



2024/KER/1679

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 11<sup>TH</sup> DAY OF JANUARY 2024 / 21ST POUSHA, 1945

MSA NO. 29 OF 2023

AGAINST THE ORDER DATED 03.07.2023 IN I.A.NO.1/2023 IN CA 1/2023

AND DECREE DATED 03.07.2023 IN CA 1/2023 OF DISTRICT COURT,

KOZHIKODE

APPELLANTS/APPELLANTS/DEFENDANTS:

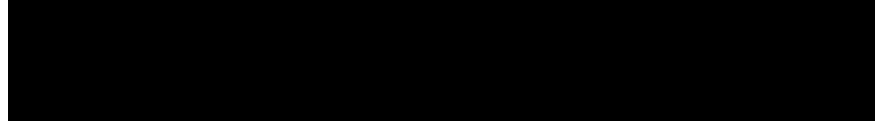
- 1 STATE OF KERALA  
REP.BY CHIEF SECRETARY GOVERNMENT OF KERALA,  
SECRETARIAT, THIRUVANATHAPURAM, PIN - 695001
- 2 DISTRICT COLLECTOR  
CIVIL STATION , KOZHIKODE  
CIVIL STATION POST,, PIN - 673020
- 3 DIVISIONAL FOREST OFFICER  
TIMBER SALES DIVISION,  
VANSREE POST ARIKKANOR, KOZHIKODE, PIN - 673028

BY SRI.DENNY K DEVASSY, GOVERNMENT PLEADER

RESPONDENT/RESPONDENT/PLAINTIF:

DR.PRAVEEN KUMAR T.K.

AGEED 54 YEARS



BY ADVS.  
A.KOMU  
T.B.SIVAPRASAD (K/17/2007)

THIS MISC. SECOND APPEAL HAVING COME UP FOR HEARING ON  
09.01.2024, THE COURT ON 11.01.2024 DELIVERED THE FOLLOWING:



**CR**

**JUDGMENT**

Dated this the 11<sup>th</sup> day of January, 2024

This Miscellaneous Second Appeal has been filed under Section 13(1A) of the Commercial Courts Act read with Section 100 and Order XLII Rule 1 of the Code of Civil Procedure, 1908, at the instance of the State of Kerala, represented by the Chief Secretary, challenging the decree and judgment in Commercial Appeal No.1/2023 on the files of the District Court, Kozhikode dated 30.07.2022 arose out of the decree and judgment in Commercial Suit No.109/2020 on the files of the Commercial Court, Kozhikode.

2. Heard the learned Special Government Pleader appearing for the State as well as Adv.A.Komu appearing for the respondent.

3. I shall refer the parties in this miscellaneous second appeal as 'plaintiff' and 'defendants' for convenience.



4. In this matter, the learned counsel for the plaintiff raised a question as to the maintainability of the second appeal. It is submitted by the learned counsel for the plaintiff that the Commercial Courts Act, 2015, as amended with effect from 03.07.2018, is intended to deal with commercial disputes in segregation from other disputes. Thus appeals from the decree and judgment of a commercial court shall be in accordance with the provisions of the Commercial Disputes Act. According to him, as per Section 13 of the Commercial Courts Act, appeals from decrees of Commercial Courts and Commercial Appellate Divisions are provided. But no provisions incorporated in the Commercial Courts Act permitting the filing of Second Appeal, in tune with Section 100 read with Order XLII of CPC. It is also pointed out that as per Section 13(2), a notwithstanding clause has been incorporated in the Statute, thereby, appeal from decrees of Commercial Courts is confined as per the provisions of the



Commercial Courts Act. Therefore, the present Second Appeal is not provided by the Commercial Courts Act and as such the same is not maintainable. Accordingly, the learned counsel for the plaintiff submitted that the second appeal deserves dismissal for the said reason.

5. The learned Special Government Pleader submitted that even though the Commercial Courts Act does not contain provisions providing second appeal, when there is substantial question of law involved, there should be Forum to decide the same and therefore, the present second appeal is to be maintained to decide the substantial question of law, in tune with Section 100 read with Order XLII of CPC.

6. Now, the question poses for consideration is;

*Whether second appeal is provided from the appellate decree and judgment passed by a Commercial Appellate Court?*

7. In this regard, it is relevant to extract Section 13 of



the Commercial Courts Act dealing with Appeals from decrees of Commercial Courts and Commercial Divisions.

The provisions are as under:

***“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.***

*(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.”*

8. Section 16 of the Commercial Courts Act made certain amendments to the Code of Civil Procedure for its application in commercial disputes and the same are as under:

***“16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.—(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.***

*(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value.*



*(3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908, (5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.*

9. On perusal of the schedule showing amendment of CPC, no amendment incorporated insofar as Section 100, Order XLII and Order XLIII.

10. In this context, Section 21 of the Commercial Courts Act also assumes significance. Section 21 of the Commercial Courts Act provides that Commercial Courts Act have overriding effect and the same is as under:

***“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.”*

11. At the time of detailed hearing, the learned Special Government Pleader fairly submitted that going by the provisions of the Commercial Courts Act, there is no special provision seen incorporated to provide second appeal and he also fairly highlighted the decision of the Madras High Court in **Surajlal Suresh Babu v. Pradeep Stainless India Pvt.Ltd**, reported in **(2023 KHC 3618)**, where various provisions of the Commercial Courts Act have been discussed.

12. On reading S.13 with reference to Sub-section (2) of S.13 which contains a non-obstante clause which provides that 'notwithstanding anything contained in the Letters Patent of the 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.'





Similarly, S.8 of the Act bars a Revision Application against an interlocutory order; S.13 bars Appeals otherwise than in accordance with the Act; S.12(3) bars an Appeal or Revision under S.115 of the Code against an order determining the jurisdiction made by the Commercial Court. Care has been taken by the parliament to prevent Appeals and to make some of the judgments which made Appeals against certain interlocutory orders possible inoperative.

13. In **Surajlal Suresh Babu's** case (*Supra*), the Madras High Court considered certain judgments of the Apex Court as under:

*“8. In **Shah Babulal Khimji v. Jayaben D. Kania and another**, reported in 1981 (4) SCC 8 : (AIR 1981 SC 1786), the Hon'ble Supreme Court held that Order XLIII Rule (1) of the Code of Civil Procedure does not override or control Clause 15 of the Letters Patent, thereby enabling Appeals against orders which are not specifically made appealable under Order XLIII Rule (1) invoking Clause 15 of the Letters Patent. The effect of this*



*judgment of the Hon'ble Supreme Court is obstante sought to be filed by Sub-section (2) of S.13 by inserting a non- obstante clause and thereby making Clause 15 of the Letters Patent unavailable to commercial disputes.*

**9. In *P. S. Sathappan (dead) by LRs. v. Andhra Bank Ltd and others*, reported in 2004 (11) SCC 672 : (AIR 2004 SC 5152), the Hon'ble Supreme Court held that despite the bar under S.104 (2) of the Code of Civil Procedure, Clause 15 could be invoked for Appeals against the judgments of Single Judges of the High Court made in the exercise of original jurisdiction. The effect of this judgment is also sought to be filed by S.13(2) of the Commercial Courts Act.**

**10. In *Iridium India Telecom Ltd. v. Motorola Inc*, reported in 2005 (2) SCC 145: (AIR 2005 SC 514), the Hon'ble Supreme Court had held that the provisions of R.1 of Order VIII would be subject to the Rules framed under the Letters Patent which are protected under S.129 of the Code of Civil Procedure, thereby concluding that the longer period of limitation of six weeks provided under the Original Side Rules framed under S.129 of the Code of Civil Procedure would apply to suits in the original side of the High Court. The effect of this**



*judgment is sought to be undone by Sub-section (3) of S.16 of the Commercial Courts Act. Sub-section (3) of S.16 of the Commercial Courts Act provides that any Rule of the jurisdictional High Court which is in conflict that the provisions of the Code of Civil Procedure as amended by the Commercial Courts Act, will not prevail over the provisions of the Code of Civil Procedure as amended by the Commercial Courts Act. R.1 of Order VIII has been amended by the Commercial Courts Act by providing an unalterable fixed period of limitation for filing a written statement and Sub-S.3 of S.16 makes R.1 of Order VIII as amended by the Commercial Courts Act to override the Rules framed by the High Court on its Original Side.*

*11. To sum up the Parliament has taken care to undo the effect of at least three judgments of the Hon'ble Supreme Court by introducing the non-obstante clause in Sub-section (2) of S.13 and by Sub-section (3) of S.16 of the Commercial Courts Act. We are pointing out the above feature only with the view to high light the importance that has been given, for speedy disposal of commercial litigation, by the Parliament.”*

14. To be on the question posed, the legislature, in its



wisdom, introduced a non-obstante clause in sub-section (2) of Section 13 of the Commercial Courts Act, limiting right of appeals subject to the provisions of the Commercial Courts Act and no appeal shall lie from any order or decree of a Commercial Division or Commercial Court, otherwise than in accordance with the provisions of the Commercial Courts Act. If so, Commercial Courts Act does not provide second appeal. Therefore, it has to be held that the present second appeal filed, challenging the decree and judgment of the Commercial Appellate Court, is not maintainable and the same deserves dismissal.

15. In the result, this miscellaneous second appeal stands dismissed as not maintainable.

16. It is submitted by the learned Special Government Pleader that the right of the appellants to challenge the verdicts impugned in the second appeal by the manner known to law needs to be protected. Therefore, it is held that



the legal remedy, if any, available to the appellants can be worked out and dismissal of this second appeal, on finding it as not maintainable, shall not be a bar in doing so.

All interlocutory orders stand vacated and all interlocutory applications pending in this miscellaneous second appeal stand dismissed.

**Sd/-  
A. BADHARUDEEN  
JUDGE**

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