



Salgaonkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL APPEAL (L) NO.40525 OF 2025

IN

COMMERCIAL MISCELLANEOUS PETITION NO.538 OF 2022

WITH

INTERIM APPLICATION (L) NO.40663 OF 2025

IN

COMMERCIAL APPEAL (L) NO.40525 OF 2025

Anil Shah Trading as Le Shark India .. Appellants
& Anr.

Versus

Le Shark Apparel Limited & Anr. .. Respondents

...

Mr.Alankar Kirpekar with Mr.Lakshyaved R. Odhekar,
Mr.Omkar N. Mhasde and Mr.Ayush Tiwari for the Appellants.

Mr.Rohan Kadam with Ms.Rucha Vaidya, Mr.Manosij
Mukharjee, Mr.Dominic Alvares, Mr.Ritik Gupta and Ms.Sneha
Meghani i/b Suvarna Joshi for the Respondents.

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATE : 18th APRIL, 2026

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ORDER (PER BHARATI DANGRE, J.)

1. The present Appeal is filed by the Appellants, challenging
the order dated 14/10/2025 passed in Commercial
Miscellaneous Petition No.538 of 2022 filed by the Le Shark

Apparel Limited, United Kingdom, who instituted Rectification Application seeking removal of the Appellants' long standing registered trademark "LESHARK" Registration No.466002 in Class 25 from the Register of Trade Marks. The application primarily was premised on the ground that the Appellants had not used their mark and the invoices placed on record to establish its user, were fabricated and they had no *bona fide* intent to use the mark and the adoption of the mark was dishonest.

By order dated 14/10/2025, Commercial Miscellaneous Petition No.538 of 2022 was made absolute by concluding that Section 57 of the Trade Marks Act, 1999 confer discretion on the Court to maintain purity of the Register and having *prima facie* held that there is fraudulent adoption of the impugned trademark by the Respondents, the impugned trademark was directed to be removed from the Register by directing removal/expunging of Trademark No.466002 in Class 25.

2. Being aggrieved by the aforesaid, the present Commercial Appeal is filed under Section 13 of the Commercial Courts Act, 2015 praying for setting aside of the impugned order passed by the learned Single Judge.

The pleading in the Appeal specifically state thus :-

“7. The impugned order dated 14 October 2025 was passed by the Hon'ble Single Judge exercising Ordinary Original Civil Jurisdiction in the Commercial Division of this Hon'ble Court, in proceedings governed by the Commercial Courts Act, 2015. The present Appeal is therefore maintainable before this Hon'ble Court under Section 13(1A) of the Commercial Courts Act, 2015, read with Order XLIII of the Code of Civil Procedure, 1908, as applicable to commercial disputes by virtue of Section 16 read with the Schedule to the Commercial Courts Act.”

3. Learned counsel Mr.Rohan Kadam representing the Respondents would raise a preliminary objection about maintainability of the Appeal, as it is the contention of Mr.Kadam that the Application for Rectification was filed by Le Shark Apparel Limited before the Intellectual Property Appellate Board (“IPAB”) for cancellation of the registered trademark in the name of Anil Shah trading as M/s Le Shark Exports Private Limited in Class 25, the said Application being filed under Section 47 of the Trade Marks Act 1999, which provide for removal of a registered trademark from the Register in respect of which it is registered, on an application being made in the prescribed manner either to the Registrar or to the High Court by any aggrieved person. It is also submitted that prior to 04/04/2021, the power to be exercised by the High Court was available to the IPAB and the application is permitted to be filed on the ground that the trademark was registered without any *bona fide* intention on the part of the applicant for registration or that there was no *bona fide* use of

the trademark in relation to the goods and services by any proprietor thereof for the time being up to a date three months before the date of the application, a continuous period of five years from the date on which the registered trademark is actually entered in the register or a period longer than this has elapsed, when there was no *bona fide* user of the said mark.

By inviting our attention to Section 57, which is the power to cancel or vary the registration and to rectify the Register, Mr.Kadam would submit that on an application being made in the prescribed manner to the High Court or to the Registrar, the concerned Authority, as the case may be, may make such a order as it thinks fit for cancelling or varying the registration of the trademark on the ground of any contravention or failure to observe a condition entered on the Register in relation thereto. It is specifically urged that earlier the power was permissible to be exercised by IPAB, but after the amendment, this power is exercised by the High Court or by the Registrar.

4. According to Mr.Kadam, a suit for infringement of a registered trademark or relating to any right in registered trademark or for passing-off arising out of the use by the defendant of any trade mark which is identical with or

deceptively similar to the plaintiff's trade mark shall lie in any Court inferior to a District Court having jurisdiction to try the suit. Mr.Kadam, by inviting our attention to Section 13 of the Commercial Courts Act, 2015, would submit that there is no dispute that the Application for Rectification can be entertained by the High Court and he does not dispute the fact that the dispute is of commercial nature.

The Miscellaneous Petition before the High Court requesting it to exercise its power under Section 57, prayed for expunging of the impugned mark on the ground that it was fraudulently adopted by the Respondents and an entry wrongly made and wrongly remaining on the Register "without sufficient cause" justified exercise of the power.

It was attempted to be canvassed in the Miscellaneous Petition that it was a fit case for invoking the power of expunging the trademark under Section 47 and undisputedly, the High Court exercised its ordinary original civil jurisdiction in commercial division. However, according to Mr.Kadam, the power to be exercised by the Commercial Court under Section 13(1-A) is hedged by a proviso, and since the order dated 14/10/2025 is passed on a Miscellaneous Petition, and it is not a "Decree", the Appeal will not lie against it under sub-section

(1-A) of Section 13, as only against the orders enumerated in Order XLIII of the Code of Civil Procedure, 1908 (for short, “CPC”), the Appeal is maintainable alongwith an order passed under Section 37 of the Arbitration and Conciliation Act.

By relying upon the decision in the case of *Skil- Himachal Infrastructure & Tourism Ltd. & Ors. Vs. IL&FS Financial Services Ltd.*¹, Mr. Kadam has urged before us that the term ‘Judgment’ contemplated under sub-section (1-A) of Section 13 must necessarily be a “Decree” and he would rely upon the aforesaid decision where it is held that Section 13 of the Commercial Courts Act permit Appeals only (i) against decree; (ii) against orders specifically enumerated in Order XLIII of CPC and (iii) under Section 37 of the Arbitration and Conciliation Act. According to Mr.Kadam, the said decision has exhaustively interpreted the provisions of Section 13(1-A) by juxtaposing it against the earlier decision, when the provision of Section 13(1) included the term “Decision” and there was no wording as “Judgment” or “Order”.

By relying upon the definition of the term “Decree” as defined in Section 2(2), it is the submission of Mr.Kadam that decree is a formal expression of adjudication, conclusively determining the right of the parties with regard to all or any of

1 2022 SCC OnLine Bom 3152

the matters in controversy and it may be preliminary or final. By placing heavy reliance upon the observations of the Division Bench in *Skil-Himachal* (supra), he would submit that an appeal under sub-section (1-A) of Section 13 would lie only against the Decrees and the Orders which are specifically enumerated in Order XLIII of the CPC, and since the impugned order do not fall within either of it, the appeal cannot be entertained. Mr.Kadam has also placed reliance upon the decision of this Court in the case of *Resilient Innovations Pvt. Ltd. Vs. PhonePe Private Limited*², where the question arose, whether an appeal under Section 13 of the Act would lie against an order dated 22/10/2021, when the plaintiff in the proceedings was granted leave to withdraw the suit, with liberty to file a fresh suit on the same cause of action, the leave having been granted by invoking power under Order XXIII Rule 1(3) of CPC. The preliminary objection being raised on the maintainability of the Appeal, it was contended that the appeal is maintainable as the impugned order is a “Judgment and a Decree”. Emphasis was laid on the requirement of a decree, conclusively determining the rights of the parties with regard to all or any matters in controversy in the suit.

² MANU/MH/0820/2022



5. In addition, Mr.Kadam would also place reliance upon the decision in the case of *Madhavprasad Kalkaprasad Nigam Vs. S.G.Chanraverkar*³ holding that the proceedings to eject a tenant under Chapter VII of the Presidency Small Cause Courts Act are not a suit and the order for ejectment is not a Decree. Reliance is also placed upon the decision in *Nalinakhya Bysack Vs. Shyam Sunder Haldar & Ors.*⁴, a decision under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, where the question arose for determination, whether an order passed under the said enactment would amount to “Decree” and it is held that the word “Decree” has been defined in the Code to mean formal expression of an adjudication which determines the rights of the parties with regard to the matter in controversy in the suit. If this is the ordinary accepted meaning of the word “Decree”, then the Court held that meaning attributed to the word “Decree” occurring in Section 18(1) of the Act of 1950, cannot cover an order for possession passed under Section 43 of the Presidency Small Cause Courts Act on an application made under Section 41 of that Act, and it is also held that the word ‘suit’ does not and was not intended to cover any proceedings under the Presidency Small Cause Courts Act.

³ 1950 ILR Bom 326

⁴ (1953) 1 SCC 167



6. Dealing with the preliminary objection raised by Mr.Kadam, Mr.Kirpekar for the Appellants, at the outset, would submit that the order is passed by the learned Single Judge in exercise of ordinary original jurisdiction on the commercial division and since, it finally determined the rights of the parties, it is a “Judgment”. Mr.Kirpekar would place reliance upon the decision in case of *Sigmarq Technologies Pvt. Ltd. Vs. Manugrah India Ltd.*⁵ in support of his submission based on Section 13 of the Commercial Courts Act, when the word used therein was “decision”, but Mr.Kadam would submit that the said decision stands overruled.

According to Mr.Kirpekar, while deciding the said issue, the Court will also have regard to Section 21 of the Commercial Courts Act, which clearly stipulated that the provision of the Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instruments having effect by virtue of any law for the time being in force other than this Act. He would invoke the principle of law laid down by this Court in a recent pronouncement in case of *Vishal Prafulsingh Solanke & Anr. Vs. Controller of Patent and Designs & Ors.*⁶, where the following issue arose for consideration :-

⁵ (2018) 1 Bom CR 202

⁶ Comm.Appeal (L) No.13430 of 2025 decided on 09/03/2026

“(a) Whether the present Appeal filed under Section 13 (1-A) of the Commercial Courts Act, 2015, is maintainable or whether the proviso to the said section, restrict the appeal only to the orders enumerated under Order XLIII of the Code of 1908, and to the order under Section 37 of the Arbitration and Conciliation Act, as the decision under challenge is not an ‘Order’ but a ‘Judgment /Decree’.”

By relying upon the decision of the Apex Court in ***MITC Rolling Private Limited & Anr. Vs. Renuka Realtors & Ors.***⁷, it is held that an appeal filed by the appellant invoking Section 117-A of the Patents Act, 1970, which was entertained as miscellaneous petition by the High Court on its ordinary original jurisdiction on its commercial division, an appeal before the Commercial Appellate Division is maintainable, though on the point of bar under Section 100-A of CPC, it being a second appeal, the appeal was not entertained.

7. Giving thoughtful consideration to the objection raised by Mr.Kadam, which we have understood to the effect that Section 13 of the Commercial Courts Act, 2015, provides for appeals from decrees of Commercial Courts and Commercial Divisions.

Sub-section (1-A) reads thus :-

“(1-A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order :

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically

⁷ 2025 SCC OnLine SC 2375



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).”

The objection of Mr.Kadam is, that such an appeal shall lie only against “judgment” or “order” of a Commercial Court, which is at the level of District Judge, exercising original civil jurisdiction or by the Commercial Division of High Court. But, by virtue of the proviso, the forum of appeal is restricted only to the orders passed by the Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of CPC and Section 37 of the Arbitration and Conciliation Act, 1996. Therefore, the contention advanced is, unless and until the order which is challenged is an order enumerated under Order XLIII of CPC, the appeal shall not lie.

Yet another contingency, when an appeal is maintainable under sub-section (1-A) is against a “Judgment” of the Commercial Court at the level of District Judge exercising original civil jurisdiction or by the Commercial Division of the High Court, when an appeal shall lie to the Commercial Appellate Division and an attempt is made to urge that the term “Judgment” is synonymous to “Decree” and as interpreted by the Division Bench in *Skil-Himachal* (supra), Section 13 of the Commercial Courts Act permits appeal only against decrees.



8. The term “Decree” is assigned a definite connotation in the Code of Civil Procedure, which reads thus :-

(2) "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”

A bare look at the aforesaid would reveal that a conclusive determination of rights of the parties with regard to all or any of the matters in controversy in the suit through a formal adjudication is decree.

The term “Judgment” is also defined in Section 2(9) to mean the statement given by the Judge on the grounds of a decree or order. Similarly, “Order” as per Section 2(14) means the formal expression of any decision of a Civil Court which is not a decree.

9. It is, therefore, evident that the Civil Procedure Code has assigned distinct meaning to the terms and though “Decree” and “Order” are the formal expression of any adjudication, the distinguishing factor is evident. “Order” is not a decree and



“Order” is the formal expression of any decision of a Civil Court, whereas “Decree” is the formal expression of adjudication by any Court expressing it, which conclusively determine the rights of the parties involved in the suit. “Judgment”, however, is the statement/reasoning of the Judge on which he has passed a Decree or Order and “Judgment” is common for both “Decree” and “Order”, as the reasoning given by the Judge in support of a decree or order is the judgment.

Keeping this clear distinction in mind, the Parliament while introducing a provision of an appeal under the Commercial Courts Act, 2015, has contemplated an appeal, both against a Judgment or Order, but restricted its maintainability only to the order under Order XLIII of the Code, although appeal is maintainable against the judgment passed by the District Court exercising original civil jurisdiction or a Commercial Division of the High Court. This distinction was clearly noted by the Apex Court in ***MITC Rolling Private Limited*** (supra), when it observed thus :-

“17. Section 13(1A) of the CCA, 2015, is in two distinct parts. The main provision contemplates appeals against ‘judgments’ and ‘orders’ of the Commercial Court to the Commercial Appellate Division of the High Court. The proviso, operating as an exception, must be construed harmoniously with the main provision and not in derogation thereof. Where the language of the main provision is plain and unambiguous, the proviso cannot be invoked to curtail or whittle down the scope of the principal enactment, save and except where such exclusion is clearly and expressly contemplated. The



proviso merely restricts appeals against interlocutory orders to those specifically enumerated under Order XLIII CPC and Section 37 of the Arbitration and Conciliation Act, 1996. Consequently, only such interlocutory orders as are expressly specified therein would be amenable to an appeal under the proviso; orders not so enumerated would not fall within the restricted fold of the proviso.

18.

19. A bare reading of the above paragraph makes it manifest that the said case involved a challenge to an order rejecting application(s) under Order VII Rule 10 and Order VII Rule 11(d) of the CPC, which order(s) are not enumerated under Order XLIII of the CPC. Thus, there cannot be any quarrel with the proposition that such an order would not be amenable to an appeal under Section 13(1A) of the CCA, 2015, and rather, can be challenged by filing a revision or a petition/application under Article 227 of the Constitution of India, as the case may be.”

Applying the principle laid down to the facts, where it involve an order rejecting plaint under Order VII Rule 11, it was held that an order rejecting a plaint under Order VII Rule 11 decide the *lis* finally and would amount to a “decree” within meaning of Section 2(1) of the Code. However, it was noted that when an order under challenge was one rejecting the application moved under Order VII Rule 10 or under Order VII Rule 11(d) of CPC, since it was only for return of plaint and the *lis* between the parties was not finally concluded and this being not an order passed under Order XLIII, an appeal would not lie.

10. The test to determine whether the judgment is final adjudication of the rights of the parties and it finally determine the *lis*, is the testing factor to ascertain whether it has conclusively determined the rights of the parties with regard



to all or any of the matters in controversy in the suit/proceedings. In the present case, the rectification proceedings were instituted before the Intellectual Property Appellate Board (IPAB) as it then existed as per Sections 47 and 57 of the Trade Marks Act, but it stood transferred to the High Court. The High Court, therefore, determined the application filed by Le Shark Apparel Limited, seeking rectification of the Respondents' (present Appellants) registered Trade mark in Class 25 for, "Articles of Clothing, including Boots, Shoes and Slippers, Scarves and Raincoats" under Sections 47 and 57 of the Trade Marks Act, 1999.

The learned Single Judge appreciated the contention raised that the petitioner's claim for its trade mark "LESHARK" and the device was unique, original and fanciful adoption of "Le" and "Shark" with a unique graphic of a shark and it relied upon the registration of the device mark in United Kingdom in Class 25. The petitioner also relied upon the use of the said mark by its predecessor and also referred to its registration in India by the Registrar of Trade marks.

In the background facts set forth in the application, the applicant prayed for expunging of the impugned mark of respondent Nos.1 and 2 under Section 47(1)(a) of the Trade



Marks Act for want of *bona fide* intention to use the impugned mark. The lack of *bona fide* use upto the period of three months before the date of petition was demonstrated by alleging that the impugned mark is borne out of a mere dishonest copy and adoption of trademark that were registered prior in time by the predecessor in United Kingdom, France and the Benelux countries and subsisting in its name.

11. Submitting that it was a fit case for exercise of power under Section 47 of the Act, it was contended that the respondents had no explanation for having adopted the impugned mark, though they had pleaded a case that they had built a thriving business under the impugned mark for over 37 years and generated enormous goodwill, but there was no material placed on record to support its sweeping claim, as no certified sales figures; advertising figures; assessment orders; and/or any promotional materials were produced.

A strong contest was raised on behalf of respondent Nos.1 and 2, by submitting that the petitioner had no business in India at the time of filing of Rectification Petition and, since, the petitioner had not claimed any trans-border reputation and goodwill, it having spilled over in Indian jurisdiction/markets in India, in contrast the respondents



trade mark being registered and subsisting for over 37 years, made it entitled for its user.

12. The rival claims were determined by the learned Single Judge, when he arrived at the conclusion that the registration of the trade mark of the respondents is vulnerable to challenge under Section 47 as well as Section 57 of the Act, since there was no *bona fide* use and the impugned trade mark has been obtained by fraud and the rights enjoyed by the respondents and conferred by registration under Section 28(1) of Act is qualified with the words, 'subject to the provisions of this Act' and, therefore, the registration is subject to the provisions of the Act, which include Sections 47 and 57.

Recording a *prima facie* finding that the impugned registered trade mark is liable to be rectified under Section 47 for having borne out of the fraudulent adoption and not having been *bona fide* used, the use by the petitioner of its registered trademark from 2014 onwards outside India was of no consequence.

As a result of detailed deliberation on the scope of Sections 47 and 57 of the Act, which conferred discretion upon the Court to maintain purity of the Register, having *prima facie* held that there is fraudulent adoption of the impugned

trademark by the respondents, it was directed to be removed from the Register for sufficient cause.

13. A thoughtful reading of the order dated 14/10/2025, though on proceedings captioned as “Commercial Miscellaneous Petition” praying for rectification of the respondents’ registered trade mark, the contest being raised by the petitioner against the respondents for lack of *bona fides* in using the impugned mark and dishonest copy and adoption of the petitioner’s trademark registered prior in time by its predecessor abroad and as between the parties, the contest for the trademark is finally adjudicated by directing the Registrar of Trademarks, directing to remove the trademark claimed by the respondents from the Register. As between the parties, there is a final adjudication of the *lis* and undisputedly, the decision of the learned Single Judge amount to a “Decree”, as the learned Single Judge has conclusively determined the rights of the parties in regard to the controversy involved and presented before him, and therefore, the decision of the learned Single Judge, though delivered on a Commercial Miscellaneous Petition, amounts to a “Decree”. If this is so, we have no hesitancy in holding that an appeal challenging it would fall within the purview of Section 13(1-A) of the



Commercial Courts Act. Merely because the proceedings under Sections 47 and 57 of the Trade Marks Act are not initiated by way of a plaint and they do not arise from a suit, but they arise in form of an application/miscellaneous petition, in our view, the decision of the learned Single Judge do not lack the traits of a decree.

14. Reliance placed by the learned counsel on the decision in the case of ***Nalinakhya*** (supra) is distinguishable as the Court considered whether an order for possession passed by the Small Cause Court under Section 43 of the Presidency Small Cause Courts Act on an application under Section 41 of the Act to be treated as “decree” and with reference to Section 18(1) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, it is seen that the provision conferred power on the Court to rescind or vary the decrees and provided that where any decree for recovery of possession of any premises has been made on the ground of default in payment of arrears of rent under the Act of 1948, but the possession of such premises had not been recovered, then the tenant may apply to the Court for vacating the decree of ejectment against him and within such period, no delivery of possession shall be made by any Court.



Admittedly, the order passed under Section 18(1), did not finally determine the *lis* between the parties and the Apex Court has rightly held that there was no occasion for giving extended meaning to the word “Decree”, so as to include “Order”, for the two are distinctly and separately provided for. It was categorically noted that Section 18(1) did not refer to “Decree”, but to “Decree for recovery of possession” of any premises on the ground of default in payment of arrears of rent under the Act of 1948 and this was distinct from an order of possession on the ground of non payment of rent. Holding that a decree for recovery of possession within the meaning of the Act can, therefore, only mean a decree in a suit for recovery of possession and cannot cover an order for possession passed under Section 43 on an application made under Section 41 of the Presidency Small Cause Courts Act, it was conclusively held as below :-

“In short, section 18(1) of Act of 1950 expressly attracts the 1948 Act and under that Act there can be no necessity for giving an extended meaning to the word "decree", for "order " is separately dealt with in said Act.”

15. The judgments relied upon by Mr.Kadam about what would amount to “Decree” under the Code of Civil Procedure are delivered in the peculiar facts, as one thing is clear that any final adjudication of the rights of the parties with regard to



all or any of the matters in controversy would amount to decree and in situations where the plaint was returned, the suit was allowed to be withdrawn, it has been held not to be amounting to “Decree”, as the order passed did not draw curtains on the *lis* between the parties, but wherever there is final determination of rights of parties in the proceedings, we have no hesitancy in holding that it is a “Judgment” for the purposes of Section 13(1-A) and an appeal would lie.

If the legislature has chosen to use the word “Judgment” or “Order” in sub-section (1-A) of Section 13 of the Commercial Courts Act instead of the word “Decree”, we must respect the intention of the legislature and presume that the Parliament was conscious in the choice of the words and it is not open for us to read beyond the same, as in our view, the term “Judgment” is the statement of the Judge in form of grounds supporting a decree or order and we deem it necessary to restrict the application of sub-section (1-A) of Section 13 to a “Judgment” and, since, the scope of appeal against the order is restricted only to those mentioned in the proviso, we must record that the orders from a Commercial Court or a Commercial Division of High Court cannot travel beyond that.



16. Another reason which prompts us to accept the aforesaid interpretation, is the use of word “suit”, “application” or “proceedings” in relation to a commercial dispute, as we find that the commercial disputes as defined in Section 2(c) are not restricted to the one arising in suits only.

While conferring the jurisdiction on the Commercial Court to try commercial disputes, Section 6 of the Act has conferred the jurisdiction to try all suits and applications relating to a commercial dispute of a specified value and similarly, by virtue of Section 7, all suits and applications relating to commercial disputes of a specified value are to be entertained by the High Court having ordinary original civil jurisdiction and it is prescribed that they shall be heard and disposed of by the Commercial Division of the High Court.

Further, when the language of Section 11, which creates a bar of jurisdiction of Commercial Courts and Commercial Divisions by prescribing that the Commercial Court or Commercial Division shall not entertain or decide any suit, application or proceedings relating to any commercial dispute in respect of which the jurisdiction of the Civil Court is either expressly or impliedly barred under any other law for the time being in force, it is to be noted that in addition to “suit” and



“application”, the Parliament has also used the terminology “proceedings”.

Another indication in this relation comes from Section 12, where the specified value of the subject matter of the commercial dispute in a suit, appeal or application, when there is a provision for determination of specified value of the subject-matter of the commercial dispute in a suit, appeal or application and the reading of the said provision would reveal that the commercial dispute can arise either in a suit, or appeal or application. In the wake of sufficient indication in the Act, where commercial dispute may be instituted, either in form of a suit, application or appeal. In our view, the constricted approach which Mr.Kadam wants us to adopt, being restricting a Decree only to a suit will not serve the purpose of enacting the special statute. Whatsoever may be the nomenclature of the proceedings involving commercial dispute, which is specifically defined by the statute and the proceedings being instituted either in form of suit, application or appeal, if there is final determination of the rights between the parties, and results into a judgment or order, an appeal under sub-section (1-A) of Section 13 is maintainable.

17. In the decision of Division Bench in *Skil-Himachal* (supra), the Court noted thus :-

“44. In the Supreme Court decision in *Kandla Export Corporation*, Section 13 was addressed like this. First, that Section 13(1) of the CC Act is in two parts. The main provision deals with appeals from judgments, orders and decrees to the Commercial Division of the High Court. To this, the proviso is an exception. *Second*, the proviso must be construed harmoniously with the main provision, not in derogation of it. It operates in the same field. If main provision is in clear language, the proviso cannot be used to ‘interpret’ the main part, or to exclude – let alone by implication – any part of the main provision; except, of course, if the proviso plainly contemplates such an exclusion. Under the proviso, appeals against orders are restricted to those orders under Order 43 of the CPC, and Section 37 of the Arbitration Act. Therefore, no appeal lies to the Commercial Appellate Division against any order not specifically listed in Order 43 of the CPC (or an order not under Section 37 of the Arbitration Act).

45. An order of conditional leave under Order 37 of the CPC is not enumerated in Order 43. It is an order, not a decree. Therefore, following *Kandla Exports* and *Shailendra Bhadauria*, such an order is not appealable under the CC Act.

46. Finally, there is the decision of division bench of this court in *Kakade Construction* which reviewed the previous decisions including *Kandla Exports*, *Shailendra Bhadauria* and *Sushila Singhania*. The appeals arose from an order appointing a Court Receiver of certain property. That order was made on a Chamber Summons in execution of a consent arbitral award. Once again, the division bench held that the appeal was not maintainable”.

With reference to the decision in *Resilient Innovations Pvt. Ltd.* (supra), which arose out of the order in Commercial Suit, which permitted the plaintiff to withdraw the suit with liberty, the argument advanced was, the appeal was maintainable, since the order permitting the withdrawal was a Judgment and Decree and the Division Bench held that an appeal from a Decree does lie under Section 13. The

submission that “Decree” for the purpose of Section 13 is more restrictive than a “Decree” under the provisions of CPC was rejected and when the judgment and the observations of the Division Bench are read in entirety, by no sense, we find that the judgment intended to restrict Section 13 of the Commercial Courts Act only against decrees, as the Division Bench was conscious of the use of the word “Judgment” in Section 13, which was introduced by 2018 amendment as distinguished from the word “Decision”, which only mean a “Decree”.

18. In light of the aforesaid, we do not find any merit in the preliminary objection raised by Mr.Kadam and reject the same.

Overruling the said objection, we direct the Commercial Appeal alongwith Interim Application to be listed on **30/04/2026**.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)