

Legal Issues in ‘Appeals under Commercial Courts Act, 2015’

Issue: When Is an Appeal from an Order Passed By A Commercial Court At District Level Maintainable?

Relevant Legal Provisions

❖ Section 13, The Commercial Courts Act, 2015 –

*“(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.*

(1A) 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.**” (Emphasis supplied)*

Relevant Legal Provisions (Contd.)

❖ Section 2(2), Code of Civil Procedure, 1908

“decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include—

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

Relevant Legal Provisions (Contd.)

- ❖ **Section 2(9), Code of Civil Procedure, 1908**

*“judgment” means the statement given by the Judge of **the grounds of a decree or order*** (Emphasis Supplied)

- ❖ **Section 2(14), Code of Civil Procedure, 1908**

“order” means the formal expression of any decision of a Civil Court which is not a decree

- ❖ **Order XLIII Rule 1, Code of Civil Procedure, 1908**

- ❖ **Section 37, Arbitration and Conciliation Act, 1996**

Relevant Judicial Decisions

- ❖ ***Kandla Export Corporation and Ors. vs. OCI Corporation and Ors. [(2018) 14 SCC 715]***
 - *“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 harmonized 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.**”*
(Emphasis supplied)

Relevant Judicial Decisions (Contd.)

- ❖ ***Hubtown Limited vs Idbi Trusteeship Service Limited* [Commercial Appeal No. 7 of 2016 in the High Court of Bombay on October 24, 2016]**
 - *“Appeal against any final decision include the judgment so passed by the Commercial Court and/or Commercial Division, the proviso to Section 13(1) will not be applicable to such decision/judgment, as the proviso refers to "orders". The reference to "orders" in the opening portion of Section 13(1) would relate to the application of the proviso to sub-section (1). However, the opening portion of sub-section (1) (words prior to the proviso) clearly use the words "decision", "judgment" and "order". Therefore, the ambit of this part of sub-section (1) is quite broader when it comes to appeals arising out of orders other than the category of orders falling under order XLIII of the CPC.”* (Emphasis supplied)

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Relevant Judicial Decisions (Contd.)

- ❖ ***HPL (India) Limited and Ors. vs. QRG Enterprises and Ors.* [FAO (OS) (Comm.) No. 12/2017 in the High Court of Delhi on February 14, 2017]**
 - *It is evident from the above extract that an appeal under the Letters Patent is barred under Section 13 of the said Act, unless an appeal was specifically provided under the Arbitration and Conciliation Act, 1996. In the context of the present case, this would translate to the statement that an appeal under the Letters Patent (or under the Delhi High Court Act, 1966) is barred under Section 13 of the said Act, unless an appeal was specifically provided under the CPC.*
 - *It is clear that from the wordings used in Section 13 that insofar as orders are concerned, appeals shall lie only from such orders that are specifically enumerated under Order XLIII of CPC. Section 13(2) further fortifies the position 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 this Act.*

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Relevant Judicial Decisions (Contd.)

- ❖ ***D and H India Ltd. vs. Superon Schweissttechnik India Ltd.* [FAO (OS) (COMM) 237/2019 in the High Court of Delhi on March 16, 2020]**
- *“The proviso to Section 13 (1A) cannot, in our view, be read as limiting the right to appeal, conferred by Section 13 (1A). The said proviso merely states that, from orders passed by the Commercial Division of the High Court, as are specifically enumerated under Order XLIII of the CPC, an appeal would lie under Section 13 (1A). In our view, the proviso cannot be read as meaning that no appeal would lie in any other case, especially where the order under appeal has not been passed under the CPC at all, but under Rule 5 in Chapter II of the 2018 Original Side Rules.”*

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Relevant Judicial Decisions (Contd.)

- ❖ ***Prasar Bharati vs. Stracon India Limited and Ors.* [EFA (OS)(COMM) 4/2020 in the High Court of Delhi on July 13, 2020]**
- *“The present appeal is directed against **an interlocutory order** passed in proceedings under Section 36 of the A & C Act, whereby a part of the amount which had been deposited by the appellant in this court, has been directed to be released in favour of the respondents. Under Section 37, no appeal is maintainable from any order passed under Section 36 of the A&C Act. Further, Section 36 of the A&C Act does not attract the provisions of the Code of Civil Procedure. Since the statute does not provide for an appeal against an order passed under Section 36, it is axiomatic that the present appeal is also not maintainable. The impugned order would neither fall under Order XLIII of the CPC, nor under Section 37 of the A&C Act. Therefore, the present appeal filed under Section 13 of the Commercial Courts Act, is not maintainable.” (Emphasis supplied)*

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Relevant Judicial Decisions (Contd.)

❖ *Skil-Himachal Infrastructure and Tourism Ltd. and Ors. vs. IL & FS Financial Services Ltd.*
[Commercial Appeal (L) No. 95 of 2020 in the High Court of Bombay on September 22, 2022]

• “52. *Our conclusions are:*

52.1 *An appeal from an order granting conditional leave to defend in a Summons for Judgment in a Commercial Summary Suit is not maintainable in view of Section 13 of the Commercial Courts Act.*

52.2 *No appeal under Clause 15 of the Letters Patent is maintainable under Section 13 of the Commercial Courts Act, i.e., in a Commercial Suit.*

52.3 *Section 13 of the Commercial Courts Act permits only appeals (i) against decrees; (ii) against orders specifically enumerated in Order 43 of the Code of Civil Procedure, 1908; and (iii) under Section 37 of the Arbitration Act.*

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Conclusion

- ❖ The interpretation of the provision by the Supreme Court has not provided much clarity. While the Supreme Court was of the view that the provision needs to be interpreted literally, the High Courts of Bombay and Delhi continued to hold varying opinions.
- ❖ While the purpose of the Commercial Courts Act is to enable speedy adjudication of suits, it appears that Courts have interpreted the provision in a manner to benefit the Appellant.
- ❖ Courts have not reached an interpretative finality, but there appears to be a shift towards interpreting the provision literally to preserve the legislative intent.

THANK YOU!

Questions?

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