written statement filed to the counter claim.

9. From perusal of the order passed by the Commercial Court, it is evident that the Commercial Court, *inter alia*, has held that application under Order XII Rule 6 of CPC will require the parties to adduce evidence and only thereafter the said application can be decided.

10. Learned Judge of the Commercial Court has failed to construe the scope and ambit of Order XII Rule 6 of the CPC. Order XII Rule 6 of CPC is extracted below for the facility of reference:

"ORDER XII
ADMISSIONS

1 to 5

6. Judgment on admissions. – (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions."

11. Thus, from the perusal of Order XII Rule 6 of CPC, it is evident that in case the Court is satisfied that admissions have been made either in the pleadings or otherwise, whether orally or in writing, the Court may at any stage of the suit decide the application without waiting for determination of any other question between the parties and may make such order or give judgment as it may think fit. The order passed

by the Commercial Court, therefore, suffers from jurisdictional infirmity in as much as the Commercial Court failed to exercise the jurisdiction vested in it by law for deciding the application under Order XII Rule 6 of CPC.

12. The impugned order, therefore, cannot be sustained in the eye of law. It is quashed. The matter is remitted to the Commercial Court to decide the application afresh by a speaking order bearing in mind the mandate contained in Order XII Rule 6 of CPC.

13. Accordingly, the appeal is disposed of.

14. Pending interim applications, if any, stand disposed of.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)

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by PRAVIN
DASHARATH
PANDIT
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