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APHC010260982026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI

FRIDAY, THE 20th DAY OF NOVEMBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE D RAMESH

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

COMMERCIAL COURT APPEAL NO: 13 OF 2026

Between:

1. The Oriental Insurance Company Ltd.,, represented by its Authorized Officer, Divisional Office -III, Gajuwaka, Visakhapatnam - 530026.

...APPELLANT

AND

1. M/s Srilakshmi Srinivas Jute Mills Pvt Ltd, rep.by its Authorized Person, Sri.K.Govindarajulu, Director, Having its Registered Office at Bobbili Road, Rajam, Vizianagaram District, Andhra Pradesh - 532127.

2. Sri N S R Chandra Prasad, , Sole Arbitrator, T-1/812, Swan Lake Apartments, Sangeetha Nagar, Kukatpally, Hyderabad - 500072

...RESPONDENTs

The Appellant prefers this Memorandum of Commercial Courts Appeal seeking to Set-A-Side the Order/ Judgment dated 15/04/2026, in CAOP No. 5/2026 on the file of the court of the Special Judge for Trial and Disposal of Commercial Disputes, Visakhapatnam

IA NO: 1 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operation of the Order dated 15/04/2026 passed in CAOP No. 5/2026 on the file of the court of the Special Judge for Trial and Disposal of Commercial Disputes, Visakhapatnam pending disposal of the main COMCA and pass

Counsel for the Appellant: KIRAN KUMAR VADLAMUDI

Counsel for the Respondents: S.MOHANA RAO

The Court made the following order:

THE HONOURABLE SRI JUSTICE D.RAMESH

AND

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

COMMERCIAL COURT APPEAL NO: 13 OF 2026

ORDER: *(Per Hon'ble Sri Justice A. Hari Haranadha Sarma)*

Introductory:-

[i] This is an appeal filed under Section 13 of Commercial Courts Act r/w Section 37 of the Arbitration and Conciliation Act, 1996. The challenge in this appeal is against the orders dated 15.04.2026 passed in CAOP No.5 of 2026 by the Special Judge for Trial and Disposal of Commercial Disputes, Visakhapatnam *[For short 'the Commercial Court'],* in terms of Section 29A(4) and (5) of the Arbitration and Conciliation Act, 1996.

[ii] Respondent No.1 before the Commercial Court is the appellant. Respondent No.2 before the Commercial Court and in the present appeal is only a formal party – learned Arbitrator.

2. An application was filed before the Commercial Court in terms of Sections 29A (4) and 29A(5) of the Arbitration and Conciliation Act, 1996 seeking for extension of the mandate of the learned Arbitral Tribunal for a further period of (8) eight months from the date of disposal of the said application. The application was opposed by the appellant, disputing the grounds set out in support of the extension and raising various objections,

inter alia with regard to the maintainability of the proceedings, insufficiency of the grounds pleaded for extension, absence of a cause of action, abuse of the process of law, pendency of proceedings before the National Company Law Tribunal (NCLT), and attributing delay to the conduct of the petitioner.

3. Learned Special Judge for the Commercial Court allowed the application extending the mandate period, granting (7) months time i.e., from 29.12.2025 to 29.07.2026.

4. Aggrieved by the same the present appeal is filed disputing granting of such time.

Hearing:-

5. (i) Heard Sri Kiran Kumar Vadlamudi, learned counsel for the appellant and Sri Rohit Benerjee, Sri Joydeep Sen, Sri Sin Guru Sai Krishna, learned counsel appearing for the respondents.

(ii) A preliminary objection is raised as to the maintainability of the present appeal in terms of Section 13 of Commercial Courts Act, against an order passed under Sections 29A(4), 29A(5) of the Arbitration and Conciliation Act, 1996. It is contended that no appeal lies under Section 13 of Commercial Courts Act against an order of such nature, as the said provision does not envisage orders passed under Sections 29A(4) and 29A(5) of the Arbitration and Conciliation Act are appealable orders. It is further contended that the scope of Section 13 of Commercial Courts Act is

confined to appeals against the orders enumerated under Order XLIII of Code of Civil Procedure, 1908 or orders appealable under Section 37 of the Arbitration and Conciliation Act and does not extend to orders of any other nature.

(iii) The learned counsel for the respondent in the present appeal has vehemently contended that the appeal can be maintainable only in respect of the orders where a specific right of appeal is conferred under the relevant statute, and the right of appeal is not an inherent or vested right unless expressly conferred by the statute; in the absence of such statutory conferment, an appeal cannot be maintained against every order passed by a Court. It is further contended that the scope of Section 13 of the Commercial Courts Act, 2015 is limited to the circumstances specifically contemplated therein. In support of his contentions and in opposition to the maintainability of the appeal, the learned counsel has placed reliance on the following decisions:

1) **Fuerst Day Lawson Limited Vs. Jindal Exports Limited**[1]

2) **Kandla Export Corporation and Another Vs. OCI Corporation and Another**[2]

3) **BGS SGS Soma JV Vs. NHPC Limited**[3]

[1] (2011) 8 SCC 333
[2] (2018) 14 SCC 715
[3] (2020) 4 SCC 234

(iv) Answering the aforesaid submissions, learned counsel for the appellant, apart from relying upon the decision in ***Kandla Export Corporation***'s case *(cited 2 supra),* has also placed reliance on the very same decision in ***BGS SGS Soma JV's*** case *(cited 3 supra),* and contended that the present appeal is very much maintainable and the arguments of the learned counsel for the respondent with regard to the maintainability of the appeal are devoid of merit and do not warrant consideration, hence, the grounds urged in the appeal can be considered. However, learned counsel for the respondent insisted for deciding the maintainability of the appeal. Hence, this Court is constrained to answer the maintainability of the appeal as a preliminary objection.

6. Now, the point that arises for consideration is,

> Whether an appeal is maintainable under Section 13 of Commercial Courts Act, 2015 against on order passed by the Commercial Court in terms of Section 29A (4) and (5) of Arbitration and Conciliation Act, 1996?

7. (i) The argument of the learned counsel for the respondent is that, in view of the observations of the Hon'ble Apex Court in ***Fuerst Day Lawson Limited's case*** (*cited 1 supra*), the Arbitration and Conciliation Act 1996 being a self -contained Code, the applicability of the general law governing appeals is not possible. It is, therefore, contended that the present appeal is not maintainable under Section 37 of the Arbitration and

Conciliation Act, 1996. Further, by placing reliance on the observations of the Hon'ble Apex Court in **Kandla Export Corporation's case** *(cited 2 supra)*, the learned counsel would submit that an appeal under Section 13 of the Commercial Courts Act, 2015, would lie only against orders passed by a Commercial Court or Commercial Division covered by Order XLIII of the Code of Civil Procedure, 1908, or by Section 37 of the Arbitration and Conciliation Act, 1996. It is contended that Section 37 of the Arbitration and Conciliation Act does not encompass orders passed under Section 29A thereof within its ambit. Therefore, the learned counsel submits that the present appeal is not maintainable under Section 13 of the Commercial Courts Act.

(ii). Further, learned counsel for the respondent has referred to the observations made in ***BGS SGS Soma JV'***s case *(cited 3 supra)* and submitted that the jurisdictional aspect has been exhaustively considered by the Hon'ble Apex Court therein. It is contended that, the observations are to the effect that, where an order is passed beyond the categories of orders specifically contemplated under Section 37 of the Arbitration and Conciliation Act, 1996, or Order XLIII of the Code of Civil Procedure, 1908, no appeal would lie under Section 13 of the Commercial Courts Act, 2015.

(iii) He would also submit that, while examining the scope of Section 13 of the Commercial Courts Act, 2015 with reference to Section 37 of Arbitration and Conciliation Act, and placing reliance on the decision in

Kandla Export Corporation's case *(cited 2 supra),* the Hon'ble Apex Court in **BGS SGS Soma JV's** case *(cited 3 supra)*, considered the maintainability of the appeal against the orders passed under Section 50 of Arbitration and Conciliation Act. The findings recorded therein would drive one to the conclusion that an appeal against the order, which does not fall within the ambit of either Order XLIII of the CPC or Section 37 of Arbitration and Conciliation Act, is not maintainable under Section 13 of the Commercial Courts Act. Consequently the present appeal is liable to be rejected.

8. Answering the same, learned counsel for the appellant submitted that the observations in **Kandla Export Corporation's case** *(cited 2 supra)* ***and BGS SGS Soma JV'***s case *(cited 3 supra)* were made in the context of questioning the orders passed in terms of Section 50 of the Arbitration and Conciliation Act, which falls outside Part I of the said Act and relating to international arbitration. He would further submit that Section 50 of the Arbitration and Conciliation Act operates independently and specifically provides for the maintainability of the appeals against the orders enumerated therein, subject to an express bar that no second appeal shall lie against such orders. Therefore, the observations made by the Hon'ble Apex Court in that context cannot be extended to attract any bar under Section 13 of the Commercial Courts Act, 2015, insofar as the maintainability of the present appeal is concerned.

Analysis:-

9. Before answering the contentions, it is found relevant to refer to the provisions of Order XLIII of the Code of Civil Procedure, 1908, Section 37 of the Arbitration and Conciliation Act and Section 13 of the Commercial Courts Act 2015

[i] Order XLIII of the Code of Civil Procedure, 1908:-

Appeal 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 [except where the procedure specified in rule 10A 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 [*****]
>
> (f) an order under rule 21 of Order XI; (g) [*****]
>
> (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 persons:] ; (o) [*****]

(p) orders in interpleader-suits under rule, rule 4 or rule 6 or Order XXXV; (q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII;

(r) an order under rule 1, rule 2 [rule 2A], 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 re-admit, or under rule 21 of Order XLI to re-hear, an appeal; (u) an order rule 23 [or rule 23A] 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.

[ii] **Section 37 of the Arbitration and Conciliation Act:-**

"37. Appealable orders:

(1)[Notwithstanding anything contained in any other law for the time being in force, an appeal] [Substituted 'An appeal' by Act No. 33 of 2019, dated 9.8.2019.] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:

(a)[refusing to refer the parties to arbitration under section 8;

(b)granting or refusing to grant any measure under section 9;

(c)setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a Court from an order of the arbitral Tribunal,

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

[iii] Section 13 of the Commercial Courts Act 2015:-

"**13. Appeals from decrees of Commercial Courts and Commercial Divisions.**

(1) Any person aggrieved by the decision of the Commercial Court or 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 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 Code of Civil Procedure, 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."

10. (i) If a commercial dispute is entertained by a Commercial Court, the provisions of the CPC as amended by the Commercial Courts Act, are applicable thereto, an appeal against an order passed thereon, as provided under Order XLIII of CPC, is maintainable under Section 13 of the Commercial Courts Act. To this extent, there can be no quarrel. In so far as an order passed by a Commercial Court in a matter arising out of or relating to Arbitration and Conciliation Act 1996, if such an order is appealable under Section 37 of the said Act, an appeal is maintainable under Section 13 of the

Commercial Courts Act, read with Section 37 of the Arbitration and Conciliation Act. This is also clear.

(ii) Now, the controversy raised for consideration is, in respect of orders which are neither covered by Order XLIII of the CPC nor made appealable under Section 37 of the Arbitration and Conciliation Act, whether an appeal is maintainable under Section 13 of the Commercial Courts Act, 2015, against every order passed by a Commercial Court, in view of Section 13(1) of the said Act.

11. The applicability of Section 37 and the context in which the said provision operates is not in dispute. Section 37 of the Arbitration and Conciliation Act, 1996, specifically enumerates the orders against which an appeal is maintainable. The orders appealable under Section 37 of the Arbitration and Conciliation Act, 1996, are as follows:

1) An order refusing to refer the parties to the Arbitration under Section 8,

2) An order granting or refusing any interim measure under Section 9,

3) An order setting aside or refusing to set aside arbitral award under Section 34,

4) An order accepting a plea under Sub-sections (2) or (3) of Section 16 of the Act that the Arbitral Tribunal lacks jurisdiction or is exceeding the scope of its authority; and

5) An order granting or refusing to grant any interim measure under Section 17 by the Arbitral Tribunal.

12. As per Section 13(1) of Commercial Courts Act, 2015,

> Any person aggrieved by the decision of the Commercial Court or Commercial Division of a High Court may appeal within sixty (60) days, before the Commercial Appellate Division of that High Court.

The proviso to Section 13(1) of the Commercial Courts Act, 2015 specifically provides that an appeal shall lie from the orders passed by a Commercial Division or a Commercial Court, as enumerated under Order XLIII of CPC and Section 37 of the Arbitration and Conciliation Act, 1996. It is very much clear that an order passed under 29A of the Arbitration and Conciliation Act is not falling within the ambit of the appealable orders enumerated under Section 37 of the said Act.

13. In this context, it is found appropriate to refer to the observations of the Hon'ble Apex Court in the authorities cited supra, which are as follows:

1) **Kandla Export Corporation and Another Vs. OCI Corporation and Another** [Cited 2 supra] vide para 13 to 15 reads as follows:

> " **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.

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.

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."

2) In **BGS SGS Soma JV Vs. NHPC Limited** *[cited 3 supra]* the observations made in paras 12 to 20, which read as follows:

" **12.** The interplay between Section 37 of the Arbitration Act, 1996 and Section 13 of the Commercial Courts Act, 2015, has been laid down in some detail in the judgment in *Kandla Export Corpn.* [*Kandla Export Corpn.* v. *OCI Corpn.*, (2018) 14 SCC 715 : (2018) 4 SCC (Civ) 664] The precise question that arose in *Kandla Export Corpn.* [*Kandla Export Corpn.* v. *OCI Corpn.*, (2018) 14 SCC 715 : (2018) 4 SCC (Civ) 664] was as to whether an appeal, which was not maintainable under Section 50 of the Arbitration Act, 1996, is nonetheless maintainable under Section 13(1) of the Commercial Courts Act, 2015. In this context, after setting out various provisions of the Commercial Courts Act, 2015 and the Arbitration Act, 1996, this Court held : (SCC pp. 727, 729, 731-34, paras 13-15, 20-22 & 27)

"*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. …"

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.

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.

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20. Given the judgment of this Court in *Fuerst Day Lawson* [*Fuerst Day Lawson Ltd.* v. *Jindal Exports Ltd.*, (2011) 8 SCC 333 : (2011) 4 SCC (Civ) 178] , which Parliament is presumed to know when it enacted the Arbitration Amendment Act, 2015, and given the fact that no change was made in Section 50 of the Arbitration Act when the Commercial Courts Act was brought into force, it is clear that Section 50 is a provision contained in a self-contained code on matters pertaining to arbitration, and which is exhaustive in nature. It carries the negative import mentioned in para 89 of *Fuerst Day Lawson* [*Fuerst Day Lawson Ltd.* v. *Jindal Exports Ltd.*, (2011) 8 SCC 333 : (2011) 4 SCC (Civ) 178] that appeals which are not mentioned therein, are not permissible. This being the case, it is clear that Section 13(1) of the Commercial Courts Act, being a general provision vis-à-vis arbitration relating to appeals arising out of commercial disputes, would obviously not apply to cases covered by Section 50 of the Arbitration Act.

21. However, the question still arises as to why Section 37 of the Arbitration Act was expressly included in the proviso to Section 13(1) of the Commercial Courts Act, which is equally a special provision of appeal contained in a self-contained code, which in any case would be outside Section 13(1) of the Commercial Courts Act. One answer is that this was done ex abundanti cautela. Another answer may be that as Section 37 itself was amended by the Arbitration Amendment Act, 2015, which came into force on the same day as the Commercial Courts Act, Parliament thought, in its wisdom, that it was necessary to emphasise that the amended Section 37 would have precedence over the general provision contained in Section 13(1) of the Commercial Courts Act. Incidentally, the amendment of 2015 introduced one more category into the category of appealable orders in the Arbitration Act, namely, a category where an order is made under Section 8 refusing to refer parties to arbitration. Parliament may have found it necessary to emphasise the fact that an order referring parties to arbitration under Section 8 is not appealable under Section 37(1)(*a*) and would, therefore, not be appealable under Section 13(1) of the Commercial Courts Act. Whatever may be the ultimate reason for including Section 37 of the Arbitration Act in the proviso to Section 13(1), the ratio decidendi of the judgment in *Fuerst Day Lawson* [*Fuerst Day Lawson Ltd.* v. *Jindal Exports Ltd.*, (2011) 8 SCC 333 :

(2011) 4 SCC (Civ) 178] would apply, and this being so, appeals filed under Section 50 of the Arbitration Act would have to follow the drill of Section 50 alone.

22. This, in fact, follows from the language of Section 50 itself. In all arbitration cases of enforcement of foreign awards, it is Section 50 alone that provides an appeal. Having provided for an appeal, the forum of appeal is left "to the Court authorised by law to hear appeals from such orders". Section 50 properly read would, therefore, mean that if an appeal lies under the said provision, then alone would Section 13(1) of the Commercial Courts Act be attracted as laying down the forum which will hear and decide such an appeal.

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27. The matter can be looked at from a slightly different angle. Given the objects of both the statutes, it is clear that arbitration itself is meant to be a speedy resolution of disputes between parties. Equally, enforcement of foreign awards should take place as soon as possible if India is to remain as an equal partner, commercially speaking, in the international community. In point of fact, the raison d'être for the enactment of the Commercial Courts Act is that commercial disputes involving high amounts of money should be speedily decided. Given the objects of both the enactments, if we were to provide an additional appeal, when Section 50 does away with an appeal so as to speedily enforce foreign awards, we would be turning the Arbitration Act and the Commercial Courts Act on their heads. Admittedly, if the amount contained in a foreign award to be enforced in India were less than Rs 1 crore, and a Single Judge of a High Court were to enforce such award, no appeal would lie, in keeping with the object of speedy enforcement of foreign awards. However, if in the same fact circumstance, a foreign award were to be for Rs 1 crore or more, if the appellants are correct, enforcement of such award would be further delayed by providing an appeal under Section 13(1) of the Commercial Courts Act. Any such interpretation would lead to absurdity, and would be directly contrary to the object sought to be achieved by the Commercial Courts Act viz. speedy resolution of disputes of a commercial nature involving a sum of Rs 1 crore and over. For this reason also, we feel that Section 13(1) of the Commercial Courts Act must be construed in accordance with the object sought to be achieved by the Act. Any construction of Section 13 of the Commercial Courts Act, which would lead to further delay, instead of an expeditious enforcement of a foreign award must, therefore, be eschewed. Even on applying the doctrine of harmonious construction of both statutes, it is clear that they are best harmonised by giving effect to the special statute i.e. the Arbitration Act, vis-à-vis the more general statute, namely, the Commercial Courts Act, being left to operate in spheres other than arbitration."

13. Given the fact that there is no independent right of appeal under Section 13(1) of the Commercial Courts Act, 2015, which merely provides the forum of filing appeals, it is the parameters of Section 37 of the Arbitration Act, 1996 alone which have to be looked at in order to determine whether the present appeals were maintainable. Section 37(1) makes it clear that appeals shall only lie from the orders set out in sub-clauses (*a*), (*b*) and (*c*) *and from no others*. The pigeonhole that the High Court in the impugned judgment [*NHPC Ltd.* v. *Jaiparkash Associates Ltd.*, 2018 SCC OnLine P&H 1304 : (2019) 193 AIC 839]

has chosen to say that the appeals in the present cases were maintainable is sub-clause (*c*). According to the High Court, even where a Section 34 application is ordered to be returned to the appropriate court, such order would amount to an order "refusing to set aside an arbitral award under Section 34".

14. Interestingly, under the proviso to Section 13(1-A) of the Commercial Courts Act, 2015, Order 43 CPC is also mentioned. Order 43 Rule (1)(*a*) reads as follows:

> "**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 7 returning a plaint to be presented to the proper court except where the procedure specified in Rule 10-A of Order 7 has been followed;"

This provision is conspicuous by its absence in Section 37 of the Arbitration Act, 1996, which alone can be looked at for the purpose of filing appeals against orders setting aside, or refusing to set aside awards under Section 34. Also, what is missed by the impugned judgment *[NHPC Ltd. v. Jaiparkash Associates Ltd., 2018 SCC OnLine P&H 1304 : (2019) 193 AIC 839]* is the words "under Section 34". Thus, the refusal to set aside an arbitral award must be under Section 34 i.e. after the grounds set out in Section 34 have been applied to the arbitral award in question, and after the Court has turned down such grounds. Admittedly, on the facts of these cases, there was no adjudication under Section 34 of the Arbitration Act, 1996 — all that was done was that the Special Commercial Court at Gurugram allowed an application filed under Section 151 read with Order 7 Rule 10 CPC, determining that the Special Commercial Court at Gurugram had no jurisdiction to proceed further with the Section 34 application, and therefore, such application would have to be returned to the competent court situate at New Delhi.

15. Shri Anurabh Chowdhury referred to a number of judgments in which a well-settled proposition was elucidated i.e. that an appeal is a creature of statute, and must either be found within the four corners of the statute, or not be there be at all. In support thereof, he referred to *MCD* v. *International Security & Intelligence Agency Ltd.* [*MCD* v. *International Security & Intelligence Agency Ltd.*, (2004) 3 SCC 250] (at paras 14 and 15), and *Arcot Textile Mills Ltd.* v. *Regl. Provident Fund Commr.* [*Arcot Textile Mills Ltd.* v. *Regl. Provident Fund Commr.*, (2013) 16 SCC 1 : (2014) 3 SCC (L&S) 358] (at para 20). He also referred to a recent Delhi High Court judgment reported as *South Delhi Municipal Corpn.* v. *Tech Mahindra* [*South Delhi Municipal Corpn.* v. *Tech Mahindra*, 2019 SCC OnLine Del 11863] , in which the Delhi High Court held that an order [*Tech Mahindra Ltd.* v. *NDMC*, 2018 SCC OnLine Del 13342] of a Single Judge, which directed the deposit of 50% of the awarded amount, would not be appealable under Section 37 of the Arbitration Act, 1996 read with the Commercial Courts Act, 2015.

In the course of discussion the Delhi High Court said : (*South Delhi Municipal Corpn. case* [*South Delhi Municipal Corpn.* v. *Tech Mahindra*, 2019 SCC OnLine Del 11863] , SCC OnLine Del paras 12-13)

> "*12*. In view of the above discussions, we conclude that the present appeal is not maintainable. The appellant's remedy clearly lies elsewhere. An attempt was made to urge that no litigant can be deprived of remedy if there is a grievance : ubi jus ibi remedium; however, that argument is wholly without substance because an appeal, it has been repeatedly emphasised, is a specific creation of statute and cannot be claimed as a matter of right. This was explained pithily in *Ganga Bai* v. *Vijay Kumar* [*Ganga Bai* v. *Vijay Kumar*, (1974) 2 SCC 393] , in the following terms : (SCC p. 397, para 15)
>
> '*15*. … There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law.

That explains why the right of appeal is described as a creature of statute.'

13. In view of the above discussion, it is held that the present appeal is plainly not maintainable by virtue of provisions of the Commercial Courts Act, 2015; the appeal is therefore dismissed. No costs."

16. Shri Chowdhury also referred to another Delhi High Court judgment reported as *Harmanprit Singh Sidhu* v. *Arcadia Shares & Stock Brokers (P) Ltd.* [*Harmanprit Singh Sidhu* v. *Arcadia Shares & Stock Brokers (P) Ltd.*, 2016 SCC OnLine Del 5383 : (2016) 234 DLT 30] , in which a learned Single Judge of the Delhi High Court allowed [*Arcadia Shares & Stock Brokers (P) Ltd.* v. *Harmanprit Singh Sidhu*, 2016 SCC OnLine Del 6625] an application for condonation of delay in filing a Section 34 petition. The Division Bench, in holding that an appeal against such an order would not be maintainable under Section 37 of the Arbitration Act, 1996, read with the Commercial Courts Act, 2015 held : *(Harmanprit Singh Sidhu case [Harmanprit Singh Sidhu v. Arcadia Shares & Stock Brokers (P) Ltd., 2016 SCC OnLine Del 5383 : (2016) 234 DLT 30] , SCC OnLine Del para 10)*

> "*10*. Coming to Section 37(1), it is evident that an appeal can lie from only the orders specified in clauses (*a*), (*b*) or (*c*). In other words, an appeal under Section 37 would only be maintainable against (*a*) an order refusing to refer the parties to arbitration under Section 8 of the A&C Act; (*b*) an order granting or refusing to grant any measure under Section 9 of the A&C Act; or (*c*) an order setting aside or refusing to set aside an arbitral award under Section 34 of the A&C Act. The impugned order [*Arcadia Shares & Stock Brokers (P) Ltd.* v. *Harmanprit Singh Sidhu*, 2016 SCC OnLine Del 6625] is clearly not relatable to Section 8 or 9 of the A&C Act. It was sought to be contended by the learned counsel for the appellant that the present appeal would fall within Section 37(1)(*c*) which relates to an order "setting aside" or "refusing to set aside" an arbitral award under Section 34. We are unable to accept this proposition. By virtue of the impugned order, the arbitral award dated 10-9-2013 has not been set aside. Nor has the court, at this stage, refused to set aside the said arbitral award under Section 34 of the A&C Act. In fact, the appellant in whose favour the award has been made, would only be aggrieved if the award were to have

> been set aside in whole or in part. That has not happened. What the learned single Judge has done is to have condoned the delay in re-filing of the petition under Section 34. This has not, in any way, impacted the award."

17. The reasoning in this judgment in *Harmanprit Singh Sidhu* [*Harmanprit Singh Sidhu* v. *Arcadia Shares & Stock Brokers (P) Ltd.*, 2016 SCC OnLine Del 5383 : (2016) 234 DLT 30] commends itself to us, as a distinction is made between judgments which either set aside, or refuse to set aside, an arbitral award after the court applies its mind to Section 34 of the Arbitration Act, 1996, as against preliminary orders of condonation of delay, which do not in any way impact the arbitral award that has been assailed.

18. However, Smt Acharya relied heavily upon the Division Bench judgment of the Delhi High Court in *Antrix Corpn. Ltd.* [*Antrix Corpn. Ltd.* v. *Devas Multimedia (P) Ltd.*, 2018 SCC OnLine Del 9338] On the facts of that case, on 28-2-2017 [*Devas Multimedia (P) Ltd.* v. *Antrix Corpn. Ltd.*, 2017 SCC OnLine Del 7229 : (2017) 238 DLT 103] , a learned Single Judge of the Delhi High Court ruled that Antrix's petition under Section 9 of the Arbitration Act, 1996 before the Bangalore Court was not maintainable, and that Devas' petition under Section 9 was maintainable, the bar under Section 42 of the Arbitration Act, 1996 being inapplicable. The order also held that consequently, Antrix's petition under Section 34 of the Arbitration Act, 1996 before the Bangalore City civil court would not be maintainable, inasmuch as Devas' petition filed in Delhi under Section 9 was filed earlier. The learned Single Judge then listed the matter for hearing on merits and directed Antrix to file an affidavit of an authorised officer, enclosing therewith its audited balance sheets, and profit and loss accounts for the past three years. Antrix then appealed against this order, to which a preliminary objection was taken, stating that this appeal would not be maintainable under Section 37 of the Arbitration Act, 1996. After setting out Section 13 of the Commercial Courts Act, 2015 and Sections 37 and 42 of the

Arbitration Act, 1996, the Division Bench noticed *Harmanprit Singh Sidhu* [*Harmanprit Singh Sidhu* v. *Arcadia Shares & Stock Brokers (P) Ltd.*, 2016 SCC OnLine Del 5383 : (2016) 234 DLT 30] in para 39, without at all adverting to para 10 of the judgment (which is set out hereinabove). Thereafter, the Court held as follows : (*Antrix Corpn. Ltd. case* [*Antrix Corpn. Ltd.* v. *Devas Multimedia (P) Ltd.*, 2018 SCC OnLine Del 9338] , SCC OnLine Del paras 42-44)

"*42. While undeniably, the learned Single Judge in the impugned order [Arcadia Shares & Stock Brokers (P) Ltd. v. Harmanprit Singh Sidhu, 2016 SCC OnLine Del 6625] has not decided the Section 9 petition finally and had listed the matter for hearing on merits, Antrix states that the impugned order is indistinguishable from an order under Section 9. Devas however, argued that the sequence of events has not been completed. Antrix should face an adverse order under Section 9 before it can approach this Court in appeal. On this issue, significant reliance has been placed on the decision of the Madras High Court in Samson Maritime [Samson Maritime Ltd. v. Hardy Exploration & Production (India) Inc., 2016 SCC OnLine Mad 9122 : (2016) 2 LW 342] . In that case, the Court held : (Samson Maritime case [Samson Maritime Ltd. v. Hardy Exploration & Production (India) Inc., 2016 SCC OnLine Mad 9122 : (2016) 2 LW 342] , SCC OnLine Mad para 23)*

'*23*. … The learned counsel appearing for the respondent made an attempt to contend that the application seeking for furnishing of details of assets cannot be construed as an interim measure or interim relief contemplated under Section 9 of the said Act. I am not convinced to accept the said contention for the reason that those details are sought for by the applicant only to seek for consequential or follow up relief in the event of the respondent's failure to furnish securities. Therefore, as the relief sought for in this application is having a direct bearing on the relief sought for in the other applications seeking for furnishing securities, it cannot be said that this relief seeking for details of the assets is outside the scope of Section 9. Therefore, I find that the application filed seeking for details of the assets is also maintainable.'

43. The Court in *Samson Maritime* [*Samson Maritime Ltd.* v. *Hardy Exploration & Production (India) Inc.*, 2016 SCC OnLine Mad 9122 : (2016) 2 LW 342] reasoned that an application seeking for furnishing of details of assets would also amount to an interim measure under Section 9, because the reason that those details are sought are only to seek consequential or follow up relief in the event of the respondent's failure to furnish securities. Therefore, an order mandating a party to disclose his assets or file his accounts would also be an interim measure within the meaning of Section 9. In this case, through para 57 of the impugned order, the learned Single Judge had directed Antrix to file an affidavit of an authorised officer, enclosing therewith its audited balance sheets and profit and loss accounts for the past three years. Keeping in mind the view of the Court in *Samson Maritime* [*Samson Maritime Ltd.* v. *Hardy Exploration & Production (India) Inc.*, 2016 SCC OnLine Mad 9122 : (2016) 2 LW 342] , which this Court is in agreement

> with, this would also in effect be a Section 9 order as those details are sought for the purpose of adjudicating whether consequential relief could be given to Devas of securing the amount due from the arbitral award against Antrix. Moreover, this Court cannot take a doctrinaire and unbending approach in this matter, when it is clear that Antrix has suffered all but one remaining blow through the impugned order, and therefore, the Court should not wait till it suffers the final blow (that of the final Section 9 order) before it can assume jurisdiction over the appeal. The Court's direction to Antrix to furnish an affidavit along with the particulars sought, is to aid its order with respect to a possible distraint, attachment or further such *consequential* order towards interim relief. Such an order would not be made unless the Court directs this as a prelude, or important step towards the inevitable interim order, which would be just consequential. Therefore, the Court finds that Antrix's appeal against the impugned order is maintainable.
>
> *44*. This Court also finds merit in Antrix's argument that as regards the Single Judge's observations that the Bangalore Court cannot proceed with the matter, the impugned order is really final. It precludes in effect, Antrix from proceeding with its Section 34 petition before that court (in turn based on the pending Section 9 petition before that court). If Antrix were to accept the ruling, the effect would be to denude the Bangalore Court of jurisdiction. It was contended—and correctly, in this Court's opinion that whereas a court acts within jurisdiction in deciding whether it has or does not have jurisdiction over a cause of a matter, the declaration by it about the lack of jurisdiction of another court, based on the appreciation of the matter before the latter court is undeniably an adverse order. Allowing that to stand would prejudice Antrix for all times." (emphasis in original)

19. It can be seen that the reasoning in this judgment would have no application to the facts of the present case. The Division Bench held that directing Antrix to file an affidavit, enclosing therewith its audited balance sheets and profit and loss account for the last three years, is itself an interim order passed under Section 9 of the Arbitration Act, 1996. The further reasoning of the Court that the direction to Antrix to furnish an affidavit is to aid a future interim order, which would be just consequential, does not commend itself to us. A step towards an interim order would not amount to granting, or refusing to grant, any measure under Section 9 of the Arbitration Act, 1996. The case is also distinguishable for the reason that, as regards the Bangalore Court, which cannot proceed further with the matter, the impugned order therein is really final and would, therefore, also be appealable under Section 37. For all these reasons, this judgment is wholly distinguishable and would not apply to the facts of the present case.

> We may also advert to the fact that our judgment in *Kandla* [*Kandla Export Corpn.* v. *OCI Corpn.*, (2018) 14 SCC 715 : (2018) 4 SCC (Civ) 664] was delivered on 7-2-2018, and was missed by the Division Bench in *Antrix Corpn. Ltd.* [*Antrix Corpn. Ltd.* v. *Devas Multimedia (P) Ltd.*, 2018 SCC OnLine Del 9338] , as the Division Bench had reserved judgment on 6-12-2017 [*Antrix Corpn. Ltd.* v. *Devas Multimedia (P) Ltd.* FAO (OS) (Comm) No. 67 of 2017, order dated 6-12-2017 (Del)] , even though it ultimately pronounced the judgment on 30-5-2018 [*Antrix Corpn. Ltd.* v. *Devas Multimedia (P) Ltd.*, 2018 SCC OnLine Del 9338] . The judgment in *South Delhi Municipal Corpn.* [*South Delhi Municipal Corpn.* v. *Tech Mahindra*, 2019 SCC OnLine Del 11863] was decided after reference was made to *Kandla* [*Kandla Export Corpn.* v. *OCI Corpn.*, (2018) 14 SCC 715 : (2018) 4 SCC (Civ) 664] , resulting in a deposit order being held to be not appealable under Section 37 of the Arbitration Act, 1996.
>
> **20.** It is clear, therefore, that the appeals filed in the present case do not fall within Section 37 of the Arbitration Act, 1996 and are not maintainable."

14. (i) The judgment in ***BGS SGS Soma JV*'s** case is rendered by Full Bench, and the provisions of the Arbitration and Conciliation Act, appealability particularly with reference to Section 13 of the Commercial Courts Act, 2015 are clearly addressed by the Hon'ble Apex Court.

(ii) It was a case arose out of a dispute concerning the jurisdiction of the Court with reference to the seat of arbitration and the return of a petition presented under Section 34 of Arbitration and Conciliation Act, 1996. When the same was challenged by filing an appeal under Section 37 of the said Act read with Section 13 of the Commercial Courts Act, 2015, as to

maintainability of the appeal with a special focus on the point that whether the appeal would lie under Section 13 of the Act.

15. Further it is relevant to note the observations of the Division Bench of the Hon'ble High Court of Delhi in **Synergies Casting Ltd. v. National Research Development Corporation and Anr.**[4], wherein a reference was made to **Fuerst Day Lawson Limited's** *case* **(***cited 1 supra),* **Kandla Export Corporation's** case (*cited 2 supra)***, BGS SGS Soma JV's** case (*cited 3 supra)*, and discussion was made as to the interplay of section 37 of Arbitration and Conciliation Act and Section 13 (1) (a) of Commercial Courts Act. It was a case of challenge to the orders passed by a Commercial Division of the Hon'ble High Court of Delhi directing the deposit of certain amounts, while entertaining an application under Section 34 of Arbitration and Conciliation Act. In that scenario whether appeal is maintainable in terms of Section 37 of the Arbitration and Conciliation Act read with Section 13 of the Commercial Courts Act was considered and finally it was observed in para 11 of the judgment that the impugned order neither sets aside nor refuses to set aside the arbitral award, and therefore, did not fall within the scope of Section 37 of the Arbitration and Conciliation Act, 1996. Accordingly, it was held that the appeal is not maintainable under Section 13 of the Commercial Courts Act.

[4] 2025 SCC OnLine Del 177

16. (i) One of the objectives of the Arbitration and Conciliation Act, 1996 is to minimize the procedural constraints and to ensure expeditious resolution of the disputes between the parties. The objective of the Commercial Courts Act, 2015 is almost similar viz., expeditious adjudication of commercial disputes. A cap or restriction on the right of the appeal under the respective enactments will have its own objective and legislative wisdom behind it.

(ii) A bare reading of Section 13(1) of the Commercial Courts Act, 2015 would suggest that any person aggrieved by a decision of a Commercial Court is entitled to prefer an appeal. But, the conjoint reading of the said provision Section 13(1) with its proviso and Section 13(2) makes it clear that the right of appeal is limited to the orders specifically enumerated under Order XLIII of the CPC and Section 37 of the Arbitration and Conciliation Act, 1996. The proviso to Section 13(1) and Section 13(2), therefore, operates as a statutory limitation. The argument that the situations provided under Order XLIII of the CPC or Section 37 of the Arbitration and Conciliation Act are in addition, cannot be accepted. If appeal is provided against every decision there is no need to specify a particular category of order against which appeal would lie.

17. The word ‘decision’ is qualified by other words ‘decree’ or ‘order’ in the provision. While the provision under Section 13(1) is referring to the

expression ‘decision’, the heading of the Section referring to “decrees”, whereas the proviso to Section 13(1) specifically refers to ‘orders’ passed by the Commercial Division or the Commercial Court. Even Section 13(2) is regulating the scope of appeals against the orders by conspicuously mentioning that no appeal shall lie from any order or decree of a Commercial Division and Commercial Court otherwise than in accordance with the provisions of the Act. Thus, the appeals against orders, contemplated under the proviso to Section 13(1), can be confined only to such orders that are appealable under Order XLIII of the CPC and Section 37 of the Arbitration and Conciliation Act, 1996.

18. It is also relevant to note that, in the context of an order returning of an application filed under Section 34 the Arbitration and Conciliation Act, 1996 the Hon'ble Apex Court had an occasion to examine the scope and interplay of Section 37 of the said Act and Section 13 of the Commercial Courts Act, 2015 as held in **BGS SGS Soma JV’s case** *[cited 3 supra].* Further, in ***Kandla Export Corporation***’s case *[cited 2 supra]* the Hon’ble Apex Court considered a similar issue concerning the maintainability of an appeal against an order not falling within the categories enumerated under Section 37 of the Arbitration and Conciliation Act and held that Section 13 of the Commercial Courts Act does not provide an independent right of appeal against such an order.

19. With regard to understanding and interpretation of a proviso to a statutory provision and function of a proviso, was addressed by the Hon'ble Apex Court in ***Haryana State Cooperative Land Development Bank Ltd. v. Haryana State Cooperative Land Development Banks Employees Union and Another Banks Employees Union***[5], paras 9 and 10 reads as follows:-

> **"9.** The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in *Mullins* v. *Treasurer of Surrey [(1880) 5 QBD 170 : 42 LT 128]* (referred to in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory* v. *Subhash Chandra Yograj Sinha [AIR 1961 SC 1596]* and *Calcutta Tramways Co. Ltd.* v. *Corpn. of Calcutta [AIR 1965 SC 1728])*, when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the

[5] (2004) 1 SCC 574:2003 SCC OnLine SC 1427

provisions which are said to occur in it you cannot derive these provisions by implication from a proviso," said Lord Watson in *West Derby Union* v. *Metropolitan Life Assurance Co*. [1897 AC 647 : 66 LJCh 726 : 77 LT 284 (HL)] Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. [See *A.N. Sehgal* v. *Raje Ram Sheoran [1992 Supp (1) SCC 304 : 1992 SCC (L&S) 975 : (1992) 19 ATC 493 : AIR 1991 SC 1406]* , *Tribhovandas Haribhai Tamboli* v. *Gujarat Revenue Tribunal* [(1991) 3 SCC 442 : AIR 1991 SC 1538] and *Kerala State Housing Board* v. *Ramapriya Hotels (P) Ltd.* [(1994) 5 SCC 672]]

> "This word (proviso) hath diverse operations. Sometime it worketh a qualification or limitation; sometime a condition; and sometime a covenant." (*Coke upon Littleton*, 18th Edn., p. 146.)
>
> "If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant, and the earlier clause prevails…. But if the later clause does not destroy but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole" (per Lord Wrenbury in *Forbes* v. *Git* [(1922) 1 AC 256 : 1921 All ER Rep Ext 770 : 126 LT 616 (PC)]).
>
> A statutory proviso "is something engrafted on a preceding enactment" (*R.* v. *Taunton, St. James* [(1829) 9 B&C 831 : 109 ER 309] , ER p. 311).
>
> "The ordinary and proper function of a proviso coming after a general enactment is to limit that general enactment in certain instances" (per Lord Esher in *Barker, Re* [(1890) 25 QBD 285 : 59 LJQB 331 (CA)]).

> 10. A proviso to a section cannot be used to import into the enacting part something which is not there, but where the enacting part is susceptible to several possible meanings, it may be controlled by the proviso.(See Jennings v. Kelly [1940 AC 206:(1939) 4 All ER 464 (HL)] .)"

20. The heading of Section 13 of Commercial Courts Act is "**Appeals from decrees of Commercial Courts and Commercial Divisions**", Sub-section (1) of Section 13 is *" Any person aggrieved by the decision of the Commercial Court or 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 judgment or order, as the case may be."* The section clearly suggests that an appeal is provided against the decision of Commercial Court. But, proviso to Section 13(1) of the Act, is controlling/regulating the appeals from such orders, by specifically referring to Order XLIII of CPC and Section 37 of the Arbitration and Conciliation Act, as may be applicable. Therefore, the appeal against the decree and judgment covered by order XLI will fall within the section 13(1). So far as the orders passed by a commercial Court they shall get regulated by proviso to Section 13(1) and 13(2), to answer the question whether an appeal lie against an order. What kind of the orders are appealable shall be examined with reference to the Order XLIII CPC or Section 37 of Arbitration and Conciliation Act.. However with regard to judgments and decrees fallowing the judgment the appelability of such

judgment & decrees or deemed decrees, shall be covered by Section 13(1) as the case may be in view of the wording decision of Commercial Court or Commercial division. This shall be purposive and harmonious interpretation and understanding of section 13 and the proviso there to. Therefore, it is clear that upon exercise of power under Section 29 A (4) & (5) of the Arbitration and Conciliation Act, order will follow and consequently Section 13 (1) of the Commercial Courts Act is not applicable for filing appeal against such orders .

21. **In the result,** in view of the above findings, the appeal is dismissed as not maintainable. It is needless to mention that the period of seven (7) months granted by the Commercial Court shall operate from the date of receipt of a copy of this order. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE D. RAMESH

JUSTICE A. HARI HARANADHA SARMA

Date: 20 .11.2026
Pnr

Speaking	No	Reasoned	Yes
Reportable	Yes	Non-reportable	No

THE HONOURABLE SRI JUSTICE D.RAMESH

AND

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

COMMERCIAL COURT APPEAL NO: 13 OF 2026

20.11.2026

Pnr

* **THE HONOURABLE SRI JUSTICE D RAMESH**

AND

***THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA**

% 20.11.2026

COMMERCIAL COURT APPEAL NO: 13 OF 2026

1. The Oriental Insurance Company Ltd.,, represented by its Authorized Officer, Divisional Office -III, Gajuwaka, Visakhapatnam - 530026.

Appellant

Vs.

$M/s Srilakshmi Srinivas Jute Mills Pvt Ltd, rep.by its Authorized Person, Sri.K.Govindarajulu, Director, Having its Registered Office at Bobbili Road, Rajam, Vizianagaram District, Andhra Pradesh – 532127 and Another

...Respondents

! Counsel for the Petitioners : Sri Kiran Kumar Vadlamudi

! Counsel for the Respondents : Sri S.Mohana Rao

< Gist :

> Head Note :

? Cases referred :

(2011) 8 SCC 333
(2018) 14 SCC 715
(2020) 4 SCC 234
2025 SCC OnLine Del 177

THE HONOURABLE SRI JUSTICE D.RAMESH

AND

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

COMMERCIAL COURT APPEAL NO: 13 OF 2026

The Oriental Insurance Company Ltd.,, represented by its Authorized Officer, Divisional Office -III, Gajuwaka, Visakhapatnam - 530026

Appellant

Vs.

$1. M/s Srilakshmi Srinivas Jute Mills Pvt Ltd, rep.by its Authorized Person, Sri.K.Govindarajulu, Director, Having its Registered Office at Bobbili Road, Rajam, Vizianagaram District, Andhra Pradesh – 532127 and Another.

...Respondents

DATE OF COMMON ORDER PRONOUNCED: 20.11.2026

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE D.RAMESH

AND

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

1. Whether Reporters of Local Newspapers may be allowed to see the Order? Yes/No

2. Whether the copies of Order may be marked to Law Reporters/Journals? Yes/No

3. Whether Your Lordships wish to see the fair copy of the Order ? Yes/No

JUSTICE D. RAMESH

JUSTICE A.HARI HARANADHA SARMA