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OSA.Nos.26 to 29 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<b>Reserved on</b> <b>13.02.2023</b>	<b>Delivered on</b> <b>02.03.2023</b>
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CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN,

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

AND

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

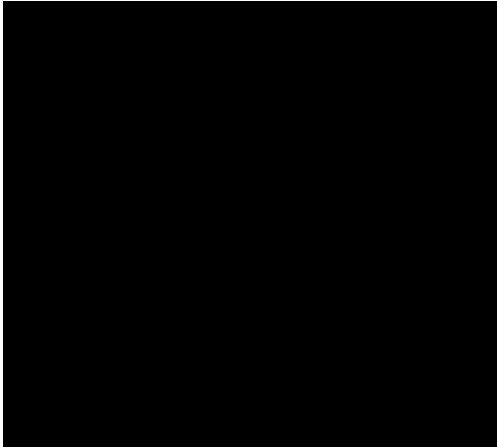
**Original Side Appeal Nos.26 to 29 of 2020**

**and**

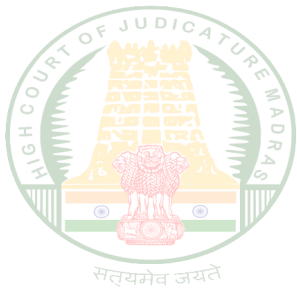
**C.M.P.Nos.1090, 1116, 1138, 1139, 1141 and 1143 of 2020**

**OSA.No.26 of 2020:-**

Surajlal  
S/o Suresh Babu



... Appellant



OSA.Nos.26 to 29 of 2020

Versus

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1.Pradeep Stainless India Pvt. Ltd.,  
C-3 & B-7, Phase II,  
MEPZ, Special Economic Zone,  
Tambaram, Chennai – 600 045.

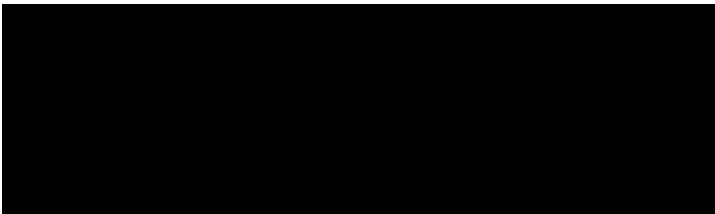
Also at

No.5 & 6, Gajapathy Lala Street,  
Triplicane, Chennai – 600 005.

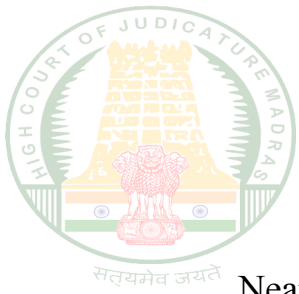
Represented by its Director B.Rameshchand.

2.M/s.Spezialstahl Middle East Fze  
Represented by its Authorized Signatory,  
P.O. Box 331630, Floor 8, BC 4,  
RAK FTZ Business Park,  
AI Nakheel, Ras Al Khaimah,  
United Arab Emirates,  
Rep. by its Director Surajlal

3.Bhawarlal Rakesh Bohara  
C/o. Bohara Trading Co. LLC  
P.O.Box 23469, Suite #3,  
Behind Car Parking Building,  
Near IraniSouqDeira, Dubai,  
United Arab Emirates.  
Tel.+97142255211  
Email : [bohararakesh@gmail.com](mailto:bohararakesh@gmail.com)



4.Bohara Trading Co. LLC  
P.O.Box 23469, Suite #3,  
Behind Car Parking Building,



OSA.Nos.26 to 29 of 2020

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Near IraniSouqDeira, Dubai,  
United Arab Emirates.  
Represented by Authorized Signatory  
Bhawarlal Rakesh Bohara,  
Email: [Bohararakesh@gmail.com](mailto:Bohararakesh@gmail.com)  
And godown/ stores at  
Bohara Trading Co. LLC-Stores  
86, Amman Street,  
Dubai, United Arab Emirates.

.... Respondents

**PRAYER in OSA.No.26 of 2020:** Original Side Appeal filed under Section 13(1) of the Commercial Courts Act, 2015 read with Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent to set aside the judgment and decree dated 11.11.2019 made in A.No.729 of 2019 in A.No.4758 of 2018 in C.S.No.441 of 2018 by allowing the appeal.

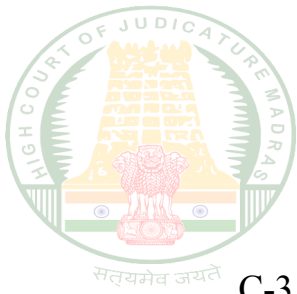
**OSA.No.27 of 2020:-**

M/s.Spezialstahl Middle East Fze  
Represented by its Authorized Signatory,  
P.O. Box 331630, Floor 8, BC 4,  
RAK FTZ Business Park,  
AI Nakheel, Ras Al Khaimah,  
United Arab Emirates,  
Rep. by its Director Surajlal

... Appellant

Versus

1.Pradeep Stainless India Pvt. Ltd.,



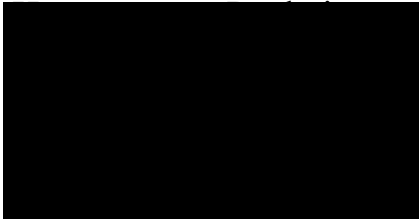
OSA.Nos.26 to 29 of 2020

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C-3 & B-7, Phase II,  
MEPZ, Special Economic Zone,  
Tambaram, Chennai – 600 045.  
Also at  
No.5 & 6, Gajapathy Lala Street,  
Triplicane, Chennai – 600 005.  
Represented by its Director B.Rameshchand.

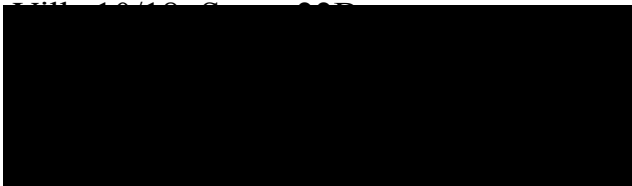
2.Surajlal  
S/o Suresh Babu  
P.O.Box 331630, Floor 8, BC 4,  
RAK FTZ Business Park,  
AI Nakheel,  
United Arab Emirates

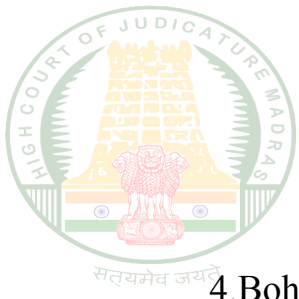
Also at



3.Bhawarlal Rakesh Bohara  
C/o. Bohara Trading Co. LLC  
P.O.Box 23469, Suite #3,  
Behind Car Parking Building,  
Near IraniSouqDeira, Dubai,  
United Arab Emirates.  
Tel.+97142255211  
Email : [bohararakesh@gmail.com](mailto:bohararakesh@gmail.com)

Also at Bhawarlal Rakesh Bohara





OSA.Nos.26 to 29 of 2020

4. Bohara Trading Co. LLC  
P.O.Box 23469, Suite #3,  
Behind Car Parking Building,  
Near IraniSouqDeira, Dubai,  
United Arab Emirates.  
Represented by Authorized Signatory  
Bhawarlal Rakesh Bohara,  
Email: [Bohararakesh@gmail.com](mailto:Bohararakesh@gmail.com)  
And godown/ stores at  
Bohara Trading Co. LLC-Stores  
86, Amman Street,  
Dubai, United Arab Emirates.

.... Respondents

**PRAYER in OSA.No.27 of 2020:** Original Side Appeal filed under Section 13(1) of the Commercial Courts Act, 2015 read with Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent to set aside the judgment and decree dated 11.11.2019 made in A.No.10178 of 2018 in A.No.4758 of 2018 in C.S.No.441 of 2018 by allowing the appeal.

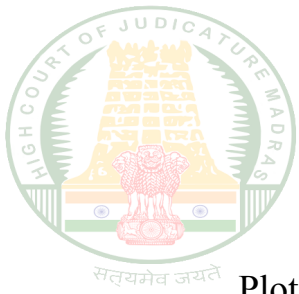
**OSA.No.28 of 2020:-**

Bohara Trading Co. LLC  
P.O.Box 23469, Suite #3,  
Behind Car Parking Building,  
Near IraniSouqDeira, Dubai,  
United Arab Emirates.

... Appellant

Versus

1. Pradeep Stainless India Pvt. Ltd.,  
Represented by B.Rameshchand,  
Director



OSA.Nos.26 to 29 of 2020

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Plot No.C-3 & B-7, Phase II,  
Special Economic Zone,  
Tambaram, Chennai – 600 045.

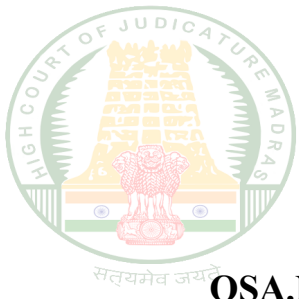
2.M/s.Spezialstahl Middle East Fze  
Represented by its Authorized Signatory,  
P.O. Box 331630, Floor 8, BC 4,  
RAK FTZ Business Park,  
AI Nakheel,  
United Arab Emirates,

3.Surajlal  
S/o Suresh Babu  
P.O.Box 331630, Floor 8, BC 4,  
RAK FTZ Business Park,  
AI Nakheel,  
United Arab Emirates.

4.Bhawarlal Rakesh Bohara  
C/o. Bohara Trading Co. LLC  
P.O.Box 23469, Suite #3,  
Behind Car Parking Building,  
Near IraniSouqDeira, Dubai,  
United Arab Emirates.

.... Respondents

**PRAYER in OSA.No.28 of 2020:** Original Side Appeal filed under Section 13(1) of the Commercial Courts Act, 2015 read with Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent to set aside the order dated 11.11.2019 made in A.No.8043 of 2018 and consequently revoke the leave to sue granted in A.No.4758 of 2018 on 02.07.2018 in C.S.No.441 of 2018.



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**OSA.No.29 of 2020:-**

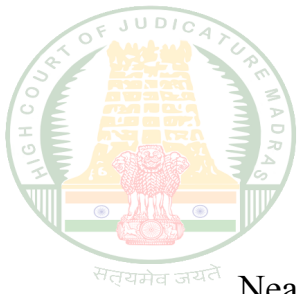
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Bhawarlal Rakesh Bohara  
C/o. Bohara Trading Co. LLC  
P.O.Box 23469, Suite #3,  
Behind Car Parking Building,  
Near IraniSouqDeira, Dubai,  
United Arab Emirates.

... Appellant

Versus

- 1.Pradeep Stainless India Pvt. Ltd.,  
Represented by B.Rameshchand,  
Director,  
C-3 & B-7, Phase II,  
Special Economic Zone,  
Tambaram, Chennai – 600 045, India.
- 2.M/s.Spezialstahl Middle East Fze  
Represented by its Authorized Signatory,  
P.O. Box 331630, Floor 8, BC 4,  
RAK FTZ Business Park,  
AI Nakheel,  
United Arab Emirates.
- 3.Surajlal  
S/o Suresh Babu  
P.O.Box 331630, Floor 8, BC 4,  
RAK FTZ Business Park,  
AI Nakheel,  
United Arab Emirates.
- 4.Bohara Trading Co. LLC  
P.O.Box 23469, Suite #3,  
Behind Car Parking Building,



OSA.Nos.26 to 29 of 2020

Near IraniSouqDeira, Dubai,  
United Arab Emirates.

.... Respondents

**PRAYER in OSA.No.29 of 2020:** Original Side Appeal filed under Section 13(1) of the Commercial Courts Act, 2015 read with Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent to set aside the order dated 11.11.2019 in A.No.8040 of 2018 and consequently revoke the leave to sue grant in A.No.4758 of 2018 on 02.07.2018 in C.S.No.441 of 2018.

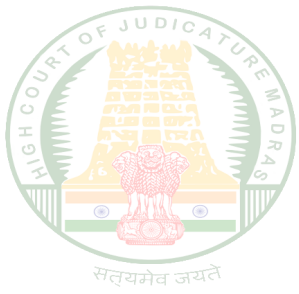
For Appellant : Mr.N.Vijayaraghavan  
in O.S.A.No.26 & 27/2020 and  
Mr.Sharath Chandran  
for Mr.N.P.Vijayakumar

For Appellant : Mr.Arun Karthik Mohan  
in O.S.A.No.28 & 29 of 2020

For 1<sup>st</sup> Respondent : Mr.K.Sukumaran  
for Mr.M.R.Gokul Krishnan  
and  
Mr.S.Patrick

## **COMMON JUDGMENT**

*(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)*



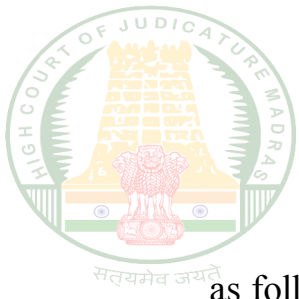
OSA.Nos.26 to 29 of 2020

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Finding itself unable to agree with the pronouncement of the Division Bench in ***Hindustan Unilever Limited Ponds House v. S.Shanthi***, reported in **2021 (6) CTC 1**, another Division Bench of this Court had referred the following questions for determination by the Full Bench:

- (i) Whether an order passed by this Court, on its ordinary original civil jurisdiction, exercising powers under Clause 12 of the Letters Patent for High Court of Madras, granting leave to any applicant to institute suit within the jurisdiction of this Court, can be said to be an order passed under the Commercial Courts Act, 2015? and further*
- (ii) Whether an order passed by this Court refusing to revoke leave granted to any applicant as referred in (i) above, can be said to be an order passed under the Commercial Courts Act, 2015?*

2. The facts which are necessary for disposal of this reference are



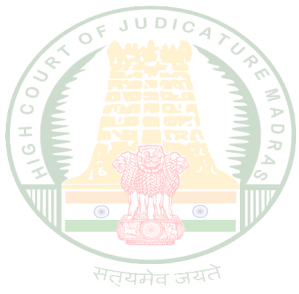
OSA.Nos.26 to 29 of 2020

as follows:

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The first respondent in all these Appeals instituted a suit against the appellants, four in number, seeking a money decree for Rs.12,39,749.55 US Dollars at the exchange rate on the date of the judgment payable towards the 17 unpaid Bills, to pay interest of Rs.18,46,665.39 calculated at 12% per annum on the said bills and to pay interest at 12% per annum on 12,39,749.55 US Dollars from the date of plaint till date of realisation.

**2.1** The said suit was filed during June 2018 along with an application seeking leave to file the suit in this Court under Clause 12 of the Letters Patent. Leave was granted by this Court on 02.07.2018. Upon service, the defendants in the suit/the appellants herein filed independent Applications in Application Nos.10178 of 2018, 726 of 2019, 8040 and 8043 of 2018 seeking revocation of the leave on various grounds. The Commercial Division which heard the Revocation Applications, dismissed the Applications by a common order dated 11.11.2019. Aggrieved, the defendants 1 to 4 filed independent Appeals in OSA Nos.26 to 29 of 2020.

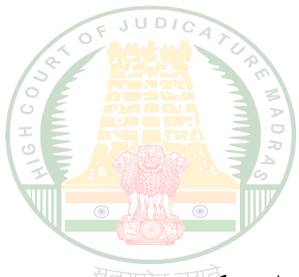


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**2.2.** The Appeals came up for hearing before the Commercial Appellate Division of this Court where a doubt was raised regarding the jurisdiction of the Commercial Appellate Division to hear these Appeals. Since the Commercial Appellate Division, *prima facie* felt that the Appeals may have to go before the Court having the roaster, since it did not consider it to be a Commercial Court matter at present, a direction was issued on 25.11.2021 directing the Appeals to be listed before the Bench having the roaster for hearing Appeals against orders on the original side of this Court. Pursuant to the said direction, the Appeals were listed before the Bench which had made the reference as aforesaid.

**2.3.** We have heard Mr.N.Vijayaraghavan and Mr.Sharath Chandran, learned counsel appearing for M/s.N.P.Vijaya Kumar, for the appellant in OSA Nos.26 and 27 of 2020, Mr.Arun Karthik Mohan, learned counsel appearing for the appellant in OSA Nos.28 and 29 of 2020 and Mr.K.Sukumaran, learned counsel appearing for M/s.M.R.Gogulkrishnan and Mr.S.Patrick, for the first respondent in all

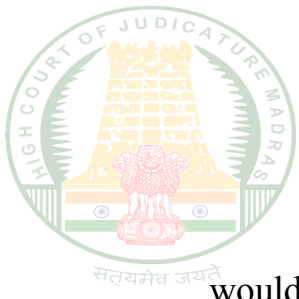


OSA.Nos.26 to 29 of 2020

the Appeals.

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2.4. Mr.N.Vijayaraghavan, Mr.Sharath Chandran and Mr. Arun Karthik Mohan, learned counsel appearing for the appellants would vehemently contend that at the stage of granting leave, the Judge sitting on the Original Side of this Court does not exercise powers under the Commercial Courts Act and therefore, the orders passed refusing to revoke the leave cannot be termed as once passed by the Commercial Division in exercise of the powers under the Commercial Courts Act. According to them in order to enable the respondent to contend that the Appeals are barred in view of the proviso to Section 13 read with Subsection 2 of Section 13 of the Commercial Courts Act it should be shown that the order granting leave and the order refusing to revoke it should be shown to have been passed in exercise of the jurisdiction conferred on the Commercial Division under Section 7 of the Commercial Courts Act 2015. The learned counsel appearing for the appellants would contend that the decision in ***Hindustan Unilever Limited Ponds House v. S.Shanthi***, requires a reconsideration on more than one ground. They

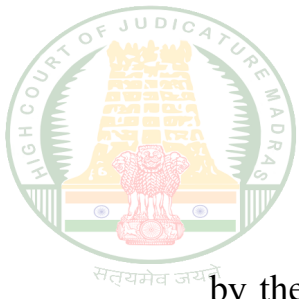


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would submit that the Division Bench in ***Hindustan Unilever Limited Ponds House v. S.Shanthi***, did not consider the question as to whether an order either granting leave under Clause 12 or refusing to revoke the leave granted could be said to be an order passed in exercise of the jurisdiction conferred under the Commercial Courts Act.

2.5. The learned counsel would further attempt to make a distinction based on the stage of the suit and according to them, a suit could become a commercial suit only upon its numbering and the cognizance of it is taken by the Commercial Court and not before that. According to them, the solitary issue that needs to be considered relates to grant of leave under Clause 12 of the Letters Patent and not the other issues which were dealt with and decided by the Division Bench in ***Hindustan Unilever Limited Ponds House v. S.Shanthi***. A distinction is sought to be made by the learned counsel to the effect that an application under Clause 12 is not a suit. It being an application anterior to the suit there is no suit registered as a commercial cause before the Commercial Division when the application for grant of leave is taken up

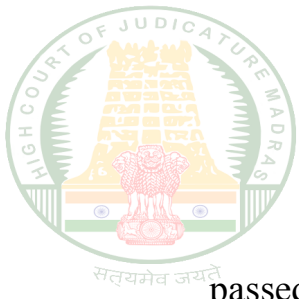


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by the Court. It is also their contention that the application for leave is heard by the Judge on the Original Side and not by the Commercial Division under the Commercial Courts Act. Relying upon the language of Section 4 of the Commercial Courts Act, the learned counsel would contend that the Commercial Division would come into play only in a suit and not at any prior stage.

**2.6.** Arguing further, the learned counsel would submit that till such time the issue relating to grant of leave is finally decided the proceedings are only on the Original Side of this Court and not before the Commercial Division. Therefore, according to the learned counsel, an order refusing to revoke the leave granted being a judgment under Clause 12 is appealable under Clause 15 of the Letters Patent *dehors* the provisions of the Commercial Courts Act. It is also contended that since it is the Judge of this Court who is sitting as a Commercial Division exercising jurisdiction under the Commercial Courts Act irrespective of the order being passed by the Judge sitting in the Commercial Division or the Judge sitting in the Original Side of this Court, if the order is not one

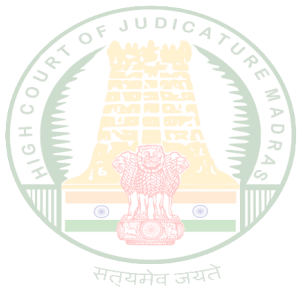


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passed in exercise of the jurisdiction under the Commercial Courts Act, the bar or prohibition contained under Section 13 would not be attracted.

2.7. Taking shelter under the language of Clause 12 of the Letters Patent, the appellants would contend that it is a special power vested in the Chartered High Courts by virtue of the Letters Patent and therefore, the exercise of such power cannot be deemed to be one under a particular enactment. If the power is not exercised under the particular enactment the prohibition contained in the said enactment would not stand attracted. In essence, the contention of the learned counsel for the appellants is that there are two stages in hearing of a commercial dispute, one before numbering and the other after numbering. A suit does not part take the character of a commercial suit before it is numbered and any order passed at a stage anterior to numbering cannot be said to be one passed in exercise of the jurisdiction under the Commercial Courts Act by the Commercial Division and therefore, such orders are appealable under Clause 15 of the Letters Patent *dehors* the prohibition or the bar contained in Section 13 of the Act.



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**3.** Contending contra Mr.K.Sukumaran, learned counsel appearing for the first respondent in all the Appeals would submit that the stage at which the order is passed does not really matter. It is the subject matter of the suit that has to be looked into. If it is found that the subject matter of the suit could be termed as a commercial dispute within any one of the Sub Clauses (i) to (xxi) of Sub Section (c) of Section 2 of the Commercial Courts Act, then the same would qualify as a commercial dispute which is to be dealt with by the Commercial Division.

**3.1.** Terming the distinction that is sought to be made by the learned counsel appearing for the appellant as non-existent, Mr.K.Sukumaran, learned counsel appearing for the first respondent would submit that the provisions of the enactment must be interpreted in such a manner that they would further the objects of the enactment and not otherwise. Drawing us to the objects and reasons of the Commercial Courts Act, Mr.K.Sukumaran, would submit that the very object being one to fast track the litigation by curtailing unnecessary appeals at the interlocutory stages, the provisions of the Act must be read in such a



OSA.Nos.26 to 29 of 2020

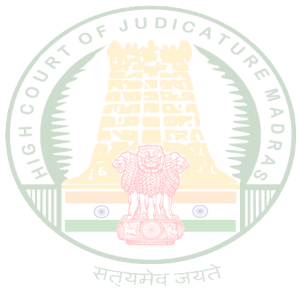
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manner to further the said intention, viz. quick disposal. He would also point out that the reference order attempts to make an artificial distinction on the basis of the stage at which the order is passed overlooking the fact that the provisions of the Commercial Courts Act do not lend support to such distinction being made. The learned counsel on either side would rely upon various judgments in support of their submissions.

4. Before advertng to the submissions of the counsel in detail, it will be useful to extract the relevant statutory provisions.

Clause 12 of the Letters Patent reads as follows:

*“12. Original Jurisdiction as to Suits: - And we do further ordain that the said High Court of Judicature at Madras, in exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description if, in the case of suits for land or other immovable property, such land or property shall be situated, or, in all other cases, if the cause of action shall have arisen, either wholly, or, in case*



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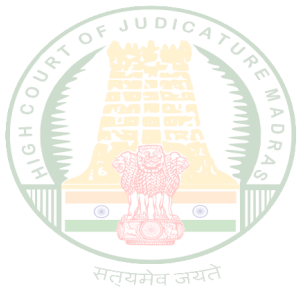


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*the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court: or if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Madras, in which the debt or damage, or value of the property sued for does not exceed one hundred rupees.”*

Clause 15 of the Letters Patent reads as follows:

***“15. Appeal from the Courts of Original Jurisdiction to the High Courts in its appellate jurisdiction: - And we do further ordain that an appeal shall lie to the said High Court of Judicature at Madras from the judgment] (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a***

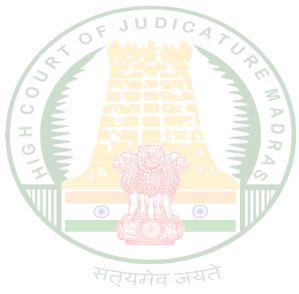


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*Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything herein before provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act made (on or after the 1st day of February 1929) in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a*



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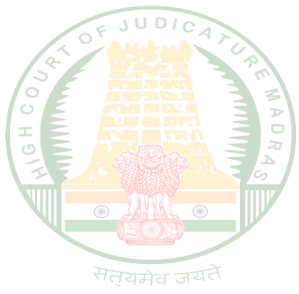
*fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council as hereinafter provided.”*

**4.1.** It will be useful to advert to the recommendations of the law commission of India contained in 188<sup>th</sup> Report dated 15<sup>th</sup> December 2003 which led to the enactment of the Commercial Courts Act :

***1.Purpose to expedite commercial cases of high pecuniary value***

*The purpose of the proposals in this report is to expedite commercial cases of high pecuniary value and create confidence in the commercial circles, within India and outside, that our Courts are quite fast, if not faster than Courts elsewhere.*

*The last decade has brought about phenomenal changes leading to enormous growth in the commerce and industrial sector of India. The policies of the Government have changed radically from 1991, the year in which our economy was opened up to foreign investment in a big way. Privatisation, liberalization*



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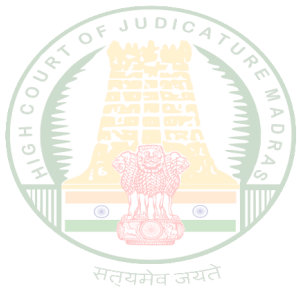


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*and globalisation have resulted in giving a big boost to our economy. At the same time, world has become very much competitive.*

*With such rapid increase in commerce and trade, commercial disputes involving high stakes are likely to increase. Unless, there is new and effective mechanism for resolving them speedily and efficiently, progress will be retarded.*

*The overall benefits that may accrue to the economy of the country as a whole by the establishment of the Commercial Division will, in our opinion, be in several hundreds of crores of Rupees. In view of the present era of globalisation and liberalization, investment in India, both domestic and foreign is bound to increase tremendously once the investors of the world know with certainty and assurance that the Commercial Division in the High Courts in India will dispose of the matters within a maximum period of two years which is comparable to the period of pendency in USA or UK. The expense involved in establishment of the Commercial Division will, in our view, be a small fraction of the overall benefits that will accrue to the economy of the country. Investors will make freely investment in*



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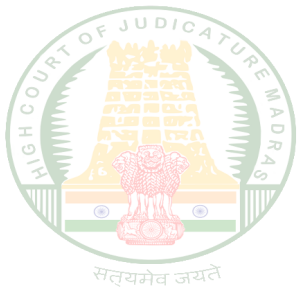


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*business ventures without fear of blocking their substantial business capital in undue prolonged litigation in courts. The proposed changes are likely to render the overall market friendly change in investment in business scenario.*

***2.Method of expeditious disposal of “Commercial cases” of high pecuniary value in NUTSHELL:***

*We recommend the creation of “Commercial Division” in each of our High Courts so that these may handle 'commercial cases' of a high threshold value of (say) Rs. 1 crore and above, or such higher limit as may be fixed by the High Court and on fast-track basis. Such a procedure was recommended in our Report on Amendments to the Indian Arbitration and Conciliation Act, 1996 for 'fast-track' arbitration. The objective is that a commercial case of such high value should be disposed of within a period of one year or at the most two years in all the States in India. A maximum period of two years is perfectly justified and is comparable to the period of pendency in most courts abroad and in particular in US and UK. The proposed Divisions should be manned by Judges of the High Court who are well-*



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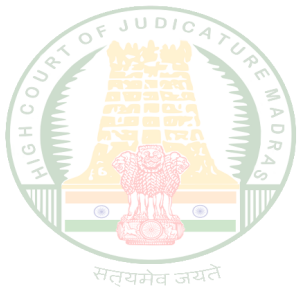


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*versed in civil law and in particular, commercial laws. It is also proposed that High Court Judge should be given extensive exposure to the fast growing changes in commerce occurring globally and that their knowledge levels in respect of new branches of commercial law should be updated constantly by a programme of continuing lectures. The commercial cases above the pecuniary limit of (say) Rs. 1 crore or more as stated above must, in our view, be taken up on the original side of the High Court and to be allocated to the Commercial Division. Simultaneously, pending appeals before the High Court in relation to commercial cases of the high pecuniary value abovementioned must also to be allocated to the Commercial Division straightway rather than stand in queue along with other civil appeals pending in the High Courts. Likewise, the execution of decrees passed by the Commercial Division must also be undertaken by the same Division.*

The Statement of objects and reasons of the Commercial Courts Act is as follows:

### ***Statement of Objects and Reasons***



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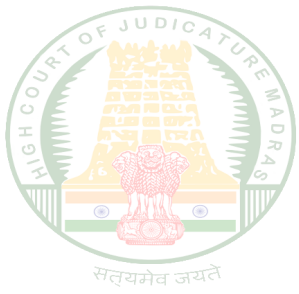


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*The proposal to provide for speedy disposal of high value commercial disputes has been under consideration of the Government for quite some time. The high value commercial disputes involve complex facts and question of law. Therefore, there is a need to provide for an independent mechanism for their early resolution. Early resolution of commercial disputes shall create a positive image to the investor world about the independent and responsive Indian legal system.*

*2. The Law Commission of India in its 188th Report had recommended the constitution of the Commercial Division in each High Court. Accordingly, the Commercial Division of High Courts Bill, 2009 was introduced and passed by the Lok Sabha. However, during the discussion of the aforesaid Bill in the Rajya Sabha, some Members raised certain issues and in view thereof, the matter was again referred to the Law Commission of India for its examination. The Law Commission of India, in its 253rd Report, has recommended for the establishment of the Commercial Courts, the Commercial Division and the Commercial Appellate Divisions in the High Courts for disposal of commercial disputes of specified value.*

*3. Based on the recommendations of the Law Commission made in its 253rd Report, a Bill namely, the*



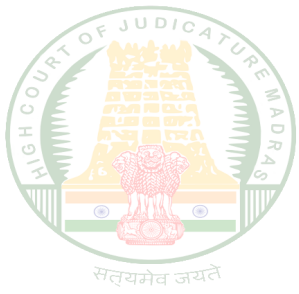
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*Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 was introduced in the Rajya Sabha on 24th April, 2015 and the same is at present under the consideration of the Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. As provided in the said Bill, 2015, all the Suits, Appeals or Applications related to commercial disputes of specified value i.e. one crore or above, are to be dealt with by the Commercial Courts or the Commercial Division of the High Court*

*4. By way of the Delhi High Court (Amendment) Act, 2015, the ordinary original jurisdiction of the Delhi High Court has been increased from rupees twenty lakhs to rupees two crore and there is a provision for transfer of pending case from the Delhi High Court to District Courts. On the enactment of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015, some of the Commercial Disputes which are to be transferred to the District Courts from the Delhi High Court may again be required to be transferred to the Commercial Division of the High Court of Delhi. It would cause delay in the disposal of cases as well as inconvenience to the parties and counsels and may also result in confusion. Therefore, it became necessary that the provisions of the Delhi High Court*



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*(Amendment) Act, 2015 and establishment of the Commercial Courts and Commercial Division of the High Courts may be brought into force simultaneously.*

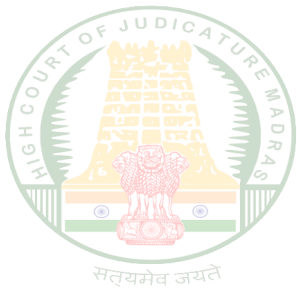
*5. As Parliament was not in session and urgent steps were needed to be taken, the Commercial Courts, Commercial Division and Commercial Appellate Division in High Courts Ordinance, 2015 was promulgated on 23rd October, 2015.*

*6. It is proposed to introduced the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 to replace the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015 which, inter alia, provides for the following namely:—*

*(i) constitution of the Commercial Courts at District level except for the territory over which any High Court is having Ordinary Original Civil jurisdiction;*

*(ii) constitution of the Commercial Divisions in those High Courts which are already exercising ordinary civil jurisdiction and they shall have territorial jurisdiction over such areas on which it has Original jurisdiction;*

*(iii) constitution of the Commercial Appellate Division in all the High Courts to hear the appeals against the Orders of the Commercial Courts and the Orders of the Commercial*



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*Division of the High Court;*

*(iv) the minimum pecuniary jurisdiction of such Commercial Courts and Commercial Division is proposed as one crore rupees; and*

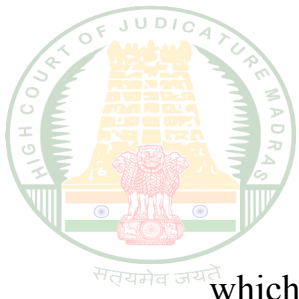
*(v) to amend the Code of Civil Procedure, 1908 as applicable to the Commercial Courts and Commercial Divisions which shall prevail over the existing High Courts Rules and other provisions of the Code of Civil Procedure, 1908 so as to improve the efficiency and reduce delays in disposal of commercial cases.*

*7.The proposed Bill shall accelerate economic growth, improve the international image of the Indian Justice delivery system, and the faith of the investor world in the legal culture of the nation.*

*8. The Bill seeks to replace the aforesaid Ordinance.*

**4.2.** The relevant provisions of the Commercial Courts Act 2015 are as follows:

Section 2(c) of the commercial Courts Act enlists various disputes which would be classified as commercial disputes. While Section 3 provides for constitution of Commercial Courts, Section 3(A) provides for constitution of Commercial Appellate Courts. Insofar as High Courts



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which are having ordinary Original Civil jurisdiction, Section 4 provides for constitution of Commercial Division of High Court, the said Section reads as follows:

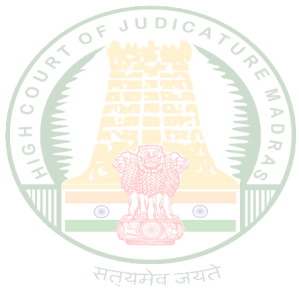
***“4. Constitution of Commercial Division of High Court.***

—

*(1) In all High Courts, having ordinary original civil jurisdiction, the Chief Justice of the High Court may, by order, constitute Commercial Division having one or more Benches consisting of a single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Act.*

*(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Division.”*

Section 7 sets out the jurisdiction of the Commercial Division of High Courts and it reads as follows:



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***“7. Jurisdiction of Commercial Divisions of High***

***Courts.—All suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court:***

*Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed or pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court:*

*Provided further that all suits and applications transferred to the High Court by virtue of sub-section (4) of section 22 of the Designs Act, 2000 (16 of 2000) or section 104 of the Patents Act, 1970 (39 of 1970) shall be heard and disposed of by the Commercial Division of the High Court in all the areas over which the High Court exercises ordinary original civil jurisdiction.”*



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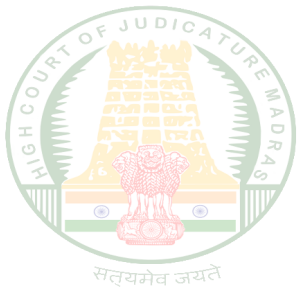
Section 13 provides for Appeals against the decrees of Commercial Courts and Commercial Divisions, it reads as follows:

***“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*



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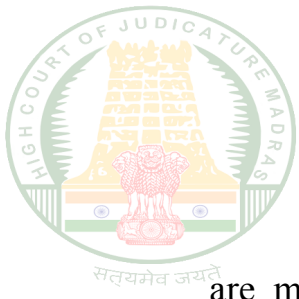
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*this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]*

*(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.”*

The other provisions of the Act may not be very relevant for our purposes.

5. At the outset, it must be borne in mind that Commercial Courts Act is an enactment which aims at speedy disposal and the legislature, with the said object in mind, had tinkered with certain provisions of the Code of Civil Procedure to enable fast tracking of commercial litigations by curtailing Appeals at the interlocutory stages and by providing mandatory time lines for performance of certain acts. The failure to adhere to the time lines would lead to orders being passed against the party who fails to adhere to such time lines. The Hon'ble Supreme Court in various decisions has held that the time lines prescribed under the Act

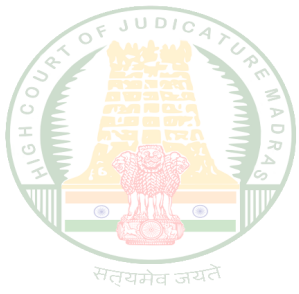


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are mandatory and they have to be strictly adhered to. None of the parties seriously dispute the above said position of law.

6. We have extracted the relevant provisions of the Commercial Courts Act. Section 4 deal with Constitution of Commercial Division of High Courts and such constitution is for the purpose of exercising the jurisdiction and powers conferred on it under the Act. Section 7 which deals with jurisdiction of Commercial Divisions of High Courts confers the jurisdiction to hear and dispose of all suits and applications relating to commercial disputes of a specified value filed in the High court. Section 13 provides for Appeals from decrees of Commercial Courts and Commercial Divisions. Section 13(1A) permits an Appeal by a person aggrieved by the judgment or order of a Commercial Division of the High Court to appeal to the Commercial Appellate Division of that High Court. Proviso to Sub Section (1) of Section 13 confines Appeals against the orders that are specifically enumerated under Order XLIII of the Code of Civil Procedure and Section 37 of the Arbitration and Conciliation Act 1996.

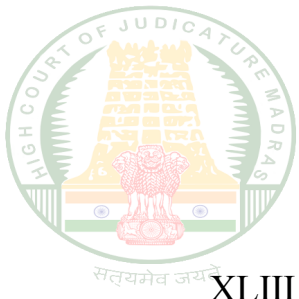


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7. Subsection 2 of Section 13 which contains a non-obstante clause provides that notwithstanding anything contained in the Letters Patent of the High Court, no Appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act. As could be seen from the provisions a conscious attempt has been made by the parliament to prohibit Appeals and Civil Revisions from orders of the Commercial Division and the Commercial Courts at the interlocutory stages. Section 8 of the Act bars a Revision Application against an interlocutory order; Section 13 bars Appeals otherwise than in accordance with the Act; Section 12(3) bars an Appeal or Revision under Section 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.

8. In *Shah Babulal Khimji v . Jayaben D. Kania and another*, reported in *1981 (4) SCC 8*, the Hon'ble Supreme Court held that Order



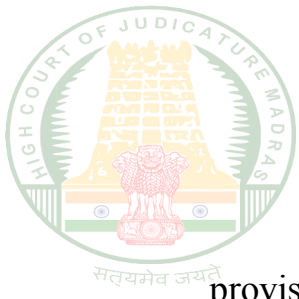
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XLIII Rule (1) of the Code of Civil Procedure does not override or control Clause 15 of the Letters Patent, thereby enabling Appeals against orders which are not specifically made appealable under Order XLIII Rule (1) invoking Clause 15 of the Letters Patent. The effect of this judgment of the Hon'ble Supreme Court is sought to be nullified by Subsection 2 of Section 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**, the Hon'ble Supreme Court held that despite the bar under Section 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 nullified by Section 13(2) of the Commercial Courts Act.

10. In *Iridium India Telecom Ltd v. Motorola Inc*, reported in **2005 (2) SCC 145**, the Hon'ble Supreme Court had held that the



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provisions of Rule 1 of Order VIII would be subject to the Rules framed under the Letters Patent which are protected under Section 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 Section 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 Subsection 3 of Section 16 of the Commercial Courts Act. Subsection 3 of Section 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. Rule 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-section 3 of Section 16 makes Rule 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



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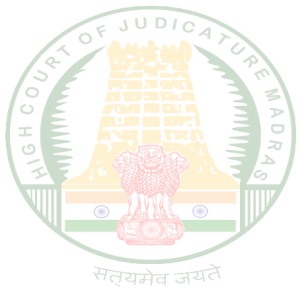
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at least three judgments of the Hon'ble Supreme Court by introducing the non-obstante clause in Subsection 2 of Section 13 and by Subsection 3 of Section 16 of the Commercial Courts Act. We are pointing out the above feature only with the view to high light the importance that has been given, for speedy disposal of commercial litigation, by the Parliament.

**12.** Adverting to the contentions of the learned counsel for the appellants that a suit does not become a commercial cause unless it is numbered and any order passed prior to the stage of numbering would not be an order passed by the Commercial Division in exercise of the powers conferred under the Act, we have to necessarily express our disinclination to accept the said argument. The reasons are not far to seek. We have extracted the provisions of the Act. Section 4 provides for constitution of a Commercial Division in the High Court for the purposes of exercising the jurisdiction and powers conferred on it under the Act.

**13.** Section 7 prescribes the jurisdiction of the Commercial Divisions of High Courts. The main Section provides that

*“All suits and applications relating to*



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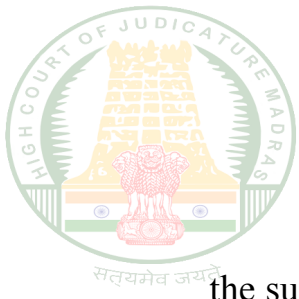


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*commercial disputes of a specified value filed in a High Court having ordinary civil jurisdiction **shall be heard and disposed of by the Commercial Division of the High Court**".*

Section 7 does not seek to make a distinction between applications anterior to or posterior to numbering of the suit. Of course the learned counsel appearing for the appellants would contend that a suit could be said to be instituted only on presentation of the plaint and not otherwise. According to them since Clause 12 enables an application for leave to institute a suit could be accompanied by a copy of the plaint and therefore, there is no institution of a suit upon presentation of an application for leave to file the suit.

**14.** Our attention in this regard is drawn to Clause 16 of Rule 4 of Order I of the Original Side Rules, which defines the suit as all proceedings commenced by the filing of a plaint. Rule I of Order III of the Original side Rules which deals with an application for leave to institute



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the suit enables a party to file an application accompanied by the plaint in the intended suit or a copy thereof. We do not think such a fine distinction could be made inasmuch as the provisions of the Commercial Courts Act are wide enough to cover even stages prior to the numbering of the suit. As we had already pointed out Section 7 confers the jurisdiction to hear and dispose of all suits and applications relating to commercial disputes to the Commercial Division of the High Court. If we are to accept the contention of the learned counsel for the appellants then we will be importing the words “*in such suits*” between the words *applications* and *relating* occurring in Section 7, so as to read it as “all suits and applications *in such suits* relating to Commercial disputes.”

15. We cannot add to a legislative provision in order to restrict the jurisdiction that is conferred on a Court by the legislature. We are therefore unable to accept the contention of the learned counsel for the appellant that an application anterior to the numbering of the suit cannot be heard by a Commercial Division and it should be deemed that it is heard and disposed of by the High Court on its original side. No doubt a

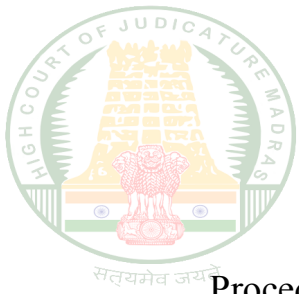


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certain criticism is made by the learned counsel appearing for the appellants on certain conclusions reached by the Division Bench in ***Hindustan Unilever Limited Ponds House v. S.Shanthi***, wherein the Division Bench at paragraph 60 while dealing with maintainability of OSA CAD Nos.24, 25, 26 and 27 of 2021, which are Appeals filed against orders directing return of complaints under Order VII Rule 10, an Appeal would lie under Order XLIII Rule 1(A) of the Code of Civil Procedure. The complaint of the counsel for the appellants is that the Division Bench has overlooked the fact that in view of Order XLIX Rule 3 of the Code of Civil Procedure, Order VII Rule 10 would not apply to the original side of a Chartered High Court. They would also point out that the Division Bench had at paragraph 107 relying upon ***R.P.O. Connor v. P.G.Sampath Kumar***, reported in ***AIR 1953 Mad 897***, held that the return can be made under Section 151 of the Code of Civil Procedure.

**16.** It is the submission of the learned counsel for the appellants that if it is an order of return under Section 151 of the Code of Civil



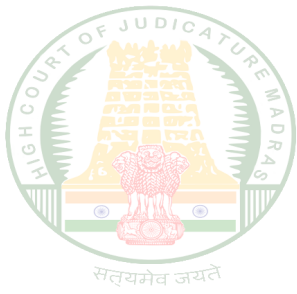
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Procedure which is not specifically made appealable under Rule 1 of Order XLIII of the Code of Civil Procedure, the conclusion of the Division Bench regarding maintainability of those Appeals is incorrect. May be there is some substance in the submission of the learned counsel but we do not propose to go into the same as that question does not fall within the scope of reference made to us.

17. Mr.K.Sukumaran, learned counsel appearing for the first respondent would invite our attention to the judgment of the Hon'ble Supreme Court in *Owners and Parties Interested in the Vessel M.V.Polaris Galaxy v. Banque Cantonale De Geneve* reported in 2022 *SCC Online SC 1293*, to contend that the Hon'ble Supreme Court had gone into the object of the Act and held that the object of the Commercial Courts Act, vis-a-vis the Admiralty Act and concluded that the Commercial Courts Act would prevail over the Admiralty Act. In doing so, the Hon'ble Supreme Court refused invoke the doctrine *generalia specialibus non derogant*, and concluded as follows:

“81. *If such an order under the Code of Civil Procedure*



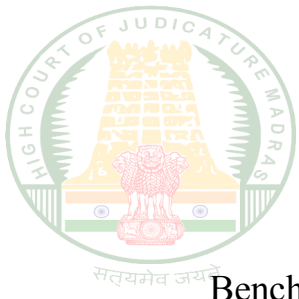
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*which does not fall under Order XLIII of CPC is held to be appealable, then the entire purpose of the Commercial Courts Act would be defeated, and every single order passed in a course of a trial of an admiralty suit would be appealable under section 14 of the Act. Such orders would be large in number including orders in relation to discovery, inspection, case management hearing, admissibility of evidence, framing of issues, interrogatories, etc. This would make a mockery of the intended purpose of Parliament in enacting the Commercial Courts Act, which is to expedite trials in commercial suits of a specified value, and restrict the number of interlocutory appeals.”*

**18.** In deciding the above question, the Hon’ble Supreme Court also pointed out that Section 14 of the Admiralty Act which provides for an Appeal from any judgment, decree, final order or interim order of a single Judge of the High Court under the Admiralty Act to the Division



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Bench of the High Court should be read harmoniously with Order XLIII Rule 1 of the Code of Civil Procedure, in view of Section 12 of the Admiralty Act read with Section 13 of the Commercial Courts Act.

**19.** The Hon'ble Supreme Court has also gone into the legislative intent and concluded that the Courts while interpreting the provisions of a legislation particularly a legislation which seeks to achieve speedy disposal should give effect to the intendment of the legislature and shall not aid a litigant to delay trial by filing Appeal even from inconsequential orders. We respectfully follow what the Hon'ble Supreme Court has pointed out in the above judgment to conclude that an Appeal against an order which is not made specifically appealable under Order XLIII Rule 1 of the Code of Civil Procedure, cannot be maintained and the distinction that is sought to be made with reference to the stage at which the order is passed is an artificial distinction not contemplated by the provisions of the Commercial Courts Act.

**20.** As we have already pointed out the provisions of the Commercial Courts Act do not aid the interpretation that is sought to be



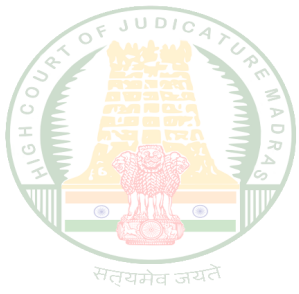
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placed by the counsel for the appellants. In interpreting a statute particularly a statute like Commercial Courts Act, we have to necessarily go by the language employed by it and we cannot supplant or add to the provisions of the Act, so as to enlarge the scope of the provision. As we had already pointed out Section 7 which invests the jurisdiction to hear and dispose of commercial disputes in the Commercial Division of the High Court does not make a difference between pre-institution and post institution applications. Once we reject the argument of the learned counsel for the appellants which attempts to make out an artificial line of distinction, the necessary conclusion would be that both the questions referred have to be answered in the negative. An Application for grant of leave under Clause 12 of the Letters Patent will definitely fall within the jurisdiction of a Commercial Division in terms of Section 7 of the said Act and it cannot be said to be an order passed outside the Commercial Courts Act 2015.

**21.** We answer the questions referred as follows:

- (i) An order passed by this Court in its Ordinary Original Civil Jurisdiction exercising powers under



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Clause 12 of the Letters Patent for the High Court of Madras granting leave to any applicant to institute a suit within the jurisdiction of this Court will be an order passed under the Commercial Courts Act 2015 in exercise of the jurisdiction conferred on the Commercial Division under Section 7 of the said Act.

(ii) An order passed by this Court refusing to revoke leave granted to any applicant as referred in (i) above will also be an order passed under the Commercial Courts Act 2015.

**22.** In the normal course, we should direct the appeals to be posted before the concerned Division Bench for disposal after answering the reference. We do not deem it necessary to do so since the reference itself is in relation to the maintainability of the Appeals which has retained us for nearly three years now, we do not propose to further delay the matter by directing the Appeals to be listed before the appropriate Division Bench. In view of our answers to the questions referred to us, the Appeals will stand dismissed as not maintainable. There shall be no



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order as to costs. Consequently, the connected miscellaneous petitions are closed.

(R.S.M., J.)

(T.K.R., J.)

(V.B.S., J.)

02.03.2023

jv

Index : Yes

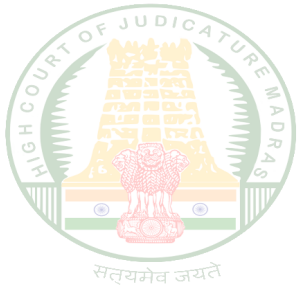
Internet : Yes

Neutral Citation : Yes

Speaking Order

To

The Section Officer,  
Original Side,  
High Court of Madras



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*OSA.Nos.26 to 29 of 2020*

**R.SUBRAMANIAN, J.**

**RMT.TEEKAA RAMAN, J.**

and

**V.BHAVANI SUBBAROYAN, J.**

jv

**Pre-Delivery Common Judgment  
in  
O.S.A.Nos.26 to 29 of 2020**

**02.03.2023**