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

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*Date of Decision: 17.04.2025*

+ **FAO(OS) (COMM) 55/2025 & CM APPL. 20946-47/2025**

**SHYAM SUNDER SURI AND ANR.**

.....Appellants

Through: Mr Kunal Tandon, Sr Advocate with  
Mr Prateek Jain and Ms Natasha,  
Advocates.

versus

**M/S. P.C. JAIN TEXTILES PVT. LTD.**

.....Respondent

Through: Mr Vidit Garg, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**HON'BLE MR. JUSTICE TEJAS KARIA**

**VIBHU BAKHRU, J.**

1. The appellants have filed the present appeal impugning an order dated 12.03.2025 [**the impugned order**], whereby the appellants' application [IA No.31874/2024] for leave to defend the suit instituted by the respondent [being CS (COMM) No.560/2023 captioned *M/s PC Jain Textile Pvt Ltd Through its Authorised Representative v. Sh. Shyam Sunder Suri and Another*], was allowed by the learned Single Judge, subject to the appellants depositing an amount of ₹73,44,969/- with the Registrar General of this court within the period of four weeks from date.

2. The respondent had instituted the above captioned summary suit



under Order XXXVII of the Code of Civil Procedure, 1908 [CPC], *inter alia*, seeking rendition of accounts with respect to the amounts due in terms of the lease deeds dated 06.04.2016 executed between the parties with respect to the subject property [Basement, Ground and First Floor of property bearing 26/1, 26/17, 26/18, Najafgarh Road, Shivaji Marg, Moti Nagar, New Delhi-110015]. The respondent also prayed for interest at the rate of eighteen [18] per cent per annum from the date of the termination of the lease deeds till the date of the realisation.

3. The appellants filed the application seeking leave to defend, which was disposed of by the impugned order passed by the learned Single Judge of this court. As stated above, the learned Single Judge allowed the application for leave to defend subject to the appellants depositing an amount of ₹73,44,969/- with the Registrar General of this court.

4. The learned counsel appearing for the respondent raised a preliminary objection regarding the maintainability of the present appeal. In terms of Section 13(1A) of the Commercial Courts Act, 2015 [the CC Act], an appeal would lie from such orders passed by the Commercial Division or the Commercial Court that are specifically enumerated under Order XLIII of the CPC.

5. Concededly, the impugned order is not one of the orders that are enumerated under Order XLIII of the CPC. The question whether an appeal is maintainable against any such order is no longer *res integra*.

6. The Supreme Court in ***Kandla Export Corporation & Another v. OCI Corporation & Another: (2018) 14 SCC 715*** has held that the proviso to



Section 13(1A) of the CC Act would control the said provision. The Supreme Court has examined the scope of an appeal under Section 13(1A) of the CC Act in aforesaid case and observed as under:-

“13. Section 13(1) of the Commercial Courts Act, with which we are immediately concerned in these appeals, is in two parts. The main provision is, as has been correctly submitted by Shri Giri, a provision which provides for appeals from judgments, orders and decrees of the Commercial Division of the High Court. To this main provision, an exception is carved out by the proviso. The primary purpose of a proviso is to qualify the generality of the main part by providing an exception, which has been set out with great felicity in *CIT v. Indo-Mercantile Bank Ltd.* [*CIT v. Indo-Mercantile Bank Ltd.*, 1959 Supp (2) SCR 256 : AIR 1959 SC 713], thus : (SCR pp. 266-67 : AIR pp. 717-18, paras 9-10)

“9. ... The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment.

‘8. ... it is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso.’

Therefore, it is to be construed harmoniously with the main enactment. (Per Das, C.J. in *Abdul Jabar Butt v. State of J&K* [*Abdul Jabar Butt v. State of J&K*, 1957 SCR 51 : AIR 1957 SC 281 : 1957 Cri LJ 404], SCR p. 59 : AIR p. 284, para 8).



Bhagwati, J., in *Ram Narain Sons Ltd. v. CST* [*Ram Narain Sons Ltd. v. CST*, (1955) 2 SCR 483 : AIR 1955 SC 765] , said : (SCR p. 493 : AIR p. 769, para 10)

‘10. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.’

10. Lord Macmillan in *Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality* [*Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality*, 1944 SCC OnLine PC 7 : (1943-44) 71 IA 113] laid down the sphere of a proviso as follows : (IA p. 122 : SCC OnLine PC)

‘... The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude, from it by implication what clearly falls within its express terms.’

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect. (Vide also *Toronto*



*Corpn. v. Attorney-General of Canada [Toronto Corpn. v. Attorney-General of Canada, 1946 AC 32 (PC)] , AC p. 37.)”*

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.

15. Thus, an order which refers parties to arbitration under Section 8, not being appealable under Section 37(1)(a), would not be appealable under Section 13(1) of the Commercial Courts Act. Similarly, an appeal rejecting a plea referred to in sub-sections (2) and (3) of Section 16 of the Arbitration Act would equally not be appealable under Section 37(2)(a) and, therefore, under Section 13(1) of the Commercial Courts Act.”

7. In view of the abovementioned authoritative decision, the proviso to Section 13(1A) of the CC Act would control the said provision and an appeal would not lie against any other order which is not enumerated under Order XLIII of the CPC or Section 37 of the Arbitration and Conciliation Act, 1996 [**A&C Act**]. Sub-section (2) to Section 13 of the CC Act makes it amply clear that no appeal would lie against any order or decree of the Commercial Division or Commercial Court otherwise than in accordance with the CC Act. It is relevant to note that Section 13(2) of the CC Act



contains a *non-obstante* clause, which expressly overrides the Letters Patent of the High Court.

8. This court following the decision of the Supreme Court in ***Kandla Export Corporation & Another v. OCI Corporation & Another*** (supra) has held in a number of cases including ***Arrena Overseas Private Limited v. Batra Art Press: Neutral Citation No.: 2023:DHC:7446:DB*** as well as the decision in ***Odeon Builders Pvt. Ltd. v. NBCC (India) Ltd.: Neutral Citation No.: 2021:DHC:2822-DB*** and ***H P Cotton Textile Mills Ltd. v. Oriental Insurance Company Ltd.: Neutral Citation No.: 2023/DHC/000632***, that an appeal under Section 13(1A) of the CC Act would not lie against any order which is not enumerated under Order XLIII of the CPC or Section 37 of the A&C Act.

9. In view of the above, the above-captioned appeal is not maintainable and is, accordingly, dismissed. The pending applications also stand disposed of.

**VIBHU BAKHRU, J**

**TEJAS KARIA, J**

**APRIL 17, 2025**

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*Click here to check corrigendum, if any*