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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Judgment reserved on: 04.11.2025**

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Judgment delivered on: 16.12.2025+ **EFA (OS) (COMM) 25/2024 & CM APPLs. 74052/2024 & 74054/2024****M/S RAMACIVIL INDIA CONSTRUCTION PVT LTD....Appellant****Through: Mr.Avinash Trivedi, Adv. with Mr.Anurag Kaushik, Adv.****versus****UNION OF INDIA****.....Respondent****Through: Mr.Vikram Jetly, CGSC with Ms.Shreya Jetly, Adv, Mr.Aakash Pathak, GP.**+ **EFA (OS) (COMM) 12/2024 & CM APPLs. 44067/2024 & 44069/2024****UNION OF INDIA****.....Appellant****Through: Mr.Farman Ali, CGSC with Mr.Taha Yasin, Ms.Usha Jamwal, Adv.****versus****SPACECHEM ENTERPRISES****.....Respondent****Through: Mr.Praveen Kumar, Adv. with Mr.Gaurav Puri, Mr.Sarthak Gupta, Mr.Kushagra Bali, Ms.Anju Singh and Mr.Suman Raj, Adv.****CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**



J U D G M E N T

DEVENDRA KUMAR UPADHYAYA, C.J.

Since the question of law raised which needs our consideration and decision in both the appeals is the same, the appeals have been heard together and are being decided by the common judgment which follows:

Facts giving rise to EFA (OS) (COMM) 25/2024

1. This appeal has been filed under Section 10 of the Delhi High Court Act, 1966, questioning the legality of the order dated 16.07.2024 passed by learned Single Judge in Enforcement Petition, being OMP (ENF.) (COMM) 126/2021, whereby the learned Single Judge has denied payment of amount of interest on the awarded amount from the date of deposit in the Court till its release.
2. The arbitration proceedings between the appellant/Ramacivil India Construction Pvt. Ltd. (*hereinafter referred to as the 'Decree Holder'*) and the respondent/Union of India (*hereinafter referred to as the 'Judgment Debtor'*), resulted in an Award by the Arbitration Tribunal passed on 28.01.2016, whereby the Judgment Debtor was directed to pay a sum of Rs.2,99,55,403/- (Rupees Two Crore Ninety-Nine Lakh Fifty-Five Thousand Four Hundred and Three only) with simple interest @ 11% per annum from 29.01.2016 till the date actual payment is made.
3. The Award dated 28.01.2016 was challenged by the Judgment Debtor by instituting proceedings of OMP (COMM.) 516/2016, under Section 34 of



the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the 'A&C Act'*). The Decree Holder also instituted Enforcement Petition, being OMP (ENF.) (COMM.) 126/2021, for enforcement/execution of the Award dated 28.01.2016 under Section 36 of the A&C Act read with Order XXI of the Code of Civil Procedure, 1908 (*hereinafter referred to as the 'CPC'*).

4. On 11.08.2021, execution of Award was stayed by learned Single Judge subject to the Judgment Debtor depositing the award amount along with interest till that date before the Registrar General of this Court. On an application, thereafter, moved by the Decree Holder, learned Single Judge passed an order dated 06.05.2022 allowing withdrawal of the amount deposited by the Judgment Debtor pursuant to the order dated 11.08.2021. However, the said withdrawal was permitted subject to the Decree Holder furnishing a bank guarantee for an amount of Rs.4.75 crore.

5. Pursuant to this order dated 06.05.2022 passed by learned Single Judge, the amount deposited by the Judgment Debtor before the Registrar General of this Court was withdrawn, except an amount of Rs.7,09,323/- (Rupees Seven Lakh Nine Thousand Three Hundred and Twenty-Three only). Thereafter, OMP (COMM.) 516/2016, filed by the Judgment Debtor under Section 34 of the A&C Act challenging the Award, was dismissed, whereupon the Decree Holder moved an application for release of the bank guarantee along with the sum of Rs.7,09,323/- (Rupees Seven Lakh Nine Thousand Three Hundred and Twenty-Three only), which was allowed on 19.07.2023.



6. In the proceedings initiated by the Decree Holder for enforcement of the Award, namely OMP (ENF.) (COMM.) 126/2021, the Decree Holder took a stand that it was entitled to be paid the balance amount which was the interest for the period between 06.09.2021 till 19.07.2024, when the deposited amount was permitted to be released by this Court against the bank guarantee.

7. Such claim raised by the Decree Holder was opposed, and thus, the issue which remained to be decided by the learned Single Judge was in respect of the claim put forth by the Decree Holder for the amount of interest for the period aforesaid.

8. The learned Single Judge, by passing the order dated 16.07.2024, which is under challenge herein, disposed of the Enforcement Petition, OMP (ENF.) (COMM) 126/2021, by holding that the Arbitral Award stood executed in its entirety, however, denied the interest to the Decree Holder as claimed by him for the period from the date the amount under the order of the Court was deposited by the Judgment Debtor before the Registrar General of this Court, till it was ordered to be released.

9. As observed above, it is this order dated 16.07.2024, which is under challenge herein in EFA (OS) (COMM) 25/2024.

Facts giving rise to EFA (OS) (COMM) 12/2024

10. This appeal has arisen out of the order dated 15.03.2024 passed by learned Single Judge, whereby the proceedings of the enforcement petition, being OMP (ENF.) (COMM.) 171/2019, seeking enforcement of an Arbitral



Award dated 31.03.2019 as rectified by order dated 13.05.2019, have been closed, with a further direction that the Judgment Debtor (appellant herein) shall release the balance amount of Rs.1,40,73,434/- (Rupees One Crore Forty Lakh Seventy-Three Thousand Four Hundred and Thirty-Four only) to the Decree Holder (respondent herein), which is the amount of interest on the Award amount for the period the amount of Award was deposited under the orders of the Court till it was released.

11. An arbitration dispute was raised between the parties, which culminated in an Award passed by the Arbitral Tribunal on 31.03.2019, which was further rectified by means of an order passed by the Arbitral Tribunal on 13.05.2019. The Arbitral Tribunal awarded an amount of Rs.4,53,96,113/- (Rupees Four Crore Fifty-Three Lakh Ninety-Six Thousand One Hundred and Thirteen only) along with interest upto the date of award with award of future interest @ 10% per annum, if the award remained unsatisfied within a period of 60 days.

12. The Judgment Debtor instituted the proceedings of a petition, being OMP (COMM.) 459/2019, under Section 34 of the A&C Act, which was dismissed on 14.02.2023. The Decree Holder also instituted enforcement proceedings by instituting a petition, being OMP (ENF.) (COMM.) 171/2019. On 30.09.2019, the learned Single Judge directed the Judgment Debtor to deposit the awarded amount before this Court. Pursuant to which, the awarded amount was deposited by the Judgment Debtor on 15.02.2021.

13. The learned Single Judge thereafter permitted withdrawal of the award amount deposited by the Judgment Debtor under order dated



2025:DHC:11387-DB



30.09.2019, by means of an order passed on 01.03.2021. Such withdrawal was, however, made subject to the Decree Holder furnishing a bank guarantee equivalent to 1.2 times the awarded amount.

14. As observed above, the petition under Section 34 of the A&C Act filed by the Judgment Debtor, namely OMP (COMM.) 459/2019 was dismissed by the learned Single Judge by means of an order dated 14.02.2023. The Judgment Debtor accepted the order dated 14.02.2023, whereby the challenge under Section 34 of the A&C Act mounted by the Judgment Debtor was refused, and did not challenge the said order dated 14.02.2023 any further.

15. By means of an order dated 27.04.2023, the Court permitted release of the awarded amount in favour of the Decree Holder. However, in the enforcement proceedings, the Decree Holder raised an issue that it is entitled to interest which shall accrue till the Decree Holder was permitted to withdraw the amount deposited by the Judgment Debtor before this Court under the Court's order. The Judgment Debtor, however, opposed the said prayer made by the Decree Holder and took a stand that interest shall cease to run on the date the awarded amount was deposited in Court pursuant to the Court's order.

16. The said issue has been decided by the learned Single Judge by means of the order dated 15.03.2024, whereby the contention of the Decree Holder that interest on the awarded amount deposited by the Judgment Debtor under the orders of the Court shall accrue till the said amount was permitted to be withdrawn unconditionally, has been upheld.



17. The contention of the Judgment Debtor that such interest shall cease to run on the date the awarded amount was deposited in the Court, was not acceded to by the learned Single Judge while passing the order dated 15.03.2024 which is under challenge herein.

18. The learned Single Judge, thus, by order dated 15.03.2024, directed that the Decree Holder shall be paid the balance amount of Rs.1,40,73,434/- (Rupees One Crore Forty Lakh Seventy-Three Thousand Four Hundred and Thirty-Four only) and closed the enforcement proceedings. It is this order dated 15.03.2024, which is under challenge in the petition, being EFA (OS) (COMM) 12/2024, which is said to have been instituted under Section 13 (1) of the Commercial Courts Act, 2015.

PRELIMINARY ISSUE

19. During the course of arguments in these appeals, a preliminary issue has emerged for our consideration, which is, as to whether these appeals are maintainable under Section 13 (1) of the Commercial Courts Act, 2015.

20. Maintainability of these appeals under Section 10 of the Delhi High Court Act, 1966, is also an issue, which has been raised as a preliminary issue to be decided in these appeals.

ANALYSIS

21. Both these appeals have been filed before us challenging orders passed by the learned Single Judge in execution/enforcement proceedings which were instituted under Section 36 of the A&C Act, read with Order XXI of the CPC.



22. We will first deal with the issue relating to the maintainability of these appeals under Section 13 (1) of the Commercial Courts Act, 2015.

Maintainability of the appeals
under Section 13 (1) of the Commercial Courts Act, 2015

23. As held by Hon'ble Supreme Court in ***Kandla Export Corpn. & Anr. v. OCI Corpn. & Anr., (2018) 14 SCC 715***, the Commercial Courts Act, 2015, has been enacted to provide for speedy disposal of commercial disputes. The Hon'ble Supreme Court considered the object of the Commercial Courts Act, 2015, as also the A&C Act and held that the *raison d'etre* for enactment of the Commercial Courts Act, 2015 is that the commercial disputes involving high amount of money should be speedily decided.

24. Section 13 of the Commercial Courts Act, 2015, before and after its amendment which came into force w.e.f. 03.05.2018 needs to be mentioned. Section 13 which existed prior to its amendment in the year 2018 is extracted here under:-

“Section 13. Appeals from decrees of Commercial Courts and Commercial Divisions–

(1) Any person aggrieved by the decision of a Commercial Court or Commercial Division of a High Court may appeal to the Commercial Division of that High Court within a period of sixty days from the date of judgment or order, as the case may be:

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 Civil Procedure Code, 1908 as amended by this Act and Section 37 of the Arbitration and Conciliation Act, 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.”

25. After its amendment vide Act No. 28/2018, Section 13 of the Commercial Courts Act, 2015 reads as under:-

“Section 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.”

26. On a comparison of amended and un-amended Section 13 of the Commercial Courts Act, 2015, what we find is that prior to amendment, an appeal was provided against a “decision” of a Commercial Court or Commercial Division of a High Court to the Commercial Appellate Division



of that High Court. On amendment, the expression “decision” has been substituted by the expression “judgment and order”.

27. We may also note that the proviso appended to sub-section (1) of Section 13, which existed prior to amendment, has been retained in the amended provision as well.

28. For determination of the issue as to whether the instant appeals are maintainable, reference may also be had to sub-section (2) of Section 13 of the Commercial Courts Act, 2015, which contains a non-obstante clause and prescribes that *notwithstanding anything contained in any other law for the time being in force or letters patent of High Court, no appeal shall lie from any order or decree under Section 13, otherwise then in accordance with the provisions of the said Act.* The proviso stated immediately after sub-section (1A) of Section 13 of the said Act specifies that *an appeal shall lie only from orders passed by a Commercial Court or Commercial Division which are specifically enumerated in Order XLIII of the CPC as amended by the Commercial Court Act and Section 37 of the A&C Act.* Thus, as per the said proviso, apart from an appeal under Section 37 of the A&C Act, appeal under the Commercial Courts Act, 2015 is permissible under Section 13 (1) or (1A) of the Commercial Courts Act, 2015, only against the orders passed by the Commercial Division or Commercial Court which are enlisted in Order XLIII of CPC.

29. If we examine Order XLIII of the CPC, what we find is that there are only two kinds of orders passed in execution proceedings which are enlisted in Rule 1 of the said Order, namely an order under Rule 72 or 92 of Order



XXI of the CPC, setting aside or refusing to set aside a sale; and (2) an order rejecting an application made under Rule 106 (1) of Order XXI of the CPC. It also provides that an order on the original application, that is to say the application referred to in Rule 105(1) of Order XXI of the CPC, is also appealable. The said provisions can be found in Order XLIII Rule 1 (j) and (ja) of the CPC. Order XLIII Rule 1 of the CPC is extracted hereunder:-

**“ORDER XLIII
APPEALS FROM ORDERS**

1. Appeals from orders.—*An appeal shall lie from the following orders under the provisions of Section 104, namely:—*

- (a) *an Order under Rule 10 of Order VII returning a plaint to be presented to the proper Court 852[except where the procedure specified in Rule 10-A of Order VII has been followed];*
- (b) *[* * *]*
- (c) *an Order under Rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;*
- (d) *an Order under Rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte;*
- (e) *[* * *]*
- (f) *an Order under Rule 21 of Order XI;*
- (g) *[* * *]*
- (h) *[* * *]*
- (i) *an Order under Rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;*
- (j) **an Order under Rule 72 or Rule 92 of Order XXI setting aside or refusing to set aside a sale;**



[(ja) an order rejecting an application made under sub-rule (1) of Rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of Rule 105 of that Order is appealable;]

(k) an Order under Rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;

(l) an Order under Rule 10 of Order XXII giving or refusing to give leave;

(m) [* * *]

(n) an Order under Rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

[(na) an Order under Rule 5 or Rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent person;]

(o) [* * *]

(p) orders in interpleader-suit under Rule 3, Rule 4 or Rule 6 of Order XXXV;

(q) an Order under Rule 2, Rule 3 or Rule 6 of Order XXXVIII;

(r) an Order under Rule 1, Rule 2, 861[Rule 2-A], Rule 4 or Rule 10 of Order XXXIX;

(s) an Order under Rule 1 or Rule 4 of Order XL;

(t) an order of refusal under Rule 19 of Order XLI to readmit, or under Rule 21 of Order XLI to rehear, an appeal;

(u) an Order under Rule 23 862[or Rule 23-A] of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;

(v) [* * *]

(w) an Order under Rule 4 of Order XLVII granting an application for review.”



30. Thus, in an enforcement or execution proceeding pertaining to an Arbitral Award instituted before Commercial Division of this Court, if any order is passed, that is referable to order XLIII Rule 1 (j) or Rule 1 (ja), only then an appeal before the Commercial Appellate Division of this Court would be maintainable under Section 13 of the Commercial Courts Act, 2015. No other order would be appealable, in our considered opinion.

31. If the orders under challenge in these appeals are examined, what we find is that, in both these appeals, the orders which have been challenged have been passed by the Commercial Division of this Court, comprising of learned Single Judge, whereby the execution proceedings have been closed with certain directions relating to payment of interest for a certain period to the Decree Holder. Such orders are referable neither to Rule 1 (j) nor Rule 1 (ja) of Order XLIII of the CPC, and accordingly, in view of a clear provision in the proviso appended to Section 13 (1) (A) of the Commercial Courts Act, 2015, these appeals, in our considered opinion, are not maintainable.

32. Our conclusion regarding the instant appeals not being maintainable under Section 13 of the Commercial Courts Act, 2015, is fortified by the judgment of Hon'ble Supreme Court in ***Kandla Export*** (*supra*). The subject matter of ***Kandla Export*** (*supra*) was in relation to execution of a foreign award under Section 48 of the A&C Act. The Section 50 of the A&C Act provides for appeal from an order refusing to refer the parties to arbitration under Section 45 or order refusing to enforce a foreign award under Section 48. Section 50, thus, does not provide any Forum of appeal, if a foreign award is found to be enforceable and is enforced under Section 48 of the



said Act. In *Kandla Export* (*supra*), the High Court of Gujarat, dismissing the objection by the Judgment Debtor, allowed the execution petition filed by the Decree Holder. Being aggrieved by the said judgment and order, an appeal was filed under the Commercial Courts Act, 2015, which was dismissed, and it is this order of dismissal of such an appeal filed under the Commercial Courts Act, 2015, which was under challenge before Hon'ble Supreme Court. A plea was taken that the said appeal filed under the Commercial Courts Act, 2015, was maintainable considering the fact that Section 50 of the A&C Act provided for an appeal only in case the petition to enforce a foreign award was rejected.

33. The Hon'ble Supreme Court, in detail, analysed the object and reasons of the Commercial Courts Act, 2015, as also the A&C Act and also considered the legislative policy embodied in these two enactments and clearly held that such an order would not be appealable under Section 13 (1) of the Commercial Courts Act, 2015. The said conclusion was reached by the Hon'ble Supreme Court after discussing the proviso appended to Section 13 (1) of the Commercial Courts Act, 2015, which existed prior to its amendment in the year 2018.

34. As already discussed above, even by amendment in the year 2018, the proviso which existed prior to amendment has been retained, and accordingly the ratio, that appeal under Section 13 of the Commercial Courts Act, 2015 would not be maintainable, except against orders which are enlisted in Order XLIII of the CPC, as held by Hon'ble Supreme Court in *Kandla Export* (*supra*), will have its application with full force in the



facts of the instant appeals as well. Paragraph 13 and 14 of the said judgment in **Kandla Export** (*supra*) is extracted herein below:-

“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 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.”

35. Our view regarding non-maintainability of these appeals also finds support from the judgment of a Division Bench of this Court, dated 14.02.2017 passed in ***HPL (India) Limited v. QRG Enterprises & Anr.,***



FAO (OS) (COMM) 12/2017, wherein the scheme of Section 13 has exhaustively been examined and it has been clearly held that the legal position which emerges is that an appeal lies from orders which are specifically enumerated under Order XLIII of the CPC and further that no appeal would lie from an order not listed in Order XLIII of the CPC. Paragraph 34, 35 and 37 of the said judgment in ***HPL (India) Limited*** (*supra*) are extracted herein below:-

“34. Now, let us examine sub-section (2) of section 13 of the said Act. As noticed above, it begins with the non obstante expression —notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court ..” The words —any other law for the time being in force — would include the Delhi High Court Act, 1966. The portion after the non obstante expression specifically cautions that “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”. In other words, whatever may be contained in, inter alia, the Delhi High Court Act, 1966, an appeal from any order or decree of a Commercial Division or Commercial Court — “shall lie” only in accordance with the provisions of the said Act. To be clear, if an appeal from a particular kind of order or decree were to be provided under the Delhi High Court Act, 1966 but not under the said Act then, such an order or decree would not be appealable. Therefore, even if, by virtue of section 10 of the Delhi High Court Act, 1966, an appeal lay from a particular kind of an order, no appeal could be preferred there against unless the said Act itself provided for such an appeal.

35. Reading the entire section 13 of the said Act the clear position is that an appeal lies from an order which is specifically enumerated under Order XLIII CPC. Furthermore, no appeal would lie from an order not specifically enumerated in Order XLIII CPC because of the incorporation of the expression “from no other orders ” appearing in section 104 CPC (which is clearly applicable by virtue of section 16(2) of the said Act). And, Section 10 of the



Delhi High Court Act, 1966 would not come to the rescue because of the non obstante provision contained in section 13(2) of the said Act.”

36.

37. The learned counsel for the appellants had submitted that if the arguments of the respondents were to be accepted then this would have grave consequences as aggrieved parties would be left remediless. It is well established that the right of appeal is a statutory right. It does not exist outside the statute. If the statute does not provide for such a right then that is how the legislature in its wisdom intended it to be. In the absence of a challenge to the provisions, it cannot be argued that though the statute does not provide a remedy of appeal yet we must infer such a right as otherwise an aggrieved party would be without a remedy.”

36. Similar is the opinion expressed in a judgment by another Coordinate Bench of this Court in ***Synergies Casting Ltd. v. National Research Development Corpn.***, 2025 SCC OnLine Del 177. Our view is also supported by another Division Bench judgment of this Court in ***Prasar Bharati v. Stracon India Ltd.***, 2020 SCC OnLine Del 737, which relies upon ***Kandla Export*** (*supra*). Yet a Division Bench of this Court in ***H.P. Cotton Textile Mills Ltd. v. Oriental Insurance Co. Ltd.***, 2023 SCC OnLine Del 511, has expressed the same view as ours.

37. Reference may also be had to a judgment of a Division Bench of the Bombay High Court in ***Bank of India &Anr. vs. Maruti Civil Works***, 2023 SCC OnLine Bom 2667, where similar view has been taken.

38. The appellants, in support of their submission regarding maintainability of these appeals, have placed heavy reliance on a Division Bench judgment of this Court dated 05.07.2020 in ***Delhi Chemical and***



Pharmaceutical Works Pvt. Ltd. & Anr. v. Hingiri Realtors Pvt. Ltd. & Anr., EFA (OS) (COMM) NO.4/2021. However, when we examine ***Delhi Chemical and Pharmaceutical*** (*supra*), what we find is that the same is based on yet another Division Bench judgment of this Court in ***D & H India Ltd. v. Superon Schweissttechnik India Ltd.***, (2020) 268 DLT 15 (DB). ***Delhi Chemical and Pharmaceutical*** (*supra*) itself has doubted the correctness of the view taken in ***D & H India Ltd.*** (*supra*). However, the Division Bench in ***Delhi Chemical and Pharmaceutical*** (*supra*) did not feel any need to make a reference to the question to a larger bench disclosed in the said judgment. Paragraph 25 of the judgment in ***Delhi Chemical and Pharmaceutical*** (*supra*) is extracted herein below:-

“25. Though we, with due deference to the members of the Division Bench in ***D&H India Ltd. supra***, entertain doubts as to the correctness of the view taken in ***D&H India Ltd.*** but do not, in the facts of the present case, feel the need to make a reference of the question to a larger bench; the reason is, that ***Bhandari Engineers & Builders Pvt. Ltd. supra***, on which the impugned orders are based, while laying down the law laid down therein, also directs all Courts to abide thereby, resulting in plethora of similar challenges as made herein and it is deemed expedient to settle the law in that regard and which would remain pending if the question of maintainability of the appeal were to be referred to a larger bench.”

39. The judgment by Bombay High Court in ***Bank of India*** (*supra*) has taken a note of the said fact and, after considering ***D & H India Ltd.*** (*supra*), held that an appeal under Section 13 of the Commercial Courts Act, 2015 will be maintainable only against the orders which are enumerated or enlisted in Order XLIII of the CPC.

40. We may also notice, at this juncture, that judgment by the Division Bench of this Court in ***HPL (India) Limited*** (*supra*) was taken to the



Hon'ble Supreme Court. However, though the SLP is said to be pending, the said judgment in ***HPL (India) Limited*** (*supra*) has not been stayed by the Hon'ble Supreme Court.

41. For the reasons as discussed above, we hold that both these appeals are not maintainable under Section 13 of the Commercial Courts Act, 2015.

Maintainability of the appeals
under Section 10 of the Delhi High Court Act, 1966

42. We now move to consider as to whether these appeals are maintainable under Section 10 of the Delhi High Court Act, 1966. Section 10 of the Delhi High Court Act, 1966 is reproduced herein under:-

“10. Powers of Judges.—(1) Where a single Judge of the High Court of Delhi exercises ordinary original civil jurisdiction conferred by sub- section (2) of section 5 on that Court, an appeal shall lie from the judgment of the single Judge to a Division Court of that High Court.

(2) Subject to the provisions of sub- section (1), the law in force immediately before the appointed day relating to the powers of the Chief Justice, single Judges and Division Courts of the High Court of Punjab and with respect to all matters ancillary to the exercise of those powers shall, with the necessary modifications, apply in relation to the High Court of Delhi.”

(underlining added)

43. The said issue has been discussed and analysed in detail and answered by the Division Bench of this Court in ***HPL (India) Limited*** (*supra*). We may note the provisions of Section 21 of the Commercial Courts Act, 2015, which unambiguously provides that *the provisions of the said Act shall have*



an overriding effect, notwithstanding anything inconsistent contained in any other law for the time being in force or any instrument having effect by virtue of law for the time being in force other than the Commercial Courts Act, 2015. Section 21 of the Commercial Courts Act is extracted herein below:-

“21. Act to have overriding effect.—*Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than this Act.”*

44. Sub-section (2) of Section 13 may also be looked into, at this juncture, which provides that no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provision of the Commercial Courts Act, 2015, notwithstanding anything contained in any other law for the time being in force or letters patent of the High Court. Sub-section (2) of Section 13 of the Commercial Courts Act, 2015, thus, commences with a non-obstante clause and provides that, even if anything contrary exists in any other law for the time being in force or even in letters patent of High Court, appeal shall not lie, otherwise than in accordance with the provision of the Commercial Courts Act, 2015. The expression “any other law for the time being in force” in our view, encompasses in its fold the provisions of Section 10 of the Delhi High Court Act, 1966, as well.



45. Our view in this regard is fortified by the view taken by the Coordinate Bench of this Court in **HPL (India) Limited** (*supra*) as expressed in Paragraph 34 of the judgment, which reads as under:-

“34. Now, let us examine sub-section (2) of section 13 of the said Act. As noticed above, it begins with the non obstante expression —notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court ..”. The words —any other law for the time being in force” – would include the Delhi High Court Act, 1966. The portion after the non obstante expression specifically cautions that — “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”. In other words, whatever may be contained in, inter alia, the Delhi High Court Act, 1966, an appeal from any order or decree of a Commercial Division or Commercial Court — “shall lie” only in accordance with the provisions of the said Act. To be clear, if an appeal from a particular kind of order or decree were to be provided under the Delhi High Court Act, 1966 but not under the said Act then, such an order or decree would not be appealable. Therefore, even if, by virtue of section 10 of the Delhi High Court Act, 1966, an appeal lay from a particular kind of an order, no appeal could be preferred there against unless the said Act itself provided for such an appeal.”

46. Paragraph 54 and 55 of the **HPL (India) Limited** (*supra*) is also apposite to be quoted herein, which are as under:-

“54. It was lastly contended that if the interpretation given by the respondents were to be accepted, there would be a conflict between the provisions of Sections 13 and 16 of the said Act and in such an eventuality, the rule of harmonious construction ought to be employed. We do not see as to how there would be a conflict between the provisions of Sections 13 and 16 if the interpretation advanced by the respondents and accepted by us was to be employed. We have already pointed out above that Section 13(1) not only provides for a forum of appeal but also a specified period of limitation. The proviso to Section 13(1) explicitly provides that an appeal shall lie from such orders that are specifically



enumerated under Order XLIII of CPC. Section 13(2) makes it further clear that no appeal shall lie from any Order or decree of a Commercial Division or a Commercial Court otherwise than in accordance with the provisions of the said Act notwithstanding anything contained in any other law for the time being in force or in a Letters Patent of a High Court. When the provisions of a statute are explicit and the intendment of the legislature is clear, there is no question of trying to resolve an imagined conflict between the provisions by employing the rule of harmonious construction.

55. Finally, we are of the view that if the interpretation of the appellants were to be accepted then we would have to read Section 13 sans the proviso to Section 13(1) and sans Section 13(2). That, surely, could not have been the intention of the legislature!”

47. Thus, we are of the opinion that these appeals are not maintainable even under Section 10 of the Delhi High Court Act, 1966.

CONCLUSION

48. For the reasons aforesaid, we hold that the instant appeals are not maintainable, which are hereby dismissed. The pending applications also stand dismissed.

49. There will be no orders as to costs.

**(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE**

**(TUSHAR RAO GEDELA)
JUDGE**

DECEMBER 16, 2025

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