

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

BEFORE:

The Hon'ble Justice Soumen Sen

and

The Hon'ble Justice Biswaroop Chowdhury

AO-COM/35/2024
WITH
CS-COM/440/2024
IA NO. GA-COM/1/2024

A K GHOSH AND COMPANY AND ORS.
VERSUS
BIMAN BOSE AND ORS.

For the appellant	:	Mr. S.N. Mitra, Sr. Adv. Mr. Rupak Ghosh, Adv. Mr. Ayan Dutta, Adv. Mr. Mehboob Rahman, Adv.
For the defendant No.1 to 3, 5 & 6	:	Mr. Utpal Bose, Sr. Adv. Mr. Saptarshi Banerjee, Adv. Ms. Sayani Das, Adv.
Hearing concluded on	:	17 th February, 2025.
Judgment on	:	26 th February, 2025.

Soumen Sen, J.:-

1. The appeal involves the question as to whether the timeline specified in Order VIII Rule 1 as amended by the Commercial Courts Act, 2015 would apply to the timeline within which reply to the counter claim in the written statement sometimes also referred to as an additional written statement is to be filed by the plaintiff.

2. The learned Single Judge declined to extend the time to file additional written statement beyond 120 days and had rejected the application filed by the plaintiff for extension of time to file additional written statement beyond that time.

3. At the outset, Mr. Utpal Bose, learned senior counsel appearing on behalf of the respondent has raised the question of maintainability of the appeal. Mr. Bose has relied upon the proviso to Section 13 (1-A) of the Commercial Courts Act, 2015 to argue that an appeal can lie only from such orders as are specifically enumerated under Order XLIII of the Code of Civil Procedure. The learned senior counsel has also referred to Section 13(2) of the said Act to show that no appeal can lie from any order or decree otherwise than in accordance with the provisions of the said Act and the said sub-section has specifically excluded application of Letters Patent of a High Court. The learned Senior Counsel has placed reliance on the decision of the Hon'ble Supreme Court in **Kandla Export Corporation & Anr. V. OCI Corporation & Anr.**¹ paragraphs 13 and 14 in support of the said submission.

4. However, we invited the learned counsel for the parties to argue on the issue of maintainability as well as on merits.

5. Mr. S.N. Mitra, learned senior counsel appearing on behalf of the appellant has submitted that the Commercial Courts Act has not specifically dealt with the right of the plaintiff to file additional pleading there has been no amendments to the Code of Civil Procedure as far as the time limit prescribed for filing additional written statement under the

¹ 2018 (14) SCC 715

Commercial Courts Act, 2015. The learned Senior Counsel has referred to the amendment in Order VIII Rule 1 of the CPC to show that the legislature in its wisdom has only amended the said provision whereas the other provisions in the Code of Civil Procedure in relation to filing of counter-claim or subsequent pleadings have not been touched. Mr. Mitra submits that when a written statement is filed with the counter-claim, there is no requirement to take out a writ of summons. It was for this reason that Order VIII Rule 6A(3) requires the Court to fix a time within which the plaintiff is required to answer to the counter-claim of the defendant. It is the duty of the Court to fix a time within which such pleading has to be delivered. Mr. Mitra has further submitted that when the Rule is silent with regard to the time frame within which the additional pleading is required to be filed, the Court has the power to enlarge the time in the event the Court initially did not fix the time. It is submitted that courts in such circumstances have held that in terms of Order VIII Rule 6A(3) of CPC the trial court is expected to fix time for filing written statement to the counter-claim. The default as mentioned in Rule 6E would apply only when time has been fixed by the court to file reply. It would occur where time has been granted by the court and the plaintiff does not file his reply within that time. In the instant case the learned Single Judge has not given time to the plaintiff to file reply to the counter claim and therefore, it cannot be said that the default would be with the plaintiff when the plaintiff moved an application praying for allowing him to file reply to the counter claim. The court is duty bound to give time to the plaintiff in terms of Order 6A(3) and if within that time the plaintiff is unable to file his reply, Order 8 Rule 6E,

would come into operation. Reliance is placed on ***Nirottam Sharma v. Ram kishore & Anr., 2019(1) RLW 844 (Raj.)*** and ***Mrs. Shalini Nunes Mascarnehas & Ors. v. Mr. Trevor Nunes & Anr.*** (Writ Petition No. 659 of 2008 in the High Court of Bombay at Goa) decided on 17th December, 2008 in support of his submission.

6. It is submitted that the practice directions for the Commercial Division and Commercial Appellate Division of the High Court at Calcutta in exercise of Section 18 of the Commercial Courts Act 2015, have not dealt with the delay in filing reply to the counter statement. No amendment has been carried out in its Original Side Rules after the Commercial Courts Act, 2015 was enacted. The provision for subsequent pleadings under Order VIII Rule 9 CPC applies only to pleadings subsequent to the filing of written statement. However, it does not apply to an additional written statement. In terms of Order VIII Rule 9 of CPC both plaintiff and defendant cannot file any pleading after written statement(s) have been filed, except with the leave of the Court and upon such terms as the Courts thinks fit. The Court may, at any time require written statement or additional written statement of any of the parties and fix a time not more than 30 days for presenting the same under Order VIII Rule 9 of the CPC. After written statement and/or additional written statement is/are filed subsequent pleadings in the form of additional written statement or additional reply statement cannot be allowed to be filed at any stage except with the leave of the Court and upon such terms as the Court thinks fit. Under the Code of Civil Procedure any additional written statement by way of a reply to the counter claim in the written statement of the defendant shall be governed by Order VIII Rule 6A

to 6G of CPC. Rule 6A to 6G in Order VIII of CPC has not been amended for the purposes of commercial disputes. In terms of sub-clause 2 of Rule 6A of Order VII, counter claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and the counter claim.

7. The learned senior Counsel placing reliance on Rule 6A (3) of Order VIII of CPC has submitted that if the said rule is applied there is no time limit for filing reply to such counter claim. However, as per Rule 6G the rules relating to a written statement by a defendant shall apply to a written statement that is to say reply to the counter claim to be filed in answer to the counter claim within 120 days of service of the written statement. Rule 9 of Order VIII has no manner of application to an additional written statement or a reply to the counter claim of a defendant in the written statement. Ordinarily such a reply to a counter claim of the defendant by the plaintiff is governed by Order VIII Rule 6A to 6G.

8. It is thus submitted that when the learned Single Judge has not fixed any time period for filing the reply to the counter claim on acceptance and in absence of any amendment in the CPC with regard to the time limit prescribed for filing reply to the counter statement under the Commercial Court Acts, 2015, the reply to the counter claim would not have been rejected on a plea that by reason of amendment to Order VIII Rule 1 of the Code of Civil Procedure, the time to file additional written statement should be considered from the date of filing of the written statement with counter claim.

9. Mr. Mitra submits that insofar as the Commercial Division of the High Court is concerned, the rules or procedures as laid down in the Original Side Rules shall not apply in this regard as the court in exercising its power shall be guided by CPC. In any event Chapter XXXVII Rule 46 of the Original Side Rules empowers the Court to enlarge or abridge the time appointed by the said Rule or fix by any order enlarging time for doing any act or taking any proceeding upon such terms as the justice of the case may require. In absence of any clear indication in the Commercial Courts Act, the power of the Court for the purpose of filing an additional written statement shall either be governed by the provisions of the Code of Civil Procedure or Original Side Rules as the case may be and hence, the interpretation of the learned Single Judge with regard to the timeline within which additional written statement is required to be filed is erroneous.

10. It is submitted that in any event rules of procedure are handmaid of justice and intended to sub-serve the cause of justice and Order VIII Rule 1 has to be read with the other provisions. The said amendment is not intended to override other provisions of CPC as observed in ***Prakash Corporates v. Dee Vee Projects Ltd.***²

11. Mr. Mitra has referred to a Division Bench judgment in ***Nasima Naqi vs. Todi Tea Company Limited and Others***³ to argue that when the Code of Civil Procedure clearly mentions the manner in which an additional pleading is required to be filed and the duty of the Court in this regard, all other provisions taking away such right, if any, should be excluded. In other

² 2022 (5) SCC 112; 2022 SCC Online SC 180

³ 2018 SCC OnLine Cal 16823

words, it is contended that Order VIII Rule 6A(3) does not mention any time limit and the said sub-section cannot be interpreted against the plaintiff having regard to the fact that the procedure required to be followed in case of an additional written statement is different from the filing of the written statement as in such a situation it requires the Court to fix the time within which the plaintiff is required to file an additional written statement.

12. In such circumstances the Court shall either fix the time for acceptance of the written statement with counter claim when no time was fixed. It is further submitted that in any event and in any view of the matter the time to file reply to the counter claim would only arise after the counter claim is scrutinized by the department concerned in accordance with the Original Side Rules. The plaintiff was not informed as to the whether the written statement was scrutinized and unless defects are removed and the plaintiff is served with the copy of such corrected written statement, the time to file reply to the written statement with counter claim does not start. It is submitted that in the event the Court is of the view that there are confusions in the rules with regard to the time within which such reply to the counter statement is required to be filed the benefit should go to the plaintiff. In this regard, the learned senior counsel has referred to the Division Bench judgment of the Madras High Court in **Mr. M. Maria Albert Stanly v M/S Diamond Hospital Equipments** delivered on 22nd December, 2023. It is submitted that on consideration of the relevant provisions of the Code of Civil Procedure read with the Madras High Court, Original Side Rules 1994 it was held that unless a final authenticated copy of the counter claim along with copies of documents relied upon by the defendant in

support of it is not served upon the plaintiff the time to file reply to the counter claim would not commence.

13. In responding to the objection as to maintainability of the appeal it is submitted that the High Court as a Chartered High Court is not precluded from exercising its power under Clause 15 of the Letters Patent. Moreover, the proviso to Section 13 of the Commercial Courts Act does not specifically exclude the power of a Letters Patent Appeal. The proviso to Section 13(1-A) of the Commercial Courts Act is an enabling provision rather than a disabling provision. There is nothing in the said proviso which would seem to indicate that it dilutes the effect of Sub-Section (1)(A) of Section 13. Mr. Mitra in this regard has referred to paragraphs 23 to 27 of a Division Bench judgment of Delhi High Court in ***D & H India Ltd. vs. Superon Schweissttechnik India Ltd.***⁴.

14. Per contra Mr. Utpal Bose, learned Senior Counsel has submitted that apart from the fact that the appeal is not maintainable in view of the ratio of the decision in ***Kandla Export Corporation & Anr.*** (*supra*) under the Original Side Rules of the High Court at Calcutta there is a clear provision in Chapter 9 Rule 12A which requires the plaintiff to file a written statement in answer to the counter claim within 10 days of receipt of the notice of the filing of the counter claim or within such further time as may be allowed. No application was filed upon the expiry of the initial period of 10 days for extension of time to file reply to the counter statement. The learned senior counsel has referred to the order passed by Hon'ble Justice Arindam Mukherjee on 13th July 2023, by which the time to file written

⁴ 2020 SCC OnLine Del 477

statement with counter claim was extended by an order dated 13th July 2023. Our attention is drawn to the following observation of the learned single judge which is reproduced below:

“The department shall accept the written statement, if approached by today on the basis of the endorsement on the fait, provided the same is in proper form and order.” (emphasis supplied)

15. The department having accepted the said written statement on that date, the argument that the time to file written statement would not commence until an authenticated copy of written statement is not served upon the plaintiff does not arise. Moreover, the copy of the written statement was served upon the advocate on record of the plaintiff on 18th July 2023 along with the counter claim. It is submitted that since the counter claim is in the nature of a plaint the time to file written statement shall commence from the date of service of notice of such counter claim and would have the same outer time limit as that of Order VIII Rule 1 of the Code of Civil Procedure as amended by the Commercial Court Acts, 2015.

16. The question thus arises is whether reply to a counter statement is required to be filed within 120 days from the service of the written statement with counterclaim upon the plaintiff.

17. The written statement with counter-claim has been filed in a commercial suit. The provisions of the Commercial Courts Act, 2015 is applicable with regard to the pleadings and procedures to be followed as mentioned in the Schedule of the Commercial Courts Act, 2015. Under the Schedule various provisions of the Code of Civil Procedure was amended and are made applicable to commercial suits. One of such provisions is in

respect of written statement. By reason of amendment to Order VIII Rule 1 of the Code of Civil Procedure the defendant would be required to file a written statement not later than 120 days from the date of service of summons and on expiry of the 120th day from the date of service of summons the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record. Although the other provisions of the Code of Civil Procedure have not been amended but Order VIII Rule 6G is clear that *“the Rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter claim”*. This was introduced by the amendment Act of 1976 with effect from 1st February, 1977. Order VIII Rule 9 of the Code of Civil Procedure contemplates that the court may at any time require a written statement or additional written statement from any of the parties and fix a time not more than 30 days for presenting the same. This provision does not in any event enlarge the time limit fixed under Order VIII Rule 1 as amended by the Commercial Courts Act, 2015. The counter claim in a written statement is treated as a plaint and the plaintiff may file an additional written statement in answer to the said counter claim in view of the fact that the suit was filed in the original side of the High Court. The procedures insofar as filing, scrutiny and other related matters are concerned in absence of any practice directions shall be governed by the Original Side Rules unless these rules are not in conflict with the procedure prescribed under the Commercial Courts Act.

18. As mentioned above, Rule 12 A of the Original Side Rules gives the time limit within which a reply to the counter claim in a written statement is to be filed. The said rule is as follows:

“12A. The plaintiff shall be entitled to file a written statement in answer to the counter-claim within 10 days from the date of receipt of the notice of the filing of the counter-claim or within such further time as may be allowed. Rules relating to written statement filed by the defendant shall apply to the written statement to be filed by the plaintiff in answer to the counter-claim.”

19. Admittedly, the written statement was served on 18th July, 2023 after the defendant was permitted to file the written statement with counterclaim by an order dated 13th July, 2023. In terms of the order dated 13th July, 2023 the department could accept the written statement provided it was filed on that date on the basis of the endorsement on the fait and “the same is in proper form and order”. The original written statement is produced by the department wherefrom it appears that the written statement with counter-claim was presented on 13th July, 2023 and was accepted by the department meaning thereby that it was in proper form and order.

20. The department could not have accepted the said written statement if it were not found to be in proper form and order. Although we are of the view that a written statement with the counter claim can be served only after scrutiny upon the plaintiff and thereafter the time to file reply to the counter claim would arise however, the said issue is not germane as admittedly on 18th July, 2023 the written statement with the

counter claim was served after the department accepted the written statement on 13th July, 2023.

21. Since the plaintiff has not contended that the written statement served was incomplete or defective, the plaintiff cannot escape the time limit within which the reply to the counter statement is required to be filed. Moreover, the plaintiff has in the application for extension of time to file reply to the counter statement has categorically stated that the written statement was served upon the advocate on record of the petitioner in pursuance of the order dated 13th July, 2023 under cover of a letter dated 18th July, 2023 and in such circumstances it was incumbent upon the plaintiff to file a written statement within 120 days to be reckoned from date of service of such notice.

22. In ***Prakash Corporates*** (*supra*) the Hon'ble Supreme Court was considering the effect of the extension of limitation period from 15th March, 2020 to 2nd October, 2021 and subsequently extended to 28th February, 2022 during the Covid-19 pandemic vis-à-vis limitation period for filing written statement in a Commercial dispute. The Apex Court answered the issue in paragraphs 37 and 38 in the following words:

“37. As noticed from the relevant parts of the order dated 5-4-2021 (vide paras 16 and 17 hereinabove) that at the relevant time, limited number of courts were to function on rotational basis in Raipur and that too, with curtailed working hours from 11.00 a.m. to 2.00 p.m.; and they were to function during full working hours only for bail and remand matters. Having regard to the situation prevalent at the relevant time and the contents as also spirit of the administrative order issued by the jurisdictional High Court, there is nothing to doubt that w.e.f. 6-

4-2021, the Court in question could not have been considered functioning normally; and that period of operation of the said administrative order dated 5-4-2021 could have only been considered dies non juridicus for the purpose of the prescribed period for doing anything in the proceedings in that Court.

38. It has not been pointed out if, as on 6-5-2021, the said order dated 5-4-2021 had been withdrawn and the situation had returned to such normalcy that the appellant should have attended the trial court and should have filed the written statement. Quite contrary to any such proposition, the submission on behalf of the appellant, even on 22-6-2021, had been about the ailments of the partners of the appellant firm as also their lawyer and their families, where the lawyer lost his mother due to health complications. Any proposition, which suggests that during such non-regular-business days of the trial court, and rather bleak days for humanity, the written statement ought to have been filed, could only be disapproved as being impractical and rather preposterous.”

23. The pendency of the application under Section 10 CPC by the trial court was also considered as Section 10 CPC requires the court to decide the said application at the earliest as by its very nature the said application under Section 10 CPC requires immediate consideration before any other steps in the suit could be taken. The appellant on the very first day of appearance i.e. on 18th January, 2021 moved an application for stay of suit under section 10 read with Section 151 CPC on the ground that proceedings between the parties relating to the subject-matter of the suit were pending before NCLT. It was on such facts **SCG contracts India (p)**

Ltd. v. K.S. Chamankar Infrastructure (P) Ltd ⁵ in which it was categorically held that on expiry of 120th day the defendant forfeits its right to file written statement was distinguished. In our mind the decision in **Prakash Corporates** (*supra*) is distinguishable on facts as would reveal from the narration of facts alluded to above and in the instant case the ratio in **SCG Contracts** (*supra*) is squarely applicable.

24. In view of the stringent provisions in the Commercial Court Act, with regard to filing of pleadings and more particularly written statement it is imperative that the Original Side Rules so far as acceptance of counterclaim and reply thereto requires amendment. In view of the fact that writ of summons along with the plaint is served upon the defendant after scrutiny and after removal of all defects and only upon service of such authenticated plaint the obligation of the defendant to file written statement arises, similarly for a reply to the counter claim which in effect partakes the character of a written statement only upon service of an authenticated copy thereof, the time to file reply to the counter statement shall arise and the period of 120 days is required to be calculated from the date of service of such authenticated copy of the written statement along with counter claim. Having regard to the fact that no rule in exercise of power conferred under Section 18 on the issue has been framed and the existing Original Side Rules on this issue is silent on scrutiny we issue the following practice directions in line with **Mr. M. Maria Albert Stanly** (*supra*) till appropriate rules are framed:

⁵ 2019 (12) SCC 210

- (i) The Commercial Division of this court with effect from 1st March, 2025 shall scrutinize every counter claim filed and shall follow the same procedure as applicable to scrutiny of a plaint before service of summons.
- (ii) After scrutiny of the counter claim filed by the defendant the registry of the commercial division shall within seven working days serve notice of such counter claim along with a copy thereof on the plaintiff or his advocate on record in the same manner as provided for suits in commercial disputes.
- (iii) All curable defects shall be removed by the defendant/s within a fortnight from the date of intimation of such defects, in default, the matter shall be placed before the Commercial Division.
- (iv) The period for filing the Written Statement by a plaintiff in response to a Counter-Claim filed by Defendant shall be reckoned from the date on which the notice along with copy of the Counter-Claim is served by the Registry of the Court on the plaintiff or his advocate, as the case may be.
- (v) While serving the notice with copy of the Counter-claim on the plaintiff, it shall be ensured that the copies of all documents relied by the Defendant in support of the counter-claim are simultaneously delivered to the plaintiff.

25. Insofar as the question of appealability is concerned we are in agreement with the submission of Mr. Utpal Bose that by reason of

paragraphs 13 and 14 of **Kandla Export Corporation** (*supra*) the appeal is not maintainable. The said paragraphs are reproduced below:

“13. Section 13(1) of the Commercial Courts Act, with which we are immediately concerned in these appeals, is in two parts. The main provision is, as has been correctly submitted by Shri Giri, a provision which provides for appeals from judgments, orders and decrees of the Commercial Division of the High Court. To this main provision, an exception is carved out by the proviso. The primary purpose of a proviso is to qualify the generality of the main part by providing an exception, which has been set out with great felicity in CIT v. Indo-Mercantile Bank Ltd. [CIT v. Indo-Mercantile Bank Ltd., 1959 Supp (2) SCR 256 : AIR 1959 SC 713] , thus : (SCR pp. 266-67 : AIR pp. 717-18, paras 9-10)

“9. ... The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment.

‘8. ... it is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso.’

Therefore, it is to be construed harmoniously with the main enactment. (Per Das, C.J. in Abdul Jabar Butt v. State of J&K [Abdul Jabar Butt v. State of J&K, 1957 SCR 51 : AIR 1957 SC 281 : 1957 Cri LJ 404] , SCR p. 59 : AIR p. 284, para 8). Bhagwati, J., in Ram Narain Sons Ltd. v. CST [Ram Narain Sons Ltd. v. CST, (1955) 2 SCR 483 : AIR 1955 SC 765] , said : (SCR p. 493 : AIR p. 769, para 10)

‘10. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.’

10. Lord Macmillan in Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality [Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality, 1944 SCC OnLine PC 7 : (1943-44) 71 IA 113] laid down the sphere of a proviso as follows : (IA p. 122 : SCC OnLine PC)

‘... The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude, from it by implication what clearly falls within its express terms.’

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect. (Vide also Toronto Corpn. v. Attorney-General of Canada [Toronto Corpn. v. Attorney-General of Canada, 1946 AC 32 (PC)] , AC p. 37.)”

14. The proviso goes on to state that an appeal shall lie from such orders passed by the Commercial Division of the High Court that are specifically enumerated under Order 43 of the Code of Civil Procedure Code, 1908, and Section 37 of the Arbitration Act. It will at once be noticed that orders that are not specifically enumerated

under Order 43 CPC would, therefore, not be appealable, and appeals that are mentioned in Section 37 of the Arbitration Act alone are appeals that can be made to the Commercial Appellate Division of a High Court.”

26. An appeal is a creature of a statute. The Commercial Courts Act, 2015 is self contained code dealing with specified kind of commercial dispute. It is a special statute. The Parliament in its wisdom has provided for an appellate forum against some orders.

27. The right of appeal when it is provided is a substantive right. The right of appeal of a litigant being aggrieved by the order passed by the Court under the Arbitration Act vis-a-vis right of appeal under Clause 15 of the Letters Patent came up for consideration in. **Union of India vs. K. Satyanarayan**⁶ in which the Division Bench after referring to Section 39 of the Arbitration Act 1940 observed:

“28. In the case of (10) R. Wright & Partner Ltd. v. Governor General in Council reported in ILR 1948(2) Cal. 265 : 52 CWN 224, it has been observed that the right of appeal under Clause 15 of the Letters Patent is by Clause 44 subject to the legislative powers of the Governor General in Council and Section 39 of the Arbitration Act, 1940, has explicitly taken away the right. B.K. Mukherjea, J. (as His Lordship then was) in the aforementioned case made the following observation:-

“Our conclusion, therefore, is that Section 39 of the Arbitration Act is sufficiently explicit to include an appeal under Clause 15 of the Letters Patent as well as the provisions of Clause 15 of the Letters Patent have to be taken subject to the Legislative Powers of the Governor General in Legislative Council. We must hold that

⁶ 1995 (1) CLJ 458

to this extent the right of appeals has been curtailed and modified."

29. The said decision has been quoted with approval by the Madras High Court in the case of (11) *Penugouda Radhakrishna Murthy v. V.A.Y. Ethirajulu Chetty*, reported in AIR 1945 Madras 184. In the case of (12) *Ranchhoddas Purshottam & Co. v. Ratanji Virpal & Co.* reported in AIR 1943 Bombay 196, the Division Bench of the Bombay High Court felt that in view of the provisions contained in Sub-section (2) of Section 39 of the Arbitration Act no appeal lies to the Privy Council from an order passed by a Single Judge under Section 33 challenging the validity of an Arbitration agreement as no appeal is provided for against it by Section 39(1). In the case of (13) *Madhavdas Devidas and Ors. v. Vithaldas Vasudeodas & Ors.*, reported in AIR 1952 Bombay 229 a Division Bench of the Bombay High Court again held that if a Single Judge of the High Court disposes of an appeal under Sub-section (1) of Section 39 of the Arbitration Act, Sub-section (2) thereof bars further right of appeal under Clause 15 of the Letters Patent. The matter came up for consideration before the Supreme Court in the case of *Union of India v. Mohindra Supply, Co.*, reported in AIR 1962 Supreme Court 256. The Supreme Court although was concerned with regard to the right of second appeal under Letters Patent in view of section 39(2) of the Arbitration Act but there cannot be any doubt that the question involved therein was that where a Single Judge of the Punjab High Court disposed of an appeal under Section 39(1) of the Arbitration Act, whether there could be any further right of appeal under Clause 10 of the Letters Patent of that High Court or not. The Supreme Court considered the provisions of Section 39 of the Arbitration Act vis-a-vis Clause 10 of the Letters Patent of the Punjab High Court and held as follows :-

"There is in the Arbitration Act no provision similar to Section 4 of the Civil Procedure Code which preserves powers reserved to Court under special statutes. There is also nothing in the expression "authorised by law to hear appeals from original decrees of the Court" contained in Section 39(1) of the Arbitration Act which by implication reserves the jurisdiction under the Letters Patent to entertain an appeal against the order passed in arbitration proceedings. Therefore, in so far as Letters Patent deal with appeals against orders passed in Arbitration proceedings, they must be read subject to the provisions of Section 39(1) and (2) of the Arbitration Act.

Under the Code of 1908, the right to appeal under the Letters Patent was saved both by Section 4 and the clause contained in Section 104(1), but by the Arbitration Act of 1940, the jurisdiction of the Court under any other law for the time being in force is not saved; the right of appeal can therefore be exercised against orders in arbitration proceedings only under Section 39 and no appeal (except an appeal to this Court) will lie from an appellate order."

30. It further held:-

"If the legislature being cognizant of this difference of opinion prior to the Code of 1908 and the unanimity of opinion which resulted after the amendment, chose not to include the reservation clause in the provisions relating to appeals in the Arbitration Act of 1940, the conclusion is inevitable that it was so done with a view to restrict the right of appeal within the strict limits defined by Section 39 and to take away the right conferred by other statutes. The Arbitration Act which is a consolidating and amending Act, being substantially in the form of a code relating to arbitration must be construed without any assumption that it was not intended to alter the law relating to appeals. The words of the statute are plain and explicit and they must

be given their full effect and must be interpreted in their natural meaning, uninfluenced by any assumptions derived from the previous state of the law and without any assumption that the legislature must have intended to leave the existing law unaltered. In our view the legislature has made a deliberate departure from the law prevailing before the enactment of Act X of 1940 by modifying the law relating to appeals in Section 39".

31. The Supreme Court followed the aforementioned decision and reiterated its views in no uncertain terms in the case of State of West Bengal v. M/s. Gourangalal Chatterjee, reported in 1993(3) SCC p. 1 wherein it was clearly held as follows :-

"The argument appears to be without any substance as Sub-section (1) of the Section 39 which is extracted below :-

(1) An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order :-

(i) superseding an arbitration;

(ii) on an award stated in the form of a special case;

(iii) modifying or correcting an award;

(iv) filing or refusing to file an arbitration agreement;

(v) staying or refusing to stay legal proceedings where is an arbitration agreement;

(vi) setting aside or refusing to set aside an award;

Provided that the provisions of the section shall not apply to any order passed by a Small Cause Court.

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

Provides that an appeal could lie only from the orders mentioned in the sub-section itself. Since the order passed by the Single Judge revoking the authority of the Chief Engineer on his failure to act as an arbitrator was not covered in either of the six clauses mentioned in Section 39 it is obvious that no appeal could be filed against the order of the learned Single Judge."

28. Even prior to such decision the issue was resolved in **Union of India v. Mohindra Supply Co.**⁷. The said decision was referred and followed in **Satyanarayan & Co.** (*supra*). In **Sureka Steel Limited v. Union of India**⁸ a Division Bench of this Court in relation to appealability *vis-a-vis* clause 15 of the Letters Patent, inter alia, held:-

*"The impugned order is one which has been passed under the Arbitration Act which is a self contained code as regards arbitration and section 37 which clearly excludes an appeal from an order of a court not specified in sub-section 1 of section 37 of the Act. In Khimji's case the court was not concerned with the effect of any statutory provision similar to section 37 of the act on Letters Patent. On the other hand, State of West Bengal vs. Gourangalal Chatterjee (*supra*) is a direct authority on the issue before us."*

29. On such consideration the appeal and the application fail on both counts. However, there shall be no order as to costs.

⁷ AIR 1962 SC 256

⁸ 1998 (1) CHN 13

30. This order shall be immediately forwarded to the Registrar,
Commercial Division of this court.

I agree

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)