

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.09.2021

DELIVERED ON : 23.09.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

OSA.Nos.230 of 2019 and 208 of 2021
and OSA (CAD) Nos.1, 2, 3, 4, 19, 24, 25, 26, 27, 29 and 30 of 2021
and
CMP Nos.9290, 10325, 10326, 10339, 10327, 10340, 10333, 10334,
10330, 10331, 10332, 10336 and 10337, 10444 and 8495 of 2021

OSA No.230 of 2019:

Hindustan Unilever Limited
Ponds House
101, Santhome High Road
Chennai – 600 028.

.. Appellant

vs.

1. S.Shanthi
Proprietrix: Lakshmi Soaps
through her power holder D.Suyaraj
139, ABC, S.M.Road
Selvapuram, Coimbatore – 26.

2. Pinkerton Corporate Risk Management
India Private Limited
rep. by its Regional Manager
DBS Business Centre
Suite 118, No.31A, DBS House
Cathedral Garden Road
Chennai – 600 034.

.. Respondents

PRAYER: Appeal under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent against the order dated 24.7.2019 passed in A.No.2002 of 2018 in C.S.No.243 of 2017.

OSA (CAD) Nos.1 and 2 of 2021:

1. V.Sundaresan
2. S.Tamilarasi
3. S.Vimal Kumar
4. K.Sindu

5. Shri Varalakshmi Company
No.3, Komarapalayam, Mallur
Rasipuram Taluk, Namakkal District
Tamil Nadu - 636 203
Branch office at:
5/1, 6th Floor, Greenwood Apartments
Cenotaph Road, Teynampet
Chennai - 600 018.

.. Appellants
in both appeals

vs.

1. Varalakshmi Starch Industries Pvt. Ltd
No.127/1, Gandhi Road
Hastampatty, Salem - 636 007.

2. V.Anbalagan

.. Respondents
in both appeals

PRAYER in OSA (CAD) Nos.1 and 2 of 2021: Appeals under Section 13(1) of the Commercial Courts Act, 2015 and Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent against the order dated 27.4.2021 passed in A.No.1381 of 2021 and order dated 29.3.2021 passed in O.A.No.151 of 2021 in C.S.(Comm. Div.) No.91 of 2021.

OSA (CAD) Nos.3 and 4 of 2021:

V.Anbalagan

.. Appellant
in both appeals

vs.

1. V.Sundaresan
2. S.Tamilarasi
3. S.Vimal Kumar
4. K.Sindhu

5. Shri Varalakshmi Company
No.3, Komarapalayam, Mallur
Rasipuram Taluk, Namakkal District
Tamil Nadu - 636 203
Branch office at:
5/1, 6th Floor, Greenwood Apartments
Cenotaph Road, Teynampet
Chennai - 600 018.

6. Varalakshmi Starch Industries Ltd
No.127/1, Gandhi Road
Hastampatty, Salem - 636 007.

.. Respondents
in both appeals

PRAYER in OSA (CAD) Nos.3 and 4 of 2021: Appeals under Section 13(1) of the Commercial Courts Act, 2015 and Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent against the order dated 27.4.2021 passed in A.Nos.1376 and 1375 of 2021 in C.S.No.91 of 2021.

OSA (CAD) No.19 of 2021:

Varalakshmi Starch Industries Ltd
No.127/1, Gandhi Road
Hastampatty, Salem - 636 007.

.. Appellant

vs.

1. V.Sundaresan
2. S.Tamilarasi
3. S.Vimal Kumar
4. K.Sindu
5. Shri Varalakshmi Company
No.3, Komarapalayam, Mallur
Rasipuram Taluk, Namakkal District
Tamil Nadu - 636 203
Branch office at:
5/1, 6th Floor, Greenwood Apartments
Cenotaph Road, Teynampet
Chennai – 600 018.

6. V.Anbalagan

.. Respondents

PRAYER in OSA (CAD) No.19 of 2021: Appeal under Section 13(1) of the Commercial Courts Act, 2015 and Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent against the order dated 29.3.2021 passed in A.No.1380 of 2021 in O.A.No.151 of 2021 in C.S.No.91 of 2021.

OSA (CAD) Nos.24 of 2021:

63 Moons Technologies Limited
(formerly known as Financial Technologies (India) Ltd)
rep. by its Authorised Signatory, D.John Dheepak
having its registered office at Sakthi Tower-1
7th Floor, E-766, Anna Salai, Thousand Lights
Chennai – 600 002.

.. Appellant

vs.

1. Brickwork Ratings India Private Limited
2nd Floor, B Wing, Swelect House
No.5, Sir P.S.Sivasamy Salai, Mylapore
Chennai – 600 004.

2. Wadhwan Global Capital Limited
Ground Floor, Madhava Building
Near Family Court, Bandra (East) Mumbai
Mumbai – 400 051
also at 10th Floor, TCG Financial Center
BKC Road, Mumbai – 400 098.
3. Kapil Rajeshkumar Wadhawan
Former Chairman and Managing Director, DHFL
at the relevant time, having office at
Warden House, 2nd Floor, Sir P.M.Road
Fort, Mumbai – 400 001
and residing at
22/23, Sea View Palace, Pali Hill
Bandra (West), Mumbai – 400 050.
4. Dheeraj Rajeshkumar Wadhawan
Former Director, DHFL
at the relevant time, having office at
Warden House, 2nd Floor, Sir P.M.Road
Fort, Mumbai – 400 001
and residing at
22/23, Sea View Palace, Pali Hill
Bandra (West), Mumbai – 400 050.
5. Harshil Mehta
Former Chief Executive Officer, DHFL
having office at
Warden House, 2nd Floor, Sir P.M.Road
Fort, Mumbai – 400 001.
6. Santosh Sharma
Former Chief Financial Officer, DHFL
having office at
Warden House, 2nd Floor, Sir P.M.Road
Fort, Mumbai – 400 001

7. Credit Analysis and Research Limited
No.O-509/C, Spencer Plaza, 5th Floor
No.769, Anna Salai
Chennai – 600 002.
 8. Chaturvedi and Shah
Chartered Accountants
a partnership firm registered under
the provisions of the Indian Partnership
Act, 1932 and having office at
714-715, Tulsiani Chambers
212, Nariman Point
Mumbai – 400 021.
 9. T.R.Chadha & Co. LLP
5D, 5th Floor, Mount Chambers
758, Anna Salai
Chennai – 600 002.
 10. Rajendra Neeti & Associates
A partnership firm registered
under the provisions of the
Indian Partnership Act, 1932 and
having office at 144, Jolly Maker Chamber II
Nariman Point, Mumbai – 400 021.
 11. Catalyst Trusteeship Limited
(formerly GDA Trusteeship Limited)
Ganapathy Colony, III Street
Teynampet, Chennai – 600 018.
- .. Respondents

PRAYER in OSA (CAD) No.24 of 2021: Appeal under Section XIII of Commercial Divisions and Commercial Appellate Division of the High Court Act, 2015 read with Clause 15 of the Letters Patent against the order dated 29.4.2021 in A.No.3293 of 2020 in C.S. (Comm.Div.) No.154 of 2020

OSA (CAD) Nos.25 of 2021:

63 Moons Technologies Limited

(formerly known as Financial Technologies (India) Ltd)

rep. by its Authorised Signatory, D.John Dheepak

having its registered office at Sakthi Tower-1

7th Floor, E-766, Anna Salai, Thousand Lights

Chennai – 600 002.

.. Appellant

vs.

1. Harshil Mehta

Former Chief Executive Officer, DHFL

having office at

Warden House, 2nd Floor, Sir P.M.Road

Fort, Mumbai – 400 001.

2. Wadhwan Global Capital Limited

Ground Floor, Madhava Building

Near Family Court, Bandra (East) Mumbai

Mumbai – 400 051

also at 10th Floor, TCG Financial Center

BKC Road, Mumbai – 400 098.

3. Kapil Rajeshkumar Wadhawan

Former Chairman and Managing Director, DHFL

at the relevant time, having office at

Warden House, 2nd Floor, Sir P.M.Road

Fort, Mumbai – 400 001

and residing at

22/23, Sea View Palace, Pali Hill

Bandra (West), Mumbai – 400 050.

4. Dheeraj Rajeshkumar Wadhawan

Former Director, DHFL

at the relevant time, having office at

Warden House, 2nd Floor, Sir P.M.Road

Fort, Mumbai – 400 001

and residing at

22/23, Sea View Palace, Pali Hill

Bandra (West), Mumbai – 400 050.

5. Santosh Sharma
Former Chief Financial Officer, DHFL
having office at
Warden House, 2nd Floor, Sir P.M.Road
Fort, Mumbai – 400 001
6. CARE Ratings Ltd
No.O-509/C, Spencer Plaza, 5th Floor
No.769, Anna Salai
Chennai – 600 002.
7. Brickwork Ratings India Private Limited
2nd Floor, B Wing, Swelect House
No.5, Sir P.S.Sivasamy Salai, Mylapore
Chennai – 600 004.
8. Chaturvedi and Shah
Chartered Accountants
a partnership firm registered under
the provisions of the Indian Partnership
Act, 1932 and having office at
714-715, Tulsiani Chambers
212, Nariman Point
Mumbai – 400 021.
9. T.R.Chadha & Co. LLP
5D, 5th Floor, Mount Chambers
758, Anna Salai
Chennai – 600 002.
10. Rajendra Neeti & Associates
A partnership firm registered
under the provisions of the
Indian Partnership Act, 1932 and
having office at 144, Jolly Maker Chamber II
Nariman Point, Mumbai – 400 021.

11. Catalyst Trusteeship Limited
(formerly GDA Trusteeship Limited)
Ganapathy Colony, III Street
Teynampet, Chennai – 600 018.

.. Respondents

PRAYER in OSA (CAD) No.25 of 2021: Appeal under Section XIII of Commercial Divisions and Commercial Appellate Division of the High Court Act, 2015 read with Clause 15 of the Letters Patent against the order dated 29.4.2021 in A.No.656 of 2021 in C.S. (Comm.Div.) No.154 of 2020

OSA (CAD) No.26 of 2021:

63 Moons Technologies Limited
(formerly known as Financial Technologies (India) Ltd)
rep. by its Authorised Signatory, D.John Dheepak
having its registered office at Sakthi Tower-1
7th Floor, E-766, Anna Salai, Thousand Lights
Chennai – 600 002.

.. Appellant

vs.

1. Kapil Rajeshkumar Wadhawan
Former Chairman and Managing Director, DHFL
at the relevant time, having office at
Warden House, 2nd Floor, Sir P.M.Road
Fort, Mumbai – 400 001
and residing at
22/23, Sea View Palace, Pali Hill
Bandra (West), Mumbai – 400 050.

2. Wadhwan Global Capital Limited
Ground Floor, Madhava Building
Near Family Court, Bandra (East) Mumbai
Mumbai – 400 051
also at 10th Floor, TCG Financial Center
BKC Road, Mumbai – 400 098.

3. Dheeraj Rajeshkumar Wadhawan
Former Director, DHFL
at the relevant time, having office at
Warden House, 2nd Floor, Sir P.M.Road
Fort, Mumbai – 400 001
and residing at
22/23, Sea View Palace, Pali Hill
Bandra (West), Mumbai – 400 050.
4. Harshil Mehta
Former Chief Executive Officer, DHFL
having office at
Warden House, 2nd Floor, Sir P.M.Road
Fort, Mumbai – 400 001.
5. Santosh Sharma
Former Chief Financial Officer, DHFL
having office at
Warden House, 2nd Floor, Sir P.M.Road
Fort, Mumbai – 400 001
6. Credit Analysis and Research Limited
No.O-509/C, Spencer Plaza, 5th Floor
No.769, Anna Salai
Chennai – 600 002.
7. Brickwork Ratings India Private Limited
2nd Floor, B Wing, Swelect House
No.5, Sir P.S.Sivasamy Salai, Mylapore
Chennai – 600 004.
8. Chaturvedi and Shah
Chartered Accountants
a partnership firm registered under
the provisions of the Indian Partnership
Act, 1932 and having office at
714-715, Tulsiani Chambers
212, Nariman Point
Mumbai – 400 021.

9. T.R.Chadha & Co. LLP
5D, 5th Floor, Mount Chambers
758, Anna Salai
Chennai – 600 002.

10. Rajendra Neeti & Associates
A partnership firm registered
under the provisions of the
Indian Partnership Act, 1932 and
having office at 144, Jolly Maker Chamber II
Nariman Point, Mumbai – 400 021.

11. Catalyst Trusteeship Limited
(formerly GDA Trusteeship Limited)
Ganapathy Colony, III Street
Teynampet, Chennai – 600 018.

.. Respondents

PRAYER in OSA (CAD) No.26 of 2021: Appeal under Section XIII of Commercial Divisions and Commercial Appellate Division of the High Court Act, 2015 read with Clause 15 of the Letters Patent against the order dated 29.4.2021 in A.No.2678 of 2020 in C.S. (Comm.Div.) No.154 of 2020

OSA (CAD) No.27 of 2021:

63 Moons Technologies Limited
(formerly known as Financial Technologies (India) Ltd)
rep. by its Authorised Signatory, D.John Dheepak
having its registered office at Sakthi Tower-1
7th Floor, E-766, Anna Salai, Thousand Lights
Chennai – 600 002.

.. Appellant

vs.

1. Chaturvedi and Shah
Chartered Accountants
a partnership firm registered under
the provisions of the Indian Partnership
Act, 1932 and having office at
714-715, Tulsiani Chambers
212, Nariman Point, Mumbai – 400 021.

2. Wadhwan Global Capital Limited
Ground Floor, Madhava Building
Near Family Court, Bandra (East) Mumbai
Mumbai – 400 051
also at 10th Floor, TCG Financial Center
BKC Road, Mumbai – 400 098.
3. Kapil Rajeshkumar Wadhawan
Former Chairman and Managing Director, DHFL
at the relevant time, having office at
Warden House, 2nd Floor, Sir P.M.Road
Fort, Mumbai – 400 001
and residing at
22/23, Sea View Palace, Pali Hill
Bandra (West), Mumbai – 400 050.
4. Dheeraj Rajeshkumar Wadhawan
Former Director, DHFL
at the relevant time, having office at
Warden House, 2nd Floor, Sir P.M.Road
Fort, Mumbai – 400 001
and residing at
22/23, Sea View Palace, Pali Hill
Bandra (West), Mumbai – 400 050.
5. Harshil Mehta
Former Chief Executive Officer, DHFL
having office at
Warden House, 2nd Floor, Sir P.M.Road
Fort, Mumbai – 400 001.
6. Santosh Sharma
Former Chief Financial Officer, DHFL
having office at
Warden House, 2nd Floor, Sir P.M.Road
Fort, Mumbai – 400 001

7. Credit Analysis and Research Limited
No.O-509/C, Spencer Plaza, 5th Floor
No.769, Anna Salai
Chennai – 600 002.
8. Brickwork Ratings India Private Limited
2nd Floor, B Wing, Swelect House
No.5, Sir P.S.Sivasamy Salai, Mylapore
Chennai – 600 004.
9. T.R.Chadha & Co. LLP
5D, 5th Floor, Mount Chambers
758, Anna Salai
Chennai – 600 002.
10. Rajendra Neeti & Associates
A partnership firm registered
under the provisions of the
Indian Partnership Act, 1932 and
having office at 144, Jolly Maker Chamber II
Nariman Point, Mumbai – 400 021.
11. Catalyst Trusteeship Limited
(formerly GDA Trusteeship Limited)
Ganapathy Colony, III Street
Teynampet, Chennai – 600 018.

.. Respondents

PRAYER in OSA (CAD) No.27 of 2021: Appeal under Section XIII of Commercial Divisions and Commercial Appellate Division of the High Court Act, 2015 read with Clause 15 of the Letters Patent against the order dated 29.4.2021 in A.No.2785 of 2020 in C.S. (Comm.Div.) No.154 of 2020.

OSA (CAD) Nos.29 and 30 of 2021:

1. Pronk Multi Service India Pvt Ltd
rep. by its Authorised Signatory
797, Thiruvallur High Road
Andersonpet, Nemam, Chennai – 600 124.

2. Pronk Multi Service India Pvt Ltd
rep. by its Authorised Signatory
No.35, Electronic City II Phase
Industrial Area, Konappana
Agrahara Village, BenguruHobli
Hosur Road, Bengaluru
Karnataka – 560 100.

.. Appellants

vs.

1. Camfil Air Filtration India Pvt Ltd
rep. by its Authorised Signatory
Sanjay Sharma, SF 107/37
Devarayaneri Road, Asoor Post
Tanjore Highway, Trichy – 620 015
Tamil Nadu.
2. Shailender Anand
Director, Pronk Multi Service India Pvt Ltd
No.35, Electronic City II Phase
Industrial Area, Konappana
Agrahara Village, BenguruHobli
Hosur Road, Bengaluru
Karnataka – 560 100.
3. Marcel Pronk
Director, Pronk Multi Service India Pvt Ltd
No.35, Electronic City II Phase
Industrial Area, Konappana
Agrahara Village, BenguruHobli
Hosur Road, Bengaluru
Karnataka – 560 100.

.. Respondents

PRAYER in OSA (CAD) Nos.29 and 30 of 2021: Appeals under Order XXXVI Rule 9 of the Original Side Rules read with Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018 read with Clause 15 of

the Letters Patent against the order dated 19.4.2021 made in A.Nos.486 and 485 of 2021 in C.S.No.445 of 2018.

OSA No.208 of 2021:

K.Bharat

.. Appellant

vs.

1. IL & FS Financial Services Limited
No.498, Karumuttu Centre
3rd Floor, South Wing, Anna Salai
Nandanam, Chennai – 600 035.
 2. Ind Bharat Thermal Power Limited
New No.20, Old No.129, Chamiers Road
Nandanam, Chennai – 600 035.
 3. Ind Bharat Power Infra Limited
rep. by its Managing Director
New No.20, Old No.129, Chamiers Road
Nandanam, Chennai – 600 035.
 4. K.Raghu Rama Krishna Raju
 5. Sriba Seabase Private Limited
New No.20, Old No.129, Chamiers Road
Nandanam, Chennai – 600 035.
 6. Tamil Nadu Generation and Distribution
Corporation Limited
10th Floor, NKPRR Maligai, No.144
Anna Salai, Chennai – 600 002.
- .. Respondents

PRAYER in OSA No.208 of 2021: Appeal under Order XXXVI Rule IX of the Original Side Rules read with Clause 15 of the Letters Patent against the order dated 23.9.2020 passed in A.No.8503 of 2019 in C.S. No.950 of 2017.

For the appellant in OSA : Mr.Madhan Babu
No.230 of 2019 for M/s.R.Parthasarathy

For the appellants in OSA : Mr.AR.L.Sundaresan
(CAD) No.1 of 2021 Senior Advocate
for M/s.Suhrith Parthasarathy

For the appellants in OSA : Mr.Parthasarathy
(CAD) No.2 of 2021 Senior Advocate
for M/s.Suhrith Parthasarathy

For the appellant in OSA : Mr.Arun C.Mohan
(CAD) Nos.3 and 4 of 2021

For the appellant in OSA : Mr.Lakshmi Kumaran
(CAD) No.19 of 2021

For the appellant in OSA : Mr.Nithyaesh Natraj
(CAD) Nos.24 to 27 of 2021

For the appellants in : Mr.Vijay Narayan
OSA(CAD) Nos.29 and 30 of Senior Advocate
2021 for Mr.P.Giridharan

For the appellant OSA No. 208 : Mr.N.L.Rajah
of 2021 Senior Advocate
for M/s.Aditya Reddy

For 1st respondent in OSA : Mr.Lakshmi Kumaran
(CAD) Nos.1 and 2 of 2021

For 2nd respondent in OSA : Mr.Arun C.Mohan
(CAD) Nos.1 and 2 of 2021

For respondents 1 to 5 in OSA : Mr.AR.L.Sundaresan
(CAD) No.3 of 2021 Senior Advocate

for M/s.Suhrith Parthasarathy

For respondents 1 to 5 in OSA : Mr.AR.L.Sundaresan
(CAD) No.4 of 2021 Senior Advocate
for M/s.Arun Karthik Mohan

For respondents 1 to 5 in OSA : Mr.AR.L.Sundaresan
(CAD) No.19 of 2021 Senior Advocate
for M/s.Suhrith Parthasarathy

For 1st respondent in OSA : Mr.Rohan K.George
(CAD) No.24 of 2021; 7th
respondent in OSA (CAD)
No.25 of 2021; 7th respondent
in OSA (CAD) No.26 of 2021;
8th respondent in OSA (CAD)
No.27 of 2021

For respondents 2 to 4 in OSA : Mr.A.Abdul Hameed
(CAD) Nos.24, 25 and 27 of 2021; for M/s.AAV Partners
respondents 1 to 3 in
OSA (CAD) No.26 of 2021

For 5th respondent in OSA : Mr.Arun C.Mohan
(CAD) No.24 of 2021; 1st
respondent in OSA (CAD)
No.25 of 2021; 4th respondent
in OSA (CAD) No.26 of 2021;
6th respondent in OSA (CAD)
No.27 of 2021

For 6th respondent in OSA : Mr.Ravindhran
(CAD) No.24 of 2021; 5th
respondent in OSA (CAD)
Nos.25 and 26 of 2021

For 7th respondent in OSA : Mr.R.Parthasarathy
(CAD) Nos.24 and 27 of 2021 and Mr.Harshavardhan Ganesan
and 6th respondent in OSA

(CAD) No.26 of 2021

For 8th respondent in OSA : Mr.Anirudh Krishnan
(CAD) No.24 of 2021; 8th assisted by
respondent in OSA (CAD) Mr.Adarsh Subramanian and
Nos.25 and 26 of 2021; 1st Mr.Shiva Krishnamurthy
respondent in OSA (CAD)
No.27 of 2021

For 11th respondent in OSA : Mr.Akhil Bhansali
(CAD) Nos.24, 25, 26 and 27 for M/s.BFS Legal
of 2021

For 1st respondent in OSA : Mr.R.Sathish Kumar
No.230 of 2019 for Mr.P.C.N.Raghupathy

For 2nd respondent in OSA : No appearance
No.230 of 2019

For respondents 6 to 10 in : Service Awaited
OSA (CAD) No.25 of 2021

For 10th respondent in OSA : Addressee moved
(CAD) Nos.26 and 27 of 2021

For the 1st respondent in OSA : Mr.K.Jagannathan
(CAD) Nos.29 and 30 of 2021

For respondent 9 in OSA : Mr.Rahul Balaji
(CAD) Nos.24 and 27 of Ms.Madhu Preetha Elango
2021; and 9th respondent in and Ms.Disha Jain
OSA (CAD) Nos.25 and 26 of
2021

: Mr.Sricharan Rangarajan
Intervenor

COMMON JUDGMENT

THE HON'BLE CHIEF JUSTICE

The extent to which appeals are permitted in respect of matters covered by the Commercial Courts Act, 2015 (hereinafter referred to as "the said Act") falls for a comprehensive consideration.

2. There are, in all, 13 appeals which are taken up together since the issue of appellability is involved in all or most of them. At the outset, it is necessary that the nature of the orders be seen so that it may be assessed whether an intra-court appeal lies therefrom under Section 13(1A) of the said Act.

3. OSA No.230 of 2019 is a proposed appeal against the dismissal of an application seeking rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code"). It is submitted by the appellant that the relevant suit was filed before the Commercial Division in this High Court came to be established and, upon the Commercial Division being established, the suit was transferred from the ordinary

Original Side to the Commercial Division in accordance with the said Act.

4. OSA (CAD) Nos.1, 2, 3, 4 and 19 of 2021 arise out of the same suit which may loosely be seen as a trademark infringement and passing-off action. Two of the appeals are by the plaintiffs and the three others by two of the defendants, one of the defendants having filed two appeals. OSA (CAD) No.1 of 2021 is a proposed appeal against an order dated April 27, 2021 returning the plaint for it to be filed elsewhere. OSA (CAD) No.2 of 2021 is an appeal against an order dated March 29, 2021 by which the injunction initially granted in the suit was modified. OSA (CAD) No. 3 of 2021 is proposed against an order dated April 27, 2021 refusing to reject the plaint under Order VII Rule 11 of the Code. OSA (CAD) No.4 of 2021 is a proposed appeal against that part of the order dated April 27, 2021 which refused to strike off the relevant defendant from the array of parties under Order I Rule 10 of the Code. OSA (CAD) No.19 of 2021 is against the order dated March 29, 2021 by which the application filed by the appellant for vacating the interim

injunction was only dismissed.

5. OSA (CAD) Nos.24, 25, 26 and 27 of 2021 all arise out of a suit for damages upon the plaintiff's substantial investment in the debentures issued in a limited liability company being completely lost. The suit is said to be founded on the statutory tort recognised in Section 35 of the Companies Act, 2013. All the appeals are by the plaintiff. OSA (CAD) Nos.24, 25, 26 and 27 of 2021 are appeals against the same order dated April 29, 2021 revoking leave under Clause 12 of the Letters Patent on applications filed by different sets of defendants. By such order, the plaint was directed to be returned to the plaintiff for it to be carried to be filed in the Bombay High Court.

6. OSA (CAD) Nos.29 and 30 of 2021 arise out of a common order in another suit. The two appeals are directed against the same order dated April 19, 2021 by which the leave granted under Clause 12 of the Letters Patent was declined to be revoked and an application for rejecting the plaint under Order VII Rule 11 of the

Code was dismissed.

7. Finally, OSA No.208 of 2021 is proposed against an order dated September 23, 2020 dismissing the defendant-appellant's application for condoning the delay in filing the written statement. Again, it is the appellant's contention that the relevant suit in this case was filed on the Original Side of this Court at a time before the Commercial Division was established herein; and, upon the Commercial Division being established in this court, the suit stood transferred by operation of law to the Commercial Division.

8. Before the specific issue as to which orders may be appellable under the said Act is taken up, a brief historical perspective and an overview of the statute is called for.

9. A year before the said Act was introduced for the avowed purpose of speedy resolution of high-value disputes, India ranked 186th among the 189 countries surveyed in the matter of enforcing contracts. There are many instances of the two Indian parties to a

contract providing for arbitration with the seat of arbitration outside India so that the disputes may be resolved expeditiously. Even then, when it came to implementation of the award, the delayed legal process in India would intervene. There is also a perception that the conservative practice of awarding costs and interest by Indian courts betrays a lack of commercial sense.

10. The underlying purpose of the said Act is not only to expedite the resolution of commercial claims, but also to project a much needed reform in the system to attract foreign investment in this country, particularly to those wary of the tardy judicial process here. Apart from case management measures being required to be undertaken under the said Act, Section 4(2) of the said Act instructs that Chief Justices of High Courts "shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Division." Similarly, under Section 3(3) of the said Act "persons having experience in dealing with commercial disputes" will be appointed to man Commercial Courts either at the level of the District Judge or a court below the

level of a District Judge.

11. The 253rd Report of the Law Commission of India, published early in 2015, commended the enactment which was initially styled as the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, before being rechristened by its shorter present name by an amendment of 2018.

12. Most of the definition provision in Section 2 of the said Act is taken up in defining what would amount to a commercial dispute. Section 2(1)(c) of the said Act defines "commercial dispute" over 22 sub-clauses. Section 2(1)(i) of the said Act, as amended, indicates the "specified value", where the floor limit is "not ... less than three lakh rupees". But the pecuniary values at the High Court Commercial Division and elsewhere in a State may be specified by the State Government after consultation with the concerned High Court.

13. Chapter II of the said Act covers Sections 3 to 11 and provides for the constitution of Commercial Courts, Commercial Divisions of High Courts, Commercial Appellate Divisions and the jurisdiction of the Commercial Courts and Commercial Divisions. Section 8 of the said Act prohibits civil revisions against any interlocutory order of a Commercial Court, including on the issue of jurisdiction. Section 9 of the said Act provided for the transfer of a suit to the Commercial Court or Commercial Division in the event any counter-claim therein amounted to a commercial dispute of specified value. Such provision has been omitted by the amendment of 2018 upon a modified version thereof being incorporated in Section 12(1)(e) of the said Act. Section 10 of the said Act extends the jurisdiction of the Commercial Courts to arbitration matters as indicated therein. Section 11 of the said Act clarifies that if the jurisdiction of the Civil Court is expressly or impliedly barred under any other law in entertaining a claim, the same prohibition would apply to a Commercial Court and a Commercial Division.

14. Chapter III of the said Act provides for the determination of the specified value. Chapter III-A, introduced by the amendment of 2018, makes pre-suit mediation mandatory.

15. Chapter IV of the said Act covers the ambit of the present judgment. Such Chapter pertains to appeals and contains Section 13, which proclaims to provide for appeals from decrees from Commercial Courts and Commercial Divisions, and Section 14 that calls for disposal of an appeal within six months of the date of filing of such appeal.

16. Chapter V of the said Act covers the solitary Section 15 pertaining to transfer of pending suits. Chapter VI deals with amendments to the provisions of the Code in its application to commercial disputes. Section 16 is the only Section in such Chapter and the salient feature thereof is in sub-section (2) that makes the provisions of the Code "as amended by this Act" to be followed "in the trial of a suit in respect of a commercial dispute of a Specified Value."

17. Chapter VII of the said Act contains the miscellaneous provisions that range from the collection and disclosure of data by Commercial Courts and Commercial Divisions in Section 17 to the power of the High Courts to issue directions in Section 18 and the usual provisions of rule-making authority; removal of difficulties; and, repeal and savings. There are also provisions requiring the State Government to provide necessary infrastructure for Commercial Courts and Commercial Divisions and for establishing necessary facilities for training and continuous education of Judges who may be appointed to the Commercial Courts and Commercial Divisions, including the appellate fora. Such final Chapter of the said Act spanning from Section 17 to Section 23 includes Section 21, which gives the said Act overriding effect:

"21. Act to have overriding effect"

Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than this Act."

18. The Schedule to the said Act covers amendments to Sections 26, 35 and 35-A of the Code and several Orders of the Code up to Order XX. Two Appendices are also provided pertaining to verification of pleadings.

19. The Statement of Objects and Reasons pertaining to the said Act refers to the Commercial Division of High Courts Bill, 2009 that was introduced in and passed by the Lok Sabha on the recommendation of the 188th Report of the Law Commission and the matter being sent back by the Rajya Sabha for reconsideration by the Law Commission before the 253rd Report came to be published. Initially, an Ordinance came to be promulgated on October 23, 2015 before the Act was subsequently passed by the Parliament.

20. On the aspect of appellability under the said Act, it may be noticed that the draft Act that formed a part of the 253rd Report of the Law Commission suggested Sections 14 and 15 to be as follows:

"14. Appeals from orders of Commercial Divisions

and Commercial Courts

- (1) An appeal shall lie only 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 as amended by this Act and Section 37 of the Arbitration and Conciliation, 1996 and from no other orders.
- (2) Notwithstanding anything contained in any law 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.

"15. Appeals from decrees of Commercial Divisions and Commercial Courts

An appeal shall lie to the Commercial Appellate Division of the jurisdictional High Court against every decree of a Commercial Division or Commercial Court, including a judgment on a claim."

21. Much confusion has been created upon the tinkering of such suggested provisions and by telescoping them into one section, again by incorporating rather inappropriate words or expressions. Originally, Section 13 – the appeal provision in the

said Act – contained sub-section (1) with a proviso and the second sub-section, which remains unaltered by the substantive amendment to the Act carried out in 2018. It is necessary to see the original provision, the amended provision, and Section 8 of the said Act, which has considerably more bearing on the present discussion than the heading of such provision may suggest:

Pre-amended Section 13:

“13. Appeals from decrees of Commercial Courts and Commercial Divisions

(1) Any person aggrieved by the decision of the Commercial Court or 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 judgment or order, as the case may be:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

(2) Notwithstanding anything contained in any other law

for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.”

Present Section 13:

“13. Appeals from decrees of Commercial Courts and Commercial Divisions

(1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

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

PROVIDED that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended

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

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.”

Section 8:

“8. Bar against revision application or petition against an interlocutory order

Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court.”

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22. As the draft statute metamorphosed to the Bill that was presented in Parliament and, finally, into the Act that came to be

passed, the two appeal provisions dealing with orders and decrees separately came to be clubbed into one with no express provision in the appeal section providing for an appeal from a decree despite the substantial alteration thereof by the amendment of 2018. Initially, the appeal provision permitted any person aggrieved by the decision of the relevant Court or Division to carry an appeal. Post-amendment, the word "decision" has been substituted by the equally unsatisfactory and equivocal expression of "judgment or order" as two sub-sections (1) and (1A) have been created out of the original sub-section (1) of Section 13 of the said Act.

23. It must also be noticed in this context that by virtue of Section 2(2) of the said Act, the words and expressions used in the said Act, but not defined therein, would carry the same meanings as assigned to them by the Code and the Indian Evidence Act, 1872.

24. The words "decree", "judgment" and "order" are defined thus in the Code:

"2. Definitions.- In this Act, unless there is anything

repugnant in the subject or context,-

...

(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;

...

(9) "judgment" means the statement given by the Judge on the grounds of a decree or order;

...

(14) "order" means the formal expression of any

decision of a Civil Court which is not a decree.”

25. Prior to the establishment of the Commercial Division and Commercial Appellate Division in this court, intra-court appeals on the Original Side of this Chartered High Court would be governed by Clause 15 of the Letters Patent, 1865 and how the word “judgment” in such provision came to be judicially interpreted for almost a century and a half, including in the initial case of *The Justices of Peace for Calcutta* (8 BLR 433) emanating from the first Chartered High Court, Calcutta, and the exalted status conferred on such word by several Supreme Court judgments, including the veritable treatise on appellability in *Shah Babulal Khimji* [(1981) 4 SCC 8] and the more recent *P.S.Sathappan* [(2004) 11 SCC 672].

26. It is ordinarily expected that the language used in a statute would be crafted to make it precise and unambiguous to the extent possible; and, most importantly, free from confusion. Words in a statute are assumed to have been used in their forensic sense and the key words of the provisions are also expected to adhere to

the definitions of such words in the statute or how such words have come to be judicially interpreted down the ages.

27. In the rather casual use of the word “decision” in the original avatar of Section 13 of the said Act and the equally facetious “judgment or order” expression introduced by the amendment of 2018, there is a lot of avoidable confusion that has been let loose.

28. Notwithstanding the overarching purpose of the said Act, the avowed attempt to expedite the process of trial of commercial disputes, the loose words or expressions have resulted in arguments being made that go against the grain of the statute and defy common sense. The fundamental canons of statutory interpretation require the usual and ordinary meanings to be ascribed to the words used in any provision; or how such words have been judicially interpreted over a long period of time. The appeal provision in the said Act has resulted in more time being taken up on the preliminary issue of maintainability than what the

merits of the matters otherwise deserved.

29. Some of the appeals in the present bunch of 13 are clearly maintainable, but they have been clubbed with other appeals arising out of the same order or same suit so that appeals arising out of the individual suits can all be comprehensively dealt with. Two major questions of law arise: whether and to what extent has the scope of an intra-court appeal in a Chartered High Court been curbed by the appeal provision in the said Act; and, whether the appeal provision in the said Act would govern suits instituted prior to the Commercial Division being established in this Chartered High Court.

30. On the scope of appellability, several of the appellants or would-be appellants exhort that nothing in the appeal provision in the said Act can be seen to whittle down the scope of appellability as ordinarily understood in the exercise of the ordinary original civil jurisdiction of this court as the width and generality of sub-section (1A), which is relevant here, is not truncated by the proviso thereto

in the absence of any word or expression of restriction appearing in the proviso. In the same vein, it is contended that sub-section (2) would have no impact on sub-section (1A) of Section 13 because sub-section (2) recognises the right of appeal conferred by the said Act and such right is of the widest import and amplitude as indicated in sub-section (1A) of the provision.

31. Of the several grounds asserted to canvass the proposition that the appeal provision in its entirety does not curb the scope of appeal as already existing in the original civil jurisdiction of this court, it is the use of the word "judgment" in sub-sections (1) and (1A) of Section 13 that is first emphasised in the context of the meaning ascribed to such word by judicial pronouncements for a century and a half. The next ground that must be noticed is the absence of the word "only" in the proviso which governs both sub-sections (1) and (1A) of Section 13 of the Act. The third broad submission is in reading sub-section (2) in conformity with the preceding parts of the provision for a holistic and wide scope of appellability to be discovered therefrom.

32. The other major plank – the least attractive – of argument in support of the wide scope of appellability under the said Act pertains to the necessity to have a correction mechanism within the relevant High Court and the State instead of having to run to Delhi to invoke Article 136 of the Constitution. Several incidental aspects have also been touched upon that will be noticed in course of the discussion.

33. A plethora of judgments has been filed, though most of them have neither been cited, nor placed.

34. On behalf of the first lot of appellants in OSA (CAD) No.29 of 2021 and OSA (CAD) No.30 of 2021, the definitions of “judgment”, “order” and “decree” from the Code have been placed to suggest that nothing in the said Act prohibits the intra-court appeals traditionally entertained on the Original Side of this Court. The first of the two appeals in this case is against an order dismissing an application for revocation of the leave granted under

Clause 12 of the Letters Patent and the other is against the same order refusing to reject the plaint on an application under Order VII Rule 11 of the Code. Section 104 of the Code has also been placed, including the expression "by any law" appearing in the governing part of sub-section (1) thereof. The substance of the argument, which has been repeated or adopted by all the other appellants, is that since an appeal under Section 13(1A) of the said Act is provided against a "judgment or order", if the relevant judicial pronouncement can be regarded as a judgment as understood in legal parlance, it would be amenable to an appeal.

35. In the context of the proviso to sub-sections (1) and (1A) of Section 13 of the said Act, the submission is that such provision merely indicates certain orders that would be appellable and the proviso cannot be understood to mandate or imply that no appeal would lie against a judicial pronouncement that can be considered as a judgment. Again, such submission has been adopted or repeated by the other appellants and particular emphasis has been laid on the fact that there are no restrictive words used in the

proviso like “only” or “not from any other order”.

36. In effect, it is suggested by the appellants that since the words “judgment” and “order” have been used with a disjunctive “or” in between, the word “orders” in the proviso must be seen to be confined in its reference only to the word “order” appearing both in sub-sections (1) and (1A) of Section 13 of the said Act and the proviso cannot be seen to apply to or affect the word “judgment” used in the preceding substantive part of the provision.

37. As to no appeal being specifically provided for against a decree in Section 13 of the said Act, notwithstanding the heading of the section incorporating the word “decrees”, the appellants assert that since the provisions of the Code have been made applicable to the said Act by virtue of Section 16 of the said Act, it is a given that appeals would lie against decrees in terms of Section 96 of the Code, which provision has not been amended by the said Act. The appellants also contend that it would defy reason, logic and common sense that appeals from interlocutory orders in suits

covered by the said Act would be permissible, but appeals from decrees in such actions would not.

38. It is the same logic which is sought to be applied to the apparent prohibition under Section 13(2) of the said Act and its operation is confined to orders and decrees and said to not operate in respect of judicial pronouncements that may be considered as judgments.

39. These appellants first rely on a judgment reported at 2020 SCC OnLine Del 477 (*D & H India Ltd v. Superon Schweisstechnik India Ltd*). In that case, an application for amending the plaint was filed under Order VI Rule 17 of the Code. The amendment sought was substantially allowed by the Joint Registrar (Judicial) of the Delhi High Court. An appeal against such order was carried to a Single Bench in accordance with the rules on the Original Side of the Delhi High Court. Upon the dismissal of the appeal, the order was carried by way of a further appeal before a Division Bench. On an objection as to the maintainability of the appeal before the

Division Bench being taken, it was observed, inter alia, as follows at paragraph 23 of the report:

"**23.** On a plain reading, the proviso to Section 13 (1A) of the Commercial Courts Act is an enabling, 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 (1A) of Section 13. If we were to read the said proviso as excluding, from the jurisdiction of the appellate court, all orders, passed by a Commercial Court, save and except those which find specific enumeration in Order XLIII of the CPC, it may amount to rewriting the proviso to read "Provided that *no appeal shall lie, except* from such orders passed by a Commercial Division or the Commercial Court as are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996)." We are not convinced that the province of our jurisdiction, in the present case, allows us to so legislate. To our mind, therefore, sub-section (1A) of Section 13 of the Commercial Courts Act allows appeals to be preferred *against all judgements and orders of the Commercial Division of the High Court*, to the Commercial Appellate Division thereof, and the

proviso, to the said sub-section merely clarifies that, in the case of orders specifically enumerated in Order XLIII of the CPC, such appeals *shall lie*.” [Emphasis in original.]

40. The next judgment placed by the first lot of appellants is rendered by a Full Bench of this Court and reported at (2021) 2 MLJ 561 (*The District Collector v. N.Udayappan*). The principal issue referred to the Full Bench pertained to the maintainability of an appeal against an order rejecting a review petition. The following passage from the judgment has been placed, which may not be relevant in the context of the appellability issue that has arisen herein:

“57. The view expressed here is also in larger public interest and to avoid the manifest miscarriage of justice. When an order governed by the Code is not appellable, a revision may lie therefrom if the conditions under Section 115 of the Code are fulfilled; if not, a petition under Article 227 of the Constitution may be carried to the High Court to correct the perceived error. Thus, there is a safety net that would cover all orders that are not appellable but are amenable to correction otherwise,

at least at the level of the High Court.

"58. When an order emanates in the High Court itself and no intra-court appeal is provided therefor, such an order may only have to be challenged before the Supreme Court. This is not an efficacious remedy in all cases as it may not be convenient to the aggrieved party to pursue such remedy. It is for such purpose that the provision for an intra-court appeal must be liberally construed for a correction mechanism to be provided within the High Court itself and to the extent the law permits." [Emphasis in original.]

41. The second set of appellants are aggrieved by an order dismissing an application for condoning the delay in filing the written statement and seeking leave to file the same. The first ground urged by such appellant in OSA No.208 of 2021 is that at the time that the suit was lodged in this court, the Commercial Division of this court had not been established. The appellant, thus, suggests that, based on a long line of judgments to the effect that the right of appeal is a substantive right and such right inheres in a party at the time of commencement of the lis, even if Section 13 of

the said Act does not permit an appeal against an order rejecting a prayer to file the written statement belatedly, since such right existed prior to the Commercial Division being established and at the time the suit was filed, the appeal has to be found to be in order and needs to be addressed on merits.

42. For a direct authority on such proposition, a recent judgment of this court reported at (2019) 2 MLJ 257 (*Rubinetterie Bresciane Bonomi Spa v. Lehry Instrumentation & Valves Pvt. Ltd*) has been brought. The Division Bench was of the opinion that there was nothing express or implied in the said Act to apply the restricted provision of appeal under the said Act to a suit instituted prior to the said Act coming into effect. The judgment in such case followed the principle recognised in the celebrated case of *Colonial Sugar Refining Co. Ltd* (1905 AC 369), which dictum has been followed in this country, particularly in the judgments of *Hoosein Kasam Dada (India) Ltd* (AIR 1953 SC 221) and *Garikapati Veeraya* (AIR 1957 SC 540). This appellant also suggests that, in any event, the appeal would be maintainable under the said Act since nothing

in Section 13 thereof prohibits the same. The submission in such regard is as made by the first lot of appellants and is buttressed by several further judgments that have been placed.

43. In the judgment reported at 2016 SCC OnLine Bom 9019 (*Hubtown Limited v. IDBI Trusteeship Service Limited*), a Division Bench of the Bombay High Court considered Section 13 of the said Act prior to such provision being amended in 2018. The appeal provision in Section 13 of the said Act contained then the word "decision", which has now been replaced by the expression "judgment or order", in the material part of such provision. In such context, the Division Bench opined that "decision ... includes judgment/order passed by the Commercial Division/Court" and went on to add that the appellate court "may or may not entertain appeal against the order or interlocutory order, in view of proviso to Section 13(1) (*but*) filing of Appeal under Section 13, in our view, cannot be occluded."

44. A Division Bench judgment of this court reported at

(2019) 5 MLJ 479 (*Magic Frames v. Radiance Media P. Ltd*) is next cited. In that case, an application filed by the defendants to pass a summary judgment dismissing the suit without recording oral evidence was rejected by the trial court and the order carried in appeal. The Division Bench in that case found that the appeal was barred under Section 13(2) of the said Act, but it is evident from paragraph 29 of the report that such view was taken not because the appeal was not expressly maintainable under the said Act, but on the ground that the order impugned in that case could not be regarded to be a judgment within the meaning of the said word in Clause 15 of the Letters Patent.

45. An unreported judgment of this court rendered on February 5, 2020 in OSA Nos.13 to 15 of 2020 (*Kapoor Imaging Private Limited v. Kodak (India) Private Limited*) has next been placed, where a Division Bench of this court accepted the dictum in *Rubinetterie Bresciane Bonomi Spa* and entertained an appeal from an order rejecting the plaintiff's application for bringing additional documents at a stage after the issues had already been framed.

46. A judgment reported at (1986) 4 SCC 537 (*Institute of Chartered Accountants of India v. L.K.Ratna*) has been placed for the proposition that the court should be liberal in allowing a statement of defence to be filed, even if there may be some delay.

47. This appellant has also referred to a Single Bench judgment of the Bombay High Court reported at 2019 SCC OnLine Bom 848 (*Reliance General Insurance Company Ltd v. Colonial Life Insurance Company (Trinidad) Limited*), where the time for filing the written statement was extended beyond the limit permissible under the said Act since the suit had been instituted prior to the Commercial Courts Ordinance being promulgated.

48. The next in point of time, in the chronology of how counsel addressed the court in these matters, was the plaintiff in the suit from which OSA No.208 of 2021 has arisen. The submission of the plaintiff on merits is that the inordinate delay on the part of the defendant-appellant in seeking to file his written

statement was not explained and there is no explanation even at this stage as to why the written statement could not be filed within time. The plaintiff exhorts that merely because the court may have the authority to extend the time to file the written statement would not imply that the extension would be granted for the mere asking and despite the defendant not making out any case as to the sufficiency of the cause that prevented the defendant from filing the written statement within time.

49. The plaintiff's submission is also without prejudice to the contention that the appeal is not maintainable under the said Act. The plaintiff asserts that the suit was not filed at a time when the said Act had not been enacted or had not come into operation. The plaintiff maintains that merely because the Commercial Division was established in this court later, it would not imply that a suit filed earlier, when the said Act had already come into operation, would be governed by the Code and not by the said Act, despite the automatic transfer of the suit to the Commercial Division in view of the nature of the dispute and the value thereof.

50. The plaintiff in the suit from which OSA (CAD) Nos.29 and 30 of 2021 has been filed refers to a judgment of the Division Bench of the Bombay High Court reported at 2017 SCC OnLine Bom 9191 (*Sigmarq Technologies Pvt. Ltd v. Manugrah India Limited*) to demonstrate that the judgment in *Hubtown Limited* was distinguished therein and the dictum in *Hubtown Limited* not followed. In that case, the order impugned was the disposal of a preliminary issue of jurisdiction raised by some of the defendants in the suit under Section 9A of the Code. Section 9A is peculiar to the Bombay High Court and requires the issue of jurisdiction to be dealt with as a preliminary issue upon an objection as to jurisdiction being raised. Despite the judgment in *Hubtown Limited* being cited, it was held in *Sigmarq Technologies Pvt. Ltd* that the order impugned could not be regarded as a judgment within the meaning of the word as used in Clause 15 of the Letters Patent, as the issue as to territorial jurisdiction could even be raised in the appeal in the event the suit was decreed against the relevant defendants. The court also interpreted the judgment in *Hubtown Limited* and another

Division Bench judgment of the same High Court reported at 2017 SCC OnLine Bom 360 (*Smt. Sushila Singhania v. Bharat Hari Singhania*) and observed as follows at paragraph 87 of the report:

"87. ... Thus, it is apparent that the difference between the language in sub-section (1) and that of the proviso was very much present to the mind of both Division Benches deciding *Hubtown* and *Smt. Sushila Singhania*. Their understanding of section 13(2) was that other than the Act 4 of 2016, insofar as the matters covered by that enactment are concerned, no appeal shall lie from any order or decree of a Commercial Division or a Commercial Court, otherwise than in accordance with the provisions of Act 4 of 2016."

Act 4 of 2016 referred to in the judgment is the Commercial Courts Act, 2015.

51. As far as the appellant in OSA (CAD) No.3 of 2021 and OSA (CAD) No.4 of 2021 is concerned, a rather reasonable stand has been taken since counsel contends that, in view of the judgment reported at (2018) 14 SCC 715 (*Kandla Export Corporation v. OCI Corporation*), it cannot be said that an order

dismissing an application for rejection of plaint under Order VII Rule 11 of the Code or an order rejecting an application for deletion of a party would be maintainable. The earlier of the two appeals is against the dismissal of the application in the nature of demurrer; while the later appeal is against the dismissal of the application for deleting the appellant as a party defendant to the suit.

52. In *Kandla Export Corporation*, the Supreme Court has taken a clear view on the matter on the basis of the pre-amended appeal provision in Section 13 of the said Act. The issue that arose in that case was whether an appeal, which was not maintainable under Section 50 of the Arbitration and Conciliation Act, 1996, would nonetheless be maintainable under Section 13(1) of the said Act as it stood prior to its 2018 amendment. Upon proceedings being launched under Section 48 of the Act of 1996 before a court in Gandhidham-Kutch, an application was filed before the High Court of Gujarat for transfer of the proceedings to the High Court. The petition was transferred to the High Court and the objections raised by the appellant in resisting enforcement of the foreign

award were repelled by the Commercial Division of the High Court of Gujarat. An appeal was preferred under the said Act, which was dismissed on the ground that the said Act did not provide any additional right of appeal which was not otherwise available to the appellant under the provisions of the Act of 1996. The High Court opined that since Section 50 of the Act of 1996 only provided for an appeal in case the petition to enforce a foreign award was rejected and did not provide for any appeal from a judgment enforcing a foreign award under the relevant provision, the appeal could not be maintained. It was such order that was carried to the Supreme Court. Paragraph 14 of the report is relevant for the present purpose:

“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.”

53. On behalf of the plaintiff in the same suit, a judgment reported at (2019) 5 MLJ 479 (*Magic Frames v. Radiance Media P. Ltd*) is cited for the acceptance therein by a Division Bench of this court that the said Act has enacted a time-bound mechanism to be followed and, to ensure the timelines, the right of appeal has been considerably restricted. The appeal in the reported judgment arose out of the dismissal of an application “to pass a summary judgment dismissing the suit”. The court noticed the replacement of the word “decision” by the expression “judgment or order” in Section 13(1A) of the Act, the incorporation of Section 13(1) therein and, on the issue of maintainability, after noticing the dictum in *Rubinetterie Bresciane Bonomi Spa* and the judgments in *Kandla Export Corporation* and *Sigmarg Technologies Pvt. Ltd*, the Court held as follows at paragraph 28 of the report:

“28. On a reading of the above judgments, it is clear that the present appeal is not maintainable, when there is a clear bar under Section 13(2) of the Commercial Courts Act.”

54. What is of greater significance is that, at paragraph 11 of the report, the court noticed that the suit in that case had been filed on May 22, 2017, though the Commercial Division and Commercial Appellate Division in this court were constituted only in 2018. On such aspect of the matter, the Division Bench set out what it perceived to be the *ratio decidendi* in the judgment in *Rubinetterie Bresciane Bonomi Spa* as follows:

"Consequently, the right of appeal under the Letters Patent should continue to be available to all Orders passed in any proceedings in all suits pending on the date of commencement of Commercial Courts Act, subject however to the test they must be 'judgments' within the meaning of Clause 15 thereof." (*Paragraph 14 of Rubinetterie Bresciane Bonomi Spa*)

"To sum it up:

(a) A right of appeal under Clause 15 of the Letters Patent is available from all Orders passed in any proceedings in any suit pending on the date of commencement of Commercial Courts Act." (*Paragraph 19 of Rubinetterie Bresciane Bonomi Spa*)

55. The next lot of appellants are the two sets of parties in an infringement and passing-off action. OSA (CAD) No.1 of 2021 is against an order returning the plaint. OSA (CAD) No.2 of 2021 is against an order passed on an injunction application and OSA (CAD) No.19 of 2021 is the defendant's appeal against the injunction that has been continued despite the return of the plaint. The contention of the plaintiff-appellants in OSA (CAD) No.1 of 2021 is that a plaint filed in this Chartered High Court could not have been returned since Order VII Rule 10 of the Code does not apply to a Chartered High Court in view of Order XLIX Rule 3 thereof. The plaintiff-appellants also insist that in view of Section 134 of the Trade Marks Act, 1999 and the plaintiffs carrying on business within the Ordinary Original Civil Jurisdiction of this court, this court had the jurisdiction to entertain, try and determine the suit. The plaintiffs rely on the plaint averments pertaining to territorial jurisdiction and the fact that the infringing goods were available to be sold and purchased within jurisdiction. The judgment and order impugned dated April 27, 2021 is criticised on divers

grounds, particularly in the trial court not confining itself to the averments in the plaint or accepting the veracity thereof. Such plaintiffs assert that on an application in the nature of demurrer, the court has to proceed on the basis of the averments in the plaint to be true and correct.

56. By the order impugned dated March 29, 2021, a limited order of injunction was passed in favour of the plaintiffs by modifying the original order and confining the injunction to the pictorial representation of the defendant's packets as indicated. It is the same order that the defendant is up against in OSA (CAD) No.19 of 2021, though the primary contention of the defendant-appellant is that the suit has been instituted upon a trap sale or a stage-managed sale being cited as the ground of alleged infringement and passing-off. But more on the merits later, if necessary.

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57. The next four appeals are by the plaintiff in a suit for damages. OSA (CAD) Nos.24 of 2021, 25 of 2021, 26 of 2021 and

27 of 2021 arise out of applications for revocation of the leave granted under Clause 12 of the Letters Patent or applications for rejection of the plaint or the return thereof. By the common judgment and order impugned in the four appeals dated April 29, 2021, the plaint has been directed to be returned to the plaintiff for it to be carried to the Bombay High Court and filed there.

58. The last of the appeals considered here is the earliest in point of time. OSA No.230 of 2019 is directed against an order dismissing an application for rejection of the plaint filed under Order VII Rule 11 of the Code. The suit was filed on or about December 1, 2017, a few days after the Commercial Division was established on the Original Side of this court on November 29, 2017. According to the defendant-appellant, the plaintiff has no cause of action and the suit is otherwise not maintainable since a negative declaration has been sought to the effect that the plaintiff's packaging of its product does not amount to infringing the defendant's get-up or packaging.

59. At this stage, it is necessary to notice which of the appeals would clearly be maintainable notwithstanding the apparently restricted scope of appeal in Section 13 of the said Act.

60. OSA (CAD) No.1 of 2021, which is directed against an order returning the plaint, would be maintainable under Order XLIII Rule 1(a) of the Code as, by the order impugned, the plaint pertaining to the suit has been returned for it to be filed elsewhere. OSA (CAD) No.2 of 2021 would also be maintainable since the order impugned is an order of injunction and an appeal from such order is provided under sub-rule (r) of Order XLIII Rule 1 of the Code. For the same reason, the defendant's appeal against the same order of injunction as in OSA (CAD) No.2 of 2021 will be maintainable in OSA (CAD) No.19 of 2021. The four appeals, OSA (CAD) Nos.24 of 2021, 25 of 2021, 26 of 2021 and 27 of 2021, would lie under Order XLIII Rule 1(a) of the Code as the plaint relating to the relevant suit has been returned for it to be filed before the Bombay High Court.

61. It has now to be assessed whether the appeals being OSA Nos.230 of 2019 and 208 of 2021, and OSA (CAD) Nos.3, 4, 29 and 30 of 2021 would be maintainable.

62. As noticed above, the additional issue that arises in OSA No.208 of 2021 is whether, by reason of such suit having been filed before the Commercial Division was established in this court, the right of appeal in such suit would be governed by the rights that subsisted prior to the establishment of the Commercial Division.

63. Notwithstanding the rather inappropriate wording of the only dedicated appeal provision in the said Act, the discussion must focus on whether the expression "judgment or order" used both in sub-sections (1) and (1A) of Section 13 thereof are affected by the perceived restrictive provisions in the proviso to such sub-sections or by the subsequent sub-section.

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64. Apart from the parties herein, Mr.Sricharan Rangarajan, Advocate, has intervened to suggest that the scope of appeal has

not been curtailed by the said Act or anything contained in Section 13 thereof. For a start, the intervenor seeks to read the expression "judgment or order" in a manner that the word "or" has to be perceived in its disjunctive sense; where the word "judgment" would cover both decrees and orders and the word "order" would pertain exclusively to those made under the Act of 1996. According to the intervenor, it would be absurd to suggest that an interlocutory order would be appellable, but the final decree would not. Since the only appeal provision in the said Act does not expressly make a decree appellable, he suggests that the word "judgment" must be read to incorporate decrees and orders passed in suits, whereas the word "order" must be confined to orders in arbitration matters.

65. The intervenor also asserts that a court does not have the authority to read or introduce words into any provision, unless the context absolutely requires the same to be implied in the provision. Thus, the submission is that since there are no restrictive words used in the proviso to sub-sections (1) and (1A) of Section 13 of the

said Act, the court will not go out of its way to impose the restrictions, since the proviso is only clarificatory in that it expressly provides for the orders covered by Order XLIII of the Code to be appellable in addition to decrees and other orders that may amount to judgment within the meaning of Clause 15 of the Letters Patent. The intervenor suggests to the court that the word "order" in the expression "judgment or order" is not covered by the proviso to Section 13(1) and (1A); but such word "order" is covered by the reference to arbitration matters in Section 13(2) of the said Act. In other words, he submits that the word "orders" in the said proviso covers, on the one hand, orders passed in suits which may be considered as judgment within the meaning of Clause 15 of the Letters Patent; and, on the other hand, orders passed in arbitration matters which are covered by Section 37 of the Act of 1996.

66. The intervenor refers to a judgment reported at (2016) 9 SCC 524 (*Arun Dev Upadhyaya v. Integrated Sales Service Limited*). In that case, an award passed in favour of the first respondent before the Supreme Court found such first respondent

entitled to money from the appellant before the Supreme Court and from two other parties. In the first respondent's proceedings for enforcement of the award, a Single Judge of the Bombay High Court found that the award was enforceable against one of the award-debtors but not against the appellant before the Supreme Court or the other party, as the arbitral tribunal could not have passed any award against such parties. The award-holder appealed before the Division Bench, whereupon an objection on the ground of maintainability of the appeal was raised and the Division Bench held that the appeal was maintainable. A review petition was filed by citing *Fuerst Day Lawson Ltd* [(2011) 8 SCC 333] for the proposition that a Letters Patent appeal was not available in arbitration matters and even Section 13 of the said Act did not provide for an appeal in such a scenario. The review petition was dismissed. The Supreme Court held that to the extent that the Single Judge of the Bombay High Court had rejected the claim for enforcement of the award against two of the award-debtors, the appeal was clearly maintainable under Section 50(1)(b) of the Act of 1996.

67. Nothing in such judgment throws any light on the present discussion, since Section 50 of the Act of 1996 expressly provides for an appeal to lie from an order refusing to enforce a foreign award under Section 48 of the relevant Act; and, in the case before the Supreme Court, the intra-court appeal in Bombay had been filed against the order of the Single Bench declining to enforce the award against the appellant before the Supreme Court and another party. As noticed above, the award had been filed against three parties and the Single Bench held that it was enforceable only against one of the three parties and not the two others.

68. The intervenor also relies on the judgment in *Kandla Export Corporation* (supra). Apart from paragraph 14 of the relevant judgment, which has been noticed above, nothing else therein is relevant for the present purpose. In that case, Section 48 of the Act of 1996 was invoked for the enforcement of a foreign award before a court in Gandhidham-Kutch. As discussed earlier, on an application filed before the High Court of Gujarat, the execution proceedings were transferred to the High Court under

Section 15(5) of the Commercial Courts Act as it stood then. The matter was taken up in the Commercial Division of the High Court and the objections filed against the prayer for enforcement were rejected. An intra-court appeal was dismissed on the ground that the said Act did not provide any additional right of appeal not otherwise available to the appellants under the provisions of the Act of 1996. It is such order which was carried to the Supreme Court. Upon referring to the provisions of the said Act, as it stood then, and the Act of 1996, the Supreme Court observed that, in view of the dictum in *Fuerst Day Lawson Ltd* and the Act of 1996 being a self-contained code, the provision of Section 13(1) of the said Act, as it stood then, "being a general provision vis-a-vis arbitration relating to appeals arising out of commercial disputes, would obviously not apply to cases covered by Section 50 of the Arbitration Act." (Paragraph 20 of the report).

69. A Division Bench judgment of the Calcutta High Court reported at 2017 Cri LJ 4775 (*Laxmi Narayan Udyog Limited v. Omendra Kumar Chowdhury*) has been brought by the intervenor

for the legal principle enunciated at paragraph 28 of the report:

"29. An appeal, as is elementary, is the creature of a statute and a party to any proceedings does not have any inherent right to prefer an appeal against any order that such party may be aggrieved by or dissatisfied with, unless there is a specific provision in such regard. It is also not necessary that appeals from the similar nature of orders are provided for in a solitary provision of a single statute or even in different provisions of a same statute. A ready example in such regard is the situation created by Clause 15 of the Letters Patent which provides for intra-court appeals in a host of cases where the orders of such nature passed in the district judiciary may not be appellable under the Code of Civil Procedure. The rule as recognised by the majority opinion in the Constitution Bench judgment in *P.S.Sathappan* is that unless an appeal permitted by the Letters Patent is expressly excluded by some other law, an appeal against an order permissible under the Letters Patent would lie."

70. The reference to this judgment begs the question. If the proviso to Sections 13(1) and (1A) of the said Act is seen to qualify and restrict the scope of appeal from orders, the effect of Section

13(2) of the said Act must then be seen to assess whether intra-court appeals permissible in this court before the Commercial Division was established would still be maintainable in the light of such provision.

71. The intervenor also suggests that the said Act, as amended in 2018, was not considered in *Kandla Export Corporation*. The intervenor refers to Section 3(3) of the said Act, which has been amended in 2018, to permit "a Court below the level of a District Judge" to take up commercial matters and Section 10(3) of the said Act permitting applications or appeals arising out of arbitration, other than international commercial arbitration, to be heard by an appropriate Commercial Court. The intervenor points out that since, upon the 2018 amendment of the said Act, even a court of a Civil Judge, Senior Division, can be designated as a Commercial Court, Section 2(1)(e) of the Act of 1996 must be seen to have been overridden in permitting petitions pertaining to arbitration to be carried to a court which is a grade inferior to the Principal Civil Court in a district.

72. The intervenor submits that the dictum in *Kandla Export Corporation* must be confined to the order itself: that in respect of an arbitration matter, the scope of appeal would be confined to what is specifically indicated as appellable in the Act of 1996 in view of the previous Supreme Court judgment in such regard in *Fuerst Day Lawson Ltd.* The observations in paragraphs 13 and 14 of the report in *Kandla Export Corporation*, it is submitted by the intervenor, may be seen as obiter.

73. In his usual fairness, the intervenor has also drawn the attention of the court to the famous judgment reported at AIR 1962 SC 256 (*Union of India v. Mohindra Supply Co.*), though such judgment detracts from the wide scope of appellability that the intervenor otherwise canvasses. In the case of *Mohindra Supply Co.*, disputes arising under a contract were referred to arbitration. The award was filed in the court of the Subordinate Judge, First Class, Delhi, whereupon the award-debtor, the then Governor-General of India in Council, applied for setting aside the award. The

order refusing to set aside the award was carried to the Lahore High Court by way of an appeal. After the dominions of India and Pakistan were set up, the matter was transferred to the Circuit Bench of the East Punjab High Court at Delhi. The award was set aside. An appeal was preferred under Clause 10 of the Letters Patent applicable to the High Court of Lahore, which, by the High Court (Punjab) Order, 1947, applied to the East Punjab High Court. A point of maintainability of such appeal was raised as the respondent in the appeal contended that under Section 39(2) of the Arbitration Act, 1940 the appeal was prohibited. The matter was referred to a Full Bench of the High Court on the issue of the maintainability of the appeal. The Full Bench held that the appeal would lie. A Division Bench, thereafter, set aside the order under appeal against which the Union appealed to the Supreme Court.

74. The Supreme Court traced the history of the appeal provisions contained in the Code of Civil Procedure from the Code of 1877 through the Code of 1882 and its transformation to that of 1908, which included matters pertaining to arbitration. Upon the

Act of 1940 coming into force, all matters pertaining to arbitration contained in the Code of 1908 were deleted therefrom as the Act of 1940 came to be regarded as the complete code in respect of all matters pertaining to arbitration.

75. The issue before the Supreme Court in *Mohindra Supply Co.* was whether an intra-court appeal under the applicable Letters Patent would lie in the High Court against an order passed by a Single Judge exercising appellate jurisdiction. The court accepted that such an appeal did lie under the Code of 1908, but, upon arbitration matters being taken away from the Code and parked in the Act of 1940, the right of appeal qua arbitration matters had to be traced only to the Act of 1940. The reasoning in paragraphs 16 and 17 are instructive:

"16. There is in the Arbitration Act no provision similar to Section 4 of the Code of Civil Procedure which preserves powers reserved to courts 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.

"17. 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." [Emphasis in original]

76. The fundamental tenets of statutory interpretation instruct that attention should be paid to what has been said as also to what has not been said, so that a construction which requires additional words to be read into a provision or a construction that renders

certain words meaningless may be avoided. However, the rule is subject to exceptions though words cannot be read into a statute unless it is absolutely necessary to do so.

77. At the same time, high authorities instruct that the object of the legislation has to be borne in mind and the occasion on which the words are used and the object that is endeavored to be attained by the provision or the legislation ought also to be kept in mind. Courts will refuse to be bound by the letter of the provision when it frustrates the patent purpose of the statute, as the expressions used in a statute should ordinarily be understood in a sense in which they best harmonise with the object of the statute and which effectuate the purpose of the legislation. It is in such light that the appeal provision in the said Act must also be seen.

78. There is no doubt that the principal purpose for carving out a separate procedure for commercial matters was to ensure that such matters were speedily disposed of.

79. Indeed, the pecuniary limit that was pegged much higher in the statute in its original form has been considerably reduced, subject to discretion of the State Governments in consultation with the relevant High Courts. Thus, there is an impetus given to expedite the process in all civil suits pertaining to commercial disputes.

80. It is evident that only so much of the procedure – and even substantive provisions – have been altered as was considered necessary to fast-track the process of final judgments being rendered in commercial disputes. It may also be noticed incidentally that the post-decree process of execution has not been altered in any manner or form by the said Act, except eliminating the right of appeal under the Letters Patent that applies to only a few of the 25 High Courts in the country. This could be because the nature of the decrees that are passed in commercial matters are not the ordinary declaration of title pertaining to property or those that are passed in partition suits or the like and it was perceived that once the main lis was disposed of and a final decree rendered,

execution of decrees passed in civil suits pertaining to commercial matters would not be delayed. It is thus that case management hearings have been introduced and several other procedures at the pre-trial and trial stages streamlined and the modifications introduced to the Code end at Order XX. If the Code is seen to have arranged its Orders in a chronological manner, Order XX, which is the last provision of the Code which is altered by the said Act, pertains to trials culminating in decrees and the next Order deals with execution.

81. There can be no doubt that the appeal provision in the said Act has been unhappily worded. Even though no reasonable person may contend that an appeal from a decree has not been provided for in the said Act, there is no doubt that there is no express provision in such regard and it is only by inference that an appeal against a decree passed in a civil suit pertaining to commercial disputes may be maintainable. That is because the said Act, in Section 16 thereof, makes the provisions of the Code applicable. The provisions of the Code recognise the right of appeal

against a decree and, by inference, such provision has to be read into the said Act despite it not expressly providing for an appeal from a decree. There is also a reference to “an appeal against the decree of the Commercial Court” at the end of Section 8 of the said Act, which points to the fact that the said Act permits an appeal from a decree though neither Section 8 nor Section 13 thereof can be said to expressly confer such right.

82. As noticed earlier, the recommendation by the Law Commission bifurcated the appeal provision: one against orders and the other against decrees; and the form in which the Bill was taken to the Parliament dropped the suggested provision pertaining to appeals from decrees. In a sense, the conscious exclusion of such express provision must be seen to be justified in the use of the expression “otherwise than in accordance with the provisions of this Act” in the last limb of Section 13(2) of the said Act. If such expression had used the words “as expressly provided in this Act” instead of “otherwise than in accordance with the provisions of this Act”, that may have led to a serious anomaly. Nonetheless, when

the said Act professes to be the entire code pertaining to civil suits covering commercial disputes of specified value as defined, ideally, there ought to have been an express provision for an appeal from a decree therein.

83. In a different sense, the expression “judgment or order” used in sub-sections (1) and (1A) of Section 13 of the said Act may also be seen to include decrees therein; or else, the word “judgment” in such expression would be superfluous or meaningless.

84. The upshot of the discussion up to now is that an appeal under the said Act would lie against all decrees, except against those which are prohibited by the Code itself, and appeals would also lie under the said Act against certain orders. It is now left to discover what orders would be appellable under the said Act in the light of the appeal provision in Section 13 of the said Act, when it is reasonably and rationally read in the overall context of the said Act and its avowed purpose of expediting the process, particularly till

the completion of the trial in civil suits pertaining to commercial disputes of the specified value as defined therein.

85. It is in such circumstances that the proviso to sub-sections (1) and (1A) of Section 13 of the said Act calls for a detailed scrutiny. A proviso may be used for manifold purposes. In its most fundamental form, a proviso excludes or qualifies something in the sense that if the proviso had not been included, the substantive provision would have applied to that something which has been excluded or qualified. A proviso may also be used to remove special cases from the general enactment. In the classical sense, a proviso may not have any impact on the interpretation of the enacting portion of the section so as to exclude something by implication which is embraced by the clear words of the substantive provision. In short, the only appropriate construction of a proviso would be that it cannot expand or limit the operation of the substantive provision except to the extent that it expressly provides and carves out as an exception. Equally, a proviso may be used as a guide in the selection of one or the other of two possible

constructions of the words in the substantive provision, as it has been judicially recognised that the terms of an intelligible proviso may throw considerable light on the ambiguous import of the statutory words. It is a balance which has to be struck between the two main principles which operate in understanding the impact of a proviso on the enactment. To repeat, the apparently opposing principles being: when the words of the enactment are clear, the proviso may not be read to detract therefrom; and, if the enactment appears to be ambiguous, the proviso may be used as a tool to resolve the ambiguity. At any rate, a proviso may not be seen as a surplusage, in the sense that the proviso would have no impact on the operation of the enactment.

86. The Code permits appeals only against decrees and certain orders. By definition, an order cannot be regarded to be a decree or a decree an order, in terms of the Code. The word "judgment" is only the statement given by the Judge, according to its definition in the Code, in support of the conclusion which is reflected in the decree or the order. In other words, any

adjudication conducted under the Code will result in either a decree or an order. Such an exercise may not result in any third possibility.

87. Since Section 2(2) of the said Act indicates that any word not defined in the said Act but defined in the Code would have the same meaning assigned to that word, the word "judgment" as used in the expression "judgment or order" in sub-sections (1) and (1A) of Section 13 of the Act may be seen to imply no more than an order or, the expression may be seen to compendiously refer to a decree or order, since a judgment, as understood in the context of the definition of such word in the Code, cannot be appellable.

88. At the same time, it must be remembered that there is always a caveat to a definition section which indicates that a defined word may carry a connotation other than as assigned to it by the definition, if the context so requires. It does not appear that the word "judgment" used in the said expression can be seen to be used in a completely different context for the definition assigned to

such word in the Code to not be applicable to the use of the word in the relevant expression.

89. That takes the discussion to sub-section (2) of Section 13 of the said Act. In the absence of such provision, there may have been a case for accepting that the word "judgment" as used in the expression "judgment or order" in sub-sections (1) and (1A) of Section 13 of the Act may have been used without intending such word to imply the meaning assigned to it in the Code, since the word "judgment" is *nomen juris* in the context of Clause 15 of the Letters Patent and the doctrine of *stare decisis* would apply. There are at least two reasons, however, why the word "judgment" as used in the relevant expression should not be read in accordance with the meaning ascribed to it in judicial pronouncements for over a century on what it means in Clause 15 of the Letters Patent. It would be extremely irrational to hold that despite sub-section (2) seeking to obliterate the operation of the Letters Patent on the aspect of appellability, the meaning of the word "judgment" used in the sole appeal provision of the said Act would take colour from the

appeal provision in the Letters Patent. Secondly, there does not appear to be any intention in Section 13 of the said Act or otherwise of making an exception for intra-court appeals in the Chartered High Courts and excluding the same in other High Courts.

90. The second reason appears to be the clinching answer since the word “judgment” in the relevant expression could not have been used to imply something in a few High Courts and something altogether different in the remaining High Courts. Seen in such light, the non-obstante clause in sub-section (2) of Section 13 of the Act read with the overriding provision in Section 21 of the said Act would prohibit appeals against any judicial pronouncement otherwise than in accordance with the provisions of the said Act. Indeed, the expression “or Letters Patent of a High Court” may have been used by way of abundant caution in the context of the line of cases culminating in *P.S.Sathappan*, though the non-obstante clause without such expression may have carried the same impact.

91. It is thus that one needs to return to the proviso to sub-sections (1) and (1A) of Section 13 of the said Act to understand whether the restrictions which ought to be implied therein would be permissible or not. The context required a discussion on sub-section (2) of Section 13 of the said Act before returning to the proviso, since such proviso appears to be the bridge between the substance of the enactment in sub-sections (1) and (1A) of Section 13 of the said Act and the substance of the prohibition or restriction imposed by sub-section (2) thereof.

92. The matter may be viewed from another perspective. Though it is impermissible to hold that a proviso is altogether superfluous and unnecessary, an attempt may be made to see the result by imagining the proviso not to be in place. In such a scenario, what would be appellable under the said Act would be decrees, except to the extent as prohibited by the Code and notwithstanding appeals from decrees not being expressly provided by the said Act, and all orders except to the extent prohibited by sub-section (2) of the provision. In such a situation, the appeal

provision, qua orders, would be vague since nothing would have been specified within the meaning of the expression "in accordance with the provisions of this Act".

93. Thus, even if restrictive words like "only" or expressions like "and no other" are not read into or introduced in the relevant proviso, in the light of the constriction in the right of appeal as structured by sub-section (2) of Section 13 of the said Act, the restrictive words or expressions are necessarily implied in such proviso. In fine, therefore, a meaningful reading of the entirety of the appeal provision in Section 13 of the said Act would imply that no appeal from any order other than those enumerated in Order XLIII of the Code and those provided for in Section 37 of the Act of 1996 would lie under the said Act in respect of civil suits involving commercial disputes of specified value as defined therein.

94. It is time to return to the authorities cited by the appellants or would-be appellants as to whether they instruct that appeals from orders other than as construed in the immediate

preceding paragraphs would be maintainable under the said Act.

95. Of the several judgments carried by the parties to court having a bearing on the aspect of appellability under the said Act, most of them have been referred to in the preceding discussion. Four other judgments on the issue of appellability need also to be noticed. In the judgment reported at (2020) 4 SCC 234 (*BGS SGS Soma JV v. NHPC Limited*), the Supreme Court relied on the observation at paragraphs 13 and 14 of the report in *Kandla Export Corporation* and opined that Section 13 of the said Act must be construed in accordance with the object sought to be achieved by the said Act and any construction of Section 13 of the said Act, which leads to further delay, instead of the expeditious conclusion of the lis, should be eschewed. In that case, a petition under Section 34 of the 1996 Act was returned by the Special Commercial Court in Gurugram for the presentation thereof in the proper court having jurisdiction in New Delhi. The respondent before the Supreme Court challenged the order before the High Court of Punjab and Haryana, which held that the appeal was maintainable.

The Supreme Court, thereafter, held that in respect of an arbitration matter, the Act of 1996 would have primacy since such Act would be the special Act governing arbitration matters and even if the dispute was a commercial dispute of specified value, the Act of 2015 would be the general Act. As such, the Supreme Court held that the appeal carried to the High Court in that case was not maintainable since the right of appeal pertaining to an arbitration matter had to be found only in Section 37 of the Act of 1996 and the fact that the petition was returned to be presented elsewhere did not make the impugned order amenable to appeal under Order XLIII Rule 1(a) of the Code, since, strictly speaking, the order passed by the Gurugram Court could not be seen to be an order passed under Order VII Rule 10 of the Code. It is in such light that the Supreme Court overruled a line of cases where the High Court had found an independent right of appeal in an arbitration matter pertaining to a commercial dispute under Section 13 of the said Act, despite the right of appeal not being available under Section 37 of the Act of 1996. Thus, the judgment of the Delhi High Court reported at 2018 SCC OnLine Del 9338 (*Antrix Corporation Ltd v.*

Devas Multimedia Pvt. Ltd) stood overruled in *BGS SGS Soma JV*. It may be recorded that the judgment in *Antrix Corporation Ltd* has been cited by one of the parties herein to give a wider meaning to the appeal provision in the said Act.

96. The appellants in OSA (CAD) Nos.29 and 30 of 2021 have relied on a judgment reported at 2021 SCC OnLine Del 3603 (*Delhi Chemical and Pharmaceutical Works Pvt. Ltd v. Himgiri Realtors Pvt. Ltd*). In that case, an order passed in execution proceedings for the enforcement of an arbitral award required the award-debtors to file their affidavits of assets. An appeal was carried from such order and the appeal was held to be maintainable on the basis of the dictum in *D & H India Ltd* (supra).

97. The appellant in OSA No.208 of 2021 has referred to a judgment reported at (2005) 4 SCC 480 (*Kailash v. Nanhku*) for the proposition that merely because a provision of law is couched in a negative language implying a mandatory character, the same is not without exceptions; and, when a court is called upon to interpret

the nature of the provision, it may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory, though worded in the negative form. That matter also pertained to the delay in filing a written statement; but in an election petition. The submission of the relevant appellant by placing the judgment is that if it is possible, in the interest of justice, to read down negative words and make for exceptions, the absence of negative words in the proviso to sub-sections (1) and (1A) of Section 13 of the said Act should guide the court to interpret such provision as being permissive of appeals rather than restricting the scope of appellability.

98. A recent judgment of this court reported at 2020 (3) CTC 461 (*Sri Narasu's Coffee Company Pvt. Ltd v. Narasu's Saarathy Enterprises Pvt. Ltd*) has been cited by one of the respondents in the appeals arising out of the return of the plaint in the suit for damages. In that case, the would-be appellant before the Division Bench of this court had applied for transfer of certain suits pending on the Original Side of this Court to a Commercial Court in Salem to

be tried along with the pending suits in the Salem court. The Single Bench that took up the application agreed that in order to avoid conflicting judgments all the suits should be tried in the same court; but instead of transferring the suits from this court to the relevant court in Salem, required the suits in Salem to be transferred to this court for trial. It is such order that was sought to be appealed against. The Division Bench referred to Section 13 of the said Act and held, at paragraph 10 of the report, that the "words mentioned in Section 13(1A) has (*sic, have*) been restricted to the extent provided under the proviso to Section 13(1) and 13(1A)." However, the Division Bench went on to suggest that the expression used in the provision was "judgment or order" and as far as orders were concerned, the relevant proviso instructs that such orders must be appealable under Order XLIII of the Code. The court went on to hold that if the order impugned had to be considered purely as an order, it would not be appealable under Order XLIII of the Code. The court next considered whether the order impugned could be regarded as a judgment within the meaning of Clause 15 of the Letters Patent and held at paragraph 16 of the report that an order

transferring a suit to the Original Side of this court was not a judgment within the meaning of Clause 15 of the Letters Patent.

99. Apropos the several judgments referred to hereinabove that recognise the wide ambit of appellability under Section 13 of the said Act, despite the relevant proviso, it may be said that in view of the observations in the Supreme Court judgments in *Kandla Export Corporation* and *BGS SGS Soma JV*, the scope of appellability under Section 13 of the said Act is quite restricted. For the aforesaid reason and the preceding discussion on how the scope of appellability has been whittled down in Section 13 of the said Act, the views expressed in *Hubtown Limited* and *D & H India Ltd* do not appeal. Indeed, in *Sigmarq Technologies Pvt. Ltd*, the Bombay High Court did not follow the dictum in *Hubtown Limited*.

100. Finally, the line of reasoning applied in *Mohindra Supply Co.* must be applied to find that the scope of appellability under Section 13 of the said Act is quite restricted and appeals that lay prior to the said Act coming into effect would no longer be

permissible in respect of civil suits involving commercial disputes of the specified value. The situation under the said Act is similar to the position that was recognised in *Mohindra Supply Co.* Just as all matters pertaining to arbitration were carved out of the Code of 1908 and placed in the Act of 1940, the said Act in this case has to be seen as the complete code for civil suits involving commercial disputes of the specified value.

101. However banal or clichéd it may sound, it bears repetition that an appeal is a creature of the statute. Judicial precedents – Judge-made laws – do not confer any right of appeal; only statutes do. Judicial precedents merely interpret statutes to ascertain whether there is a right of appeal in a particular situation. As a statute may confer a right, a subsequent statute may abridge the same or even take away the right. The said Act and Section 13 thereof must be seen in such light.

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102. It is also necessary, for completeness, to notice the contrary philosophy in *P.S.Sathappan* where the majority opinion

was that Section 104(1) of the Code specifically saves appeals under the Letters Patent and the bar under Section 104(2) of the Code does not apply thereto. Indeed, the majority opinion relied on the judgment in *Shah Babulal Khimji* to hold that the Letters Patent “is not any subordinate piece of legislation” and “Letters Patent cannot be excluded by implication” since it “is a special law for the concerned High Court.” The Supreme Court recognised that the special right of appeal under the Letters Patent would be preserved “unless the same was expressly excluded.” Even the minority view in the judgment agreed that under Section 104 of the Code, the expression “by any law for the time being in force” saved Letters Patent appeals in Chartered High Courts, but disagreed with the majority on the ground that by virtue of sub-section (2) of the same provision, Letters Patent appeals would be excluded only when the order sought to be appealed against was by itself an appellate order.

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103. Despite the Supreme Court recognising that Letters Patent appeals remain unaffected by Section 104 of the Code, it

also recognised that it was possible to exclude Letters Patent appeals, but only by express provision. It is, possibly, in the light of such dictum that Section 13(2) of the said Act specifically refers to the Letters Patent, though the non-obstante clause therein may otherwise have had the same effect even if Letters Patent had not been expressly included therein.

104. Accordingly, OSA (CAD) No.3 of 2021 is found to be not maintainable since it is an appeal against an order refusing to reject the plaint under Order VII Rule 11 of the Code and no appeal is provided against such an order in Order XLIII of the Code. For the same reason, OSA (CAD) No.4 of 2021 is held to not be maintainable since the appeal is directed against an order refusing to strike off a defendant from the array of parties, against which no appeal is provided for in Order XLIII of the Code. OSA (CAD) No.29 of 2021 is not maintainable as the order impugned is one dismissing an application for revocation of the leave granted under Clause 12 of the Letters Patent. Though such appeal may have been maintainable under Clause 15 of the Letters Patent, in view of the

bar under Section 13(2) of the said Act and no provision for such appeal being recognised in Order XLIII of the Code, such appeal is not maintainable. For the same reasons, OSA (CAD) No.30 of 2021 is found to not be maintainable as the order impugned is the dismissal of an application to reject the plaint under Order VII Rule 11 of the Code. Nonetheless, the objections raised by the appellant may be urged at the trial.

105. OSA No.230 of 2019 is not maintainable as such appeal is also directed against an order refusing to reject the plaint. Though the appellant in this case claimed that the suit was filed on December 1, 2017, at a time when the Commercial Division was not established in this court, it is evident from the Tamil Nadu Government Gazette (Extraordinary) published on November 29, 2017 that the Commercial Division of the High Court of Judicature at Madras was set up on and with effect from the date of the publication of the notification in the said gazette. However, the objection as to maintainability of the suit may be raised by the defendant at the trial.

106. Though OSA No.208 of 2021 was filed in this court on or about November 10, 2017 and prior to the Commercial Division in this court being set up, in view of the previous Division Bench judgment of this court in *Magic Frames* that the appeal provision under Section 13 of the said Act would not apply only to suits that had been instituted prior to the date of commencement of the said Act, the fact that the suit from which OSA No.208 of 2021 arises, was filed a few days before the Commercial Division was established in this court, will make no difference. The said Act came into force on October 23, 2015. As a consequence, the scope of appellability in suits in respect of commercial disputes of specified value filed on or after such date would be governed by the provisions of the said Act.

107. It is now that the appeals which are maintainable that need to be addressed on merits. A common ground taken in the two sets of appeals in different suits assailing orders by which the complaints relating to the relevant suits have been returned is that

Order VII Rule 10 of the Code does not apply to a Chartered High Court in view of Order XLIX Rule 3 thereof. However, it is too late in the day, at least in this court, to contend that a plaint filed in this court cannot be returned in view of the judgment reported at AIR 1953 Mad 897 (*R.P. O'Connor v. P.G.Sampath Kumar*). The Division Bench held in that case that although Order VII Rule 10 of the Code did not apply to Chartered High Courts by virtue of Order XLIX Rule 3 thereof, a Chartered High Court has the requisite authority under Section 151 of the Code to make an order directing the return of the plaint, if it was necessary for the ends of justice or to prevent the abuse of the process of court.

108. Indeed, the practice of returning the plaint in certain cases has been followed even in the Calcutta High Court. In a judgment reported at (1994) 2 CHN 472 (*Sambhu Prasad Agarwal v. ICDS Ltd*), the Calcutta High Court relied on the dictum in *R.P. O'Connor* and noticed that there were instances in the 1980s where, upon revoking the leave granted under Clause 12 of the Letters Patent, the relevant plaints were returned for presentation before

the appropriate court.

109. It is, thus, that the merits of the matters need to be assessed, particularly as to whether there is any scope for interfering with the relevant orders impugned herein providing for the return of the plaints. In OSA (CAD) No.1 of 2021, the order impugned dated April 27, 2021 is assailed, primarily, on the ground that since a part of the cause of action had arisen within the ordinary original jurisdiction of this court, the plaintiffs were entitled to initiate the action herein. The suit was filed in this court for infringement of trademark and passing-off on the basis of the branch office of the plaintiff firm and the sale of the infringing product within the territorial limits of this court. The judgment referred to the case made out in the plaint and the grounds asserted by the defendants in seeking to demonstrate that the subject-matter of the suit had no nexus with this court, before concluding that the "sporadic presence of the goods within the jurisdiction of this Court ... not sufficient to confer jurisdiction upon this court if the 'connecting factor principle' is applied."

110. The court noticed that four out of the five plaintiffs resided at Mallur in Namakkal District and the fifth plaintiff also had its registered office at Mallur. The first defendant had its registered office in Salem and the second defendant also resided in Salem. According to the trial court, the products of both the plaintiffs and the defendants were manufactured outside the jurisdiction of this court and the marketing of such products, which, according to the trial court, was a chain of events, also commenced outside the jurisdiction of this court.

111. What appears to have weighed with the trial court in this case is that the branch office of one of the plaintiffs was shown to have been within jurisdiction for the purpose of attracting Section 134 of the Trade Marks Act, 1999, though it was a residential house. What also appears to have counted with the trial court was that some stray sales of the alleged infringing product was shown to have taken place within jurisdiction almost in a manner of a trap sale or a stage-managed sale, where a friendly shop-owner is

arranged by the plaintiffs to show the sale of the alleged infringing product from a shop within jurisdiction to create jurisdiction.

112. The impugned judgment refers to the view expressed by the Supreme Court on Section 134 of the Act of 1999 in the judgment reported at (2015) 10 SCC 161 (*Indian Performing Rights Society Limited v. Sanjay Dalia*). The Supreme Court noticed the word "include" in Section 134(2) of the Act of 1999 and held that under Section 134 of the Act of 1999, the place where the plaintiff resides or carries on business would be an additional place and not an exclusive place to institute a trade mark infringement action. The Supreme Court proceeded to observe that if the cause of action, wholly or in part arises at the principal or ordinary place where the plaintiff resides or carries on business or works for gain or, in case of a corporation, where its principal office or head office or registered office is situate, a trade mark infringement action can be filed only at such place and not at other places where the corporation had a branch or subordinate office or, in case of an individual, he had an alternative place of residence. What is evident

from the impugned judgment is that it found that Chennai was not the natural forum for the action and plaintiff had gone out of its way to create an illusion of this court having jurisdiction.

113. A judgment relied upon by the defendants, in such connection, supports the course of action chosen by the trial court in not permitting the suit to be pursued in this court. In the judgment reported at (2012) 8 SCC 706 (*Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust*), while discussing what amounts to cause of action, the Supreme Court observed that the cause of action must include some act done by the defendant since, in the absence of such an act, no cause of action can possibly accrue. It is such observation, found in the last sentence of paragraph 13 of the report that the defendants commend to this court:

“13. While scrutinising the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant.

Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue."

114. On a reading of the plaint, it does not appear that the subject-matter of the suit has any real connection with Chennai. In fact, the residential premises within jurisdiction, which is shown to be the branch office of one of the plaintiffs, began with its first purported transaction and the document in such regard has been relied upon to try and suggest that a part of the cause of action had arisen within jurisdiction. On the basis of what is evident on a meaningful reading of the plaint, it would be clear that the transactions relied upon for the purpose of demonstrating that a part of the cause of action had arisen within were all contrived and tailor-made only to invoke the territorial jurisdiction of this court to, possibly, harass the defendants. The order impugned returning the plaint for it to be filed before the appropriate court in Namakkal or

Salem does not call for any interference.

115. Both the plaintiffs and the defendants are in appeal against the order of injunction passed in the same suit. The original order of injunction has been modified and continued despite the plaint being returned to be filed elsewhere. The defendants claim that the transactions relied upon are contrived and, as such, no injunction should have been issued. The plaintiffs, on the other hand, suggest that the original order of injunction should have been maintained and no case was made out for the modification thereof. The impugned order of injunction was made on March 29, 2021. Initially, the court had granted an ex parte injunction on March 12, 2021 limited in duration till March 26, 2021. Such interim injunction restrained the defendants from using the mark "VARALAKSHMI" in connection with their products. The defendants applied for vacating the injunction. The first plaintiff and the second defendant are brothers and a family business was divided between the two brothers. The fifth plaintiff is a partnership firm by the name of "Shri Varalakshmi Company", while the first defendant,

which is controlled by the second defendant, is a company by the name of "Varalakshmi Starch Industries Private Limited".

116. It is evident from the plaint that the plaintiffs claimed exclusivity over the name "VARALAKSHMI" and claimed registration of the word mark. The trial court noticed that the initial injunction was granted as against a particular mark used by the defendants, but the defendants had relied on other marks in which the word "VARALAKSHMI" was used along with other words. Upon noticing the plaintiffs' contention that the combination may have been used only subsequent to the initial injunction, the court confined the injunction to certain pictorial representations on the basis of the exclusivity claimed by the plaintiffs over such device marks, but did not continue the injunction in general against the word mark "VARALAKSHMI". The plaintiffs are aggrieved in the order of injunction being curtailed, so to say, and the defendants are aggrieved that the injunction was continued at all, albeit in the truncated form.

117. At paragraph 37 of the impugned judgment, the court gave liberty to the plaintiffs to introduce fresh pleadings and observed that “the injunction granted to the plaintiffs with respect to the device complained in the plaint” could only be maintained, since the packaging material produced by the defendants were quite dissimilar to the packaging material attributed to the defendants in the plaint.

118. The trial court noticed that there were previous disputes even before the formal separation of the businesses of the two brothers in the use of the word mark “VARALAKSHMI”. It is in such circumstances that the initial injunction came to be modified by the impugned order, though the plaintiffs were given liberty to incorporate fresh pleadings and claim reliefs and interlocutory orders on the basis thereof.

119. There is an element of discretion available at the interlocutory stage and once the court perceives that there is a possibility of confusion, in the sense that a person seeking to

purchase the plaintiffs' product may be misled by looking at the defendants' product and thinking the same to be from the plaintiffs' stable, an injunction would issue. Since the court found that certain device marks were registered in favour of the plaintiffs, the court confined the injunction to the device marks and the defendants cannot have any legitimate grievance in respect thereof, since the injunction is confined in respect of the pictorial representations as indicated in the order impugned. On the basis of the material before the trial court, the order impugned appears to be justified. At the very least, the discretion exercised cannot be seen to be perverse. In an intra-court appeal, unless the order impugned is seen to be founded on erroneous principles or there is perverse exercise of discretion, the appellate court is loath to interfere with the order impugned.

120. For the reasons aforesaid, the judgment and order dated March 29, 2021 does not call for any interference, either at the instance of the plaintiffs or at the instance of the defendants. Though the order of injunction as modified does not appear to be

limited by time, since the suit has to be carried to another court, the injunction will now continue for a period of six weeks from date or earlier order of the receiving court.

121. However, it will be open to the court to which the plaint is now carried to assess future applications in accordance with law, without being overly influenced by the subsisting injunction or this order sustaining such injunction.

122. The four remaining appeals – OSA (CAD) Nos.24 to 27 of 2021 – arise out of several applications filed by the defendants in the suit which culminated in the plaint being returned for it to be presented before the Bombay High Court. Though none of the applying defendants had specifically sought the return of the plaint, albeit seeking revocation of the leave granted under Clause 12 of the Letters Patent or rejection of the plaint under Order VII Rule 11 of the Code, the trial court, in the judgment and order impugned dated April 29, 2021, noticed that there was a previous suit pertaining to the same transaction filed by the plaintiff before the

Bombay High Court and perceived, that unless the present suit was carried to the Bombay High Court, there was a serious possibility of conflict of judgments.

123. The cause-title to the suit indicates the plaintiff appellant's registered office to be in Chennai. Of the 11 defendants, the offices of the sixth defendant company, the seventh defendant company, the ninth defendant limited liability partnership firm and the 11th defendant company are shown to be in Chennai. According to the plaintiff, the suit is founded on the right conferred under Section 35 of the Companies Act, 2013 upon the substantial investment of the plaintiff of Rs.200 crore in a debenture issue, pertaining to a company that has not been impleaded in this suit, being completely lost. At paragraph 123 of the plaint, it is alleged that the "suit has been filed on the fraud and deceit perpetrated inter alia by the Defendant No.1 to 11." The immediate preceding paragraph in the plaint discloses that the plaintiff had filed a commercial suit before the Bombay High Court against Dewan Housing Finance Limited (DHFL) for the recovery of the amount due

in respect of non-convertible debentures in DHFL that had been invested in by the plaintiff. Paragraph 122 of the plaint also reveals that the continuation of the proceedings in the summary suit instituted in Bombay had been prohibited in terms of Section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016 by an order dated December 3, 2019 passed by the National Company Law Tribunal. The plaintiff also asserts that the cause of action in the present suit is different from the cause of action in the commercial summary suit filed before the Bombay High Court.

124. The plaintiff refers to Section 35 of the Act of 2013 that provides for civil liability for mis-statements in a prospectus. The substance of the plaintiff's grievance in the suit appears to be that the defendant Nos.1 to 11 had presented a rosy picture as to the financial position of DHFL and thereby induced the plaintiff to invest in the said non-convertible debenture issue with knowledge that the financial projections made were false and misleading. Sub-section (1) of Section 35 of the Act of 2013 is relevant for the present purpose:

“35. Civil liability for mis-statements in prospectus.- (1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who-

- (a) is a director of the company at the time of the issue of the prospectus;
- (b) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;
- (c) is a promoter of the company;
- (d) has authorised the issue of the prospectus; and
- (e) is an expert referred to in sub-section (5) of section 26,

shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.”

125. The plaintiff also refers to Section 37 of the Act of 2013

that specifically provides that a suit may be filed or any other action

may be taken, inter alia, under Section 35 of the Act of 2013 “by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.” According to the plaintiff, the debenture issue was a scam and it is reported that a sum in excess of Rs.95,000 crore was lost to the market upon DHFL going bust. The plaintiff had invested Rs.200 crore in the debenture issue for a period of seven years yielding interest at 9.5 per cent per annum. The plaintiff clarifies that the suit before the Bombay High Court was a summary suit based on the investment in the debentures and the failure on the part of DHFL to make the payments in terms of the agreement between the parties. The plaintiff submits that it is for such reason that the suit was filed under Order XXXVII of the Code as, according to the plaintiff, DHFL could not have had any defence to the claim, since the clause in the agreement made DHFL liable to repay the entire amount of investment and interest upon any event of default taking place and the event of default was undisputable as DHFL had failed to make the first tranche of payment in terms of the relevant agreement.

126. The plaintiff says that DHFL was the subject-matter of insolvency proceedings before the National Company Law Tribunal and only an insignificant fraction of the colossal debts due from DHFL to its secured creditors had been realised for repayment. Other creditors like the plaintiff herein have, according to the plaintiff, been left completely in the lurch.

127. In the present suit, DHFL has not been impleaded. At any rate, a resolution plan pertaining to DHFL has been approved by the NCLT. The plaintiff can no longer expect the refund of its investment from DHFL. Further, the plaintiff points out that in December, 2019 the Reserve Bank of India carried the case of DHFL to the NCLT and, by the first week of December, 2019, an order was passed by the NCLT appointing a resolution professional and a moratorium in terms of Section 14 of the Code of 2016 fell into place. Section 14(1)(a) of the Code of 2016 prohibits the institution of suits and the continuation of pending suits or proceedings against the corporate debtor. In such circumstances, DHFL could not have

been impleaded by the plaintiff in the present suit till the moratorium was lifted. The plaintiff also refers to Section 74(2) of the Code of 2016. Under such provision, any creditor of a corporate debtor violating the provisions of Section 14 of the Code of 2016 is visited with the punishment of imprisonment or with fine that may extend up to Rs.1 crore or with both. The plaintiff suggests that at the time the applications for revocation of the leave or rejection of the plaint were taken up for hearing, the plaintiff's Bombay suit against DHFL was as good as over.

128. According to the plaintiff, the judgment and order impugned proceeded on a completely erroneous premise and took irrelevant considerations into account. Indeed, the plaintiff refers to several of the paragraphs at the business end of the impugned judgment, including paragraphs 100 to 140, to suggest that the judgment is perverse.

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129. There were five applications before the trial court that culminated in the judgment and order impugned dated April 29,

2021: The second, fourth, seventh and eight defendants had applied for revocation of the leave granted under Clause 12 of the Letters Patent to institute the suit; while the ninth defendant applied for rejection of the plaint under Order VII Rule 11 of the Code. Since the court was minded to revoke the leave granted under Clause 12 of the Letters Patent and returned the plaint for it to be carried to the Bombay High Court and filed within the time specified, the application for rejection of the plaint was not conclusively dealt with and it was left to be decided by the Bombay High Court along with the other interlocutory applications.

130. The plaintiff maintains that the suit was well-founded on the statutory tort recognised in Section 35 of the Act of 2013 and the plaintiff had due mandate to proceed against the first defendant promoter of DHFL; the second and third defendants, who were directors of DHFL; the fourth and fifth defendants, who were the Chief Executive Officer and the Chief Finance Officer of DHFL, respectively; the sixth and seventh defendants, which were the credit rating agencies that had rated the debenture issue so high

that the plaintiff was induced to invest therein; the eighth, ninth and tenth defendants, who were the auditors of the company at the time of the issue or within a proximate period prior to the debenture issue; and, the eleventh defendant, who was the debenture trustee. According to the plaintiff, all such persons are liable under Section 35 of the Act of 2013. The plaintiff submits, on a reading of Section 35 of the Act of 2013, that such provision makes the directors of the relevant company who have authorised themselves to be named in the prospectus, the promoters of the company, the persons who authorise the issue of the prospectus, and the experts whose statements are included in the prospectus, all individually liable to pay compensation to every person who has sustained loss or damage upon acting on any statement in the prospectus or subscribing in the securities covered by the prospectus.

131. It is the further contention of the plaintiff that the plaintiff makes out a case that the prospectus pertaining to the debenture issue of DHFL, in which the plaintiff subscribed, had been issued with intent to defraud the applicants and, as such, by virtue of

Section 35(3) of the Act of 2013 “every person referred to in sub-section (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.” The plaintiff submits that the case made out in the plaint is that the plaintiff had suffered loss and damages by subscribing to the debenture issue on the basis of the prospectus that had been issued by the defendants with intent to defraud prospective applicants.

132. A further ground urged by the plaintiff is that the suit is maintainable in this court by virtue of Section 19 of the Code as it is a suit for compensation for wrong done to the plaintiff within the meaning of such provision. The plaintiff points out that Section 120 of the Code makes certain rules inapplicable to Chartered High Courts in exercise of its ordinary or extraordinary original civil jurisdiction, but does not include Section 19 thereof.

133. Several of the defendants have stood up in support of

the judgment and order impugned. These defendants say that the suit has, at best, a tenuous connection with this court, as the entirety of the alleged cause of action arose, or should be seen to have arisen, in Mumbai. These defendants contend that the location of the plaintiff's registered office in Chennai or the accidental situs of the branch offices of some of the defendants in Chennai – which branch offices had no connection with the plaintiff investing in debenture issue of DHFL – will not clothe this court with the jurisdiction to try the suit. At any rate, such defendants submit that witnesses and documents necessary at the time of trial would be more conveniently and readily available in Mumbai and, it is on such consideration, that the trial court exercised its discretion in returning the plaint for the plaintiff to carry it to the Bombay High Court. The defendants also suggest that when the ground of *forum non conveniens* was crying out of every page of the plaint and the trial court exercised the discretion available to return the plaint, the appellate court would scarcely interfere in such exercise of authority.

134. The defendants have referred to several precedents to sustain the judgment and order impugned. A judgment reported at AIR 1953 SC 23 (*Keshardeo Chamria v. Radha Kissen Chamria*) has been cited to contend that since Order VII Rule 10 of the Code does not apply to this High Court, the power exercised by the trial court to return the plaint must be seen to be upon invoking Section 151 of the Code. At paragraph 15 of the reported case, the Supreme Court observed that an order under Section 151 simpliciter would not be appellable. The court reasoned that only certain specific orders mentioned in Section 104 and Order XLIII Rule 1 of the Code would be appellable "and no appeal lies from any other orders (vide Section 105 CPC)."

135. A judgment of this court reported at AIR 2021 Mad 209 (*Sambandh Finserve Pvt. Ltd v. Vivriti Capital Private Limited*) is next cited, where the restricted scope of appellability under Section 13 of the said Act was noticed and an attempted appeal in a commercial suit from an order granting conditional leave to defend the summary suit was not entertained. The court observed that

what had traditionally been considered to be appellable orders under Clause 15 of the Letters Patent applicable to this court would no longer be appellable under Section 13(1A) of the said Act if such matter was not covered by Order XLIII of the Code.

136. The next judgment cited is reported at AIR 1951 Mad 93 (*V.Ramamirtham v. Rama Film Service*), where the Full Bench considered the jurisdiction of this court to receive suits under Clause 12 of the Letters Patent, which does not throw much light on the present discussion.

137. Another judgment of this court reported at 2011-5-L.W. 838 (*The Uttar Pradesh Cricket Association v. The Board of Control of Cricket in India*) has been brought for the observation therein at paragraph 13 of the report that the expression “defendant” occurring in the third limb of Clause 12 of the Letters Patent should be interpreted to mean all the defendants. Again, such authority may not be relevant in the present context since the present suit was not carried to this court on the basis of all the defendants

dwelling or carrying on business or personally working for gain within the territorial jurisdiction of this court at the time of the institution of the suit. The plaintiff had sought and obtained leave under Clause 12 of the Letters Patent on the ground that a part of the cause of action had arisen within.

138. A judgment reported at 2014-5-L.W. 673 (*Duro Flex Pvt. Limited v. Duroflex Seatings System*) has been pressed into service for the proposition that when a major portion of the suit properties was situated outside and it was found that parties and witnesses who were acquainted with the transactions alleged in the plaint resided outside, the suit should not be continued in this jurisdiction.

139. A more recent Supreme Court judgment reported at (2019) 13 SCC 259 (*Ahmed Abdulla Ahmed Al Ghurair v. Star Health and Allied Insurance Company*) has been placed to emphasise on the principle of *forum conveniens* as recognised at paragraphs 31.3 and 43 of the report.

140. One of the defendants lays great stress on the fact that the plaintiff had sought leave under Clause 12 of the Letters Patent not to institute the suit in this court, but to sue the defendants. It is necessary to immediately deal with such technical argument before proceeding to notice the remaining legal authorities carried by the defendants to bear on the issue. Clause 12 of the Letters Patent mandates the leave of the court to be "first obtained" if the cause of action, in part, has arisen within the local limits of the ordinary original jurisdiction of this court. However inarticulately worded the prayer for leave under Clause 12 of the Letters Patent may have been, when the court granted the leave, it was the leave to institute the suit in this court.

141. The defendants next rely on a judgment reported at (2003) 6 SCC 659 (*Shiv Shakti Coop. Housing Society v. Swaraj Developers and others*) for the proposition that a right of appeal is statutory and it does not inhere in any person. Such proposition is placed in the context that the authority exercised to return the plaint in this case is under Section 151 of the Code and no appeal

would lie from such an order.

142. A Division Bench judgment of this court reported at 2002 (1) CTC 134 (*Parameswari Veluchamy v. T.R.Jayaraman*) has been carried and paragraph 12 therefrom placed for the allegory that, just as it has been observed in the reported case, the plaintiff was trying to make its elephantine claim in the suit stand on the pinhead of the sliver of its alleged cause of action that is said to have arisen within the jurisdiction of this court.

143. A judgment reported at (1997) 6 SCC 370 (*Manju Bhatia v. New Delhi Municipal Council*) is placed for the discussion at paragraph 9 thereof on what amounts to tortious liability and the distinction between a claim under a contract and a claim in tort.

144. A Full Bench judgment of the Calcutta High Court reported at 2009 1 Cal LJ 199 (*Chainrup Sampatram v. Punjab & Sind Bank*) has been brought for the discussion on Clause 12 of the Letters Patent and the exercise thereof in a Chartered High Court.

It may be noticed in brief that in a suit for land, it is the situs of the land, in whole or in part, that is the deciding factor as to the venue of the suit. In other suits, the jurisdiction of the court may be invoked if the defendant or all the defendants reside or work for gain or carry on business within the territorial jurisdiction of the relevant Chartered High Court at the time of the institution of the suit. In such case, no leave under Clause 12 of the Letters Patent would be necessary. A suit may also be instituted by taking recourse to Clause 12 of the Letters Patent if any part of the cause of action has arisen within the jurisdiction of the relevant Chartered High Court, provided leave in such respect is first obtained. However, if the entirety of the cause of action is said to have arisen within jurisdiction, the leave is not necessary. In the every day suit carried before a Chartered High Court, it is possible that some of the defendants, at the time of the institution of the suit, reside or work for gain or carry on business within the territorial limits of the Chartered High Court and some others do not. It is also possible that a part of the cause of action – however huge or infinitesimal – may have arisen within jurisdiction and a part outside. When a suit

is instituted in this court under Clause 12 of the Letters Patent – which is the only guide as to the authority of this court to receive a suit – if any of the defendants, at the time of the institution of the suit, does not dwell or carry on business or personally work for gain within the territorial limits of this court, the practice is to obtain leave under Clause 12 of the Letters Patent by pleading that a part of the cause of the action has arisen within the jurisdiction of this court. And – so it appears to have been in the present case.

145. The defendants also place reliance on a judgment of this court reported at 2006-4-L.W.343 (*V.Selladurai v. N.Nethaji*), where the court considered the applicability of Section 19 of the Code to this court in the context of Clause 12 of the Letters Patent. In that case, an action for defamation was instituted in this court, though the impugned publication had been made only in the Trichy edition of a Tamil newspaper and only one of the defendants had a place of business within the jurisdiction of this court. Though Section 19 of the Code is referred to in the judgment, it does not form any part of the *ratio decidendi*, as the Division Bench held that

since a part of the cause of action of the plaintiff had arisen within jurisdiction and leave had been sought under Clause 12 of the Letters Patent for the institution of the suit, the finding rendered by the trial court that this court had no jurisdiction to entertain the suit was erroneous.

146. The next judgment brought by the defendants is reported at (2003) 4 SCC 305 (*Kailash Nath Agarwal v. Pradeshiya Industrial and Investment Corporation of U.P. Ltd*), where the court found little difference between "suit or proceeding" in Section 22(1) of the erstwhile Sick Industrial Companies (Special Provisions) Act, 1985. The court observed that there was only a semantic difference. It is the same analogy that is sought to be applied in this case in respect of the expression "judgment or order" in Section 13(1A) of the said Act. However, the reference in the present context is irrelevant since an order returning a plaint is clearly appellable under Order XLIII Rule 1(a) of the Code.

147. A Single Bench judgment of this court reported at (2007)

5 MLJ 303 (*South Indian Bank Ltd v. M.M.T.C. Ltd*) has been placed for the same proposition as noticed in an earlier judgment that all the defendants, at the time of the institution of the suit, must reside or carry on business or work for gain within jurisdiction for the suit to be founded on such limb of Clause 12 of the Letters Patent without reference to the situs of the cause of action or obtaining leave of the court under Clause 12 of the Letters Patent.

148. A judgment reported at 1932 LW (7) 279 (*Sri Raja Sobhanadri Appa Rao Bahadur v. Sri Raja Parthasarathi Appa Rao Savai Aswa Rao Bahadur*) has been placed, again for the distinction between an action for a wrong arising out of a contract and an action of pure tort. The discussion is inapposite in the present context as to whether the trial court was justified in returning the plaint in this suit.

149. The defendants have also brought the judgments reported at (2013) 1 SCC 1 (*Sahara India Real Estate Corporation Ltd v. Securities and Exchange Board of India*) and (2010) 169 DLT

197 (*Kimsuk Krishna Sinha v. Securities & Exchange Board of India*) in support of the contention that by virtue of the special provisions in the Securities and Exchange Board of India Act, 1992 and SEBI's exclusive authority pertaining to markets, the suit was not maintainable in a civil court and the grievance had only to be carried to SEBI. It is not necessary to go into the judgments, since the contention deserves to be rejected out of hand, notwithstanding Sections 15Y and 20A of the Act of 1992 and Section 24 of the Act of 2013.

150. There is no doubt that the relevant provisions give exclusive authority to SEBI in respect of certain matters, but it would be too much of a stretch to read that the right conferred by Section 35 of the Act of 2013 had only to be pursued before SEBI. Indeed, Section 37 of the Act of 2013 is a complete answer in such regard as it provides that "A suit may be filed or any other action may be taken under section 34 or section 35 or section 36 by any person ... affected by any misleading statement or the inclusion or omission of any matter in the prospectus." Surely, nothing in any

law confers SEBI, the market watchdog, the authority to receive a suit. Further, the provision makes a distinction between “A suit” and “any other action”.

151. A judgment reported at 113 CWN 379 (*Secretary, Department of Atomic Energy, Government of India v The Controller General of Patents, Designs and Trademarks*) has been placed for the principle of *forum conveniens* discussed therein in the context of a petition under Article 226 of the Constitution of India. However, on facts, none of the defendants had made out a case of overwhelming inconvenience before the trial court that could have excited the trial court to deny the plaintiff's natural choice of a forum. The grounds in the relevant applications were vague and general, to the effect that witnesses may be more conveniently available in Mumbai and that the documents required to be brought for the trial were also in Mumbai. Ordinarily, the plaintiff, as *dominus litis*, has the right to choose the forum and, as long as the forum has the authority to receive the action, unless an overwhelming case of inconvenience is made out, the choice of the

plaintiff ought to be respected. In any event, in the modern day and age, where transportation and communication pose no problem at all (the lockdown period during the pandemic excluded!), grounds of inconvenience would have to be taken with more than a ladle-full of salt.

152. Two other judgments have been relied upon by the plaintiff and need to be referred to for completeness, though such judgments may not throw any light on the considerations relevant herein. In the judgment reported 2021 SCC OnLine SC 152 (*P.Mohanraj v. Shah Brothers Ispat Pvt. Ltd*), the court held, at paragraph 103 of the report, that though the corporate debtor would be covered by the moratorium provision in Section 14 of the Code of 2016, the persons mentioned in Section 141(1) and (2) of the Negotiable Instruments Act, 1881 may be proceeded against. It is the same analogy which the plaintiff says would apply to the defendants herein notwithstanding the moratorium against DHFL.

153. The judgment reported at AIR 1961 Mys 188 (*Gokaldas*

Melaram v. Baldevdas T. Chabria) has been placed for the discussion on Section 19 of the Code therein. At paragraph 14 of the report, it was observed that Section 19 of the Code “appears to have been enacted only for the purpose of elucidating the position that the place where the wrong is done to the person or movable property is the place where the cause of action arises ...”

154. The objection taken as to the maintainability of the four appeals does not appear to be meritorious. While it is true that no appeal has been provided for in the Code against an order passed under Section 151 of the Code, it must be remembered that it is the nature of the order that is the guiding factor in ascertaining whether an appeal is maintainable therefrom rather than the source of the power exercised to pass the order.

155. It is possible that the source of the power is provided in a particular statute but the exercise thereof is under the general procedure in accordance with the Code. Again, the power to pass the order may be traced to the mandate in a particular statute though the

manner of exercise of that power may not be stipulated in such statute. At any rate, even Order XLIII Rule 1 of the Code indicates the nature of the order which is appellable in certain cases and, in other cases, the order made in exercise of an authority conferred by the Code itself. The difference between the wording of, for example, sub-rules (a), (c) and (d) of Order XLIII Rule 1 of the Code, on the one hand, and sub-rules (f), (q), (r) and (s) of Order XLIII Rule 1 of the Code, on the other hand, is telling. While every order passed under the relevant provisions indicated in sub-rules (f), (q), (r) and (s) of Order XLIII Rule 1 of the Code is appellable, only those of a particular kind as indicated in sub-rules (a), (c) and (d) of Order XLIII Rule 1 of the Code are appellable. The obvious inference that is to be drawn is that it is the nature of the order that determines whether it would be appellable or not.

156. In the judgment of *Keshardeo Chamria*, the discussion pertained to a completely different kind of order – restoring or refusing to restore execution proceedings – and there was agreement all round that an appeal passed in exercise of the authority under Section 151 of the Code was not appellable. Indeed, what was ultimately held was that the nature of the order that was passed was not appellable since

no appeal therefor was provided. This follows the basic principle that the right of appeal may only be conferred by statute and neither does it inhere in any party nor may it be otherwise inferred. In the other judgment relied upon in this context, *Shiv Shakti Coop. Housing Society*, the discussion was on the amendment to Section 115 of the Code and the right to apply for revision being curtailed thereby. Nothing in either judgment cited on such count would suggest that an appeal against an order for return of a plaint – and, thereby, involving a degree of finality in closing the doors of that forum to the plaintiff – would not be appellable, despite the nature of such order permitting an appeal to be carried thereunder in terms of Order XLIII Rule 1(a) of the Code.

157. There is no doubt, as the plaintiff suggests, that the trial court completely failed to construe the nature of the suit that the plaintiff herein instituted before the Bombay High Court. It is also evident that the trial court misread Section 35 of the Act of 2013 in holding that a suit under such provision “should be filed against the company AND every other individual whom the plaintiff claims to be

responsible for the reports made in the prospectus.” The finding in such regard is clearly exceptionable. On a plain reading of the provision, it is apparent that the liability of the company and the several other persons indicated in Section 35(1) of the Act of 2013 are joint and several. That is apparent from the ordinary reading of sub-section (1) and, in any event, by virtue of sub-section (3) of Section 35 of the Act of 2013 in its use of the words “every person referred to in sub-section (1) shall be personally responsible ...”. Thus, the fact that DHFL was not a party to this suit was of little consequence and the trial court erred in founding its opinion on such flawed and irrelevant consideration. Since insolvency proceedings had been commenced against DHFL by the time the suit was instituted, DHFL could not have been impleaded as a party by virtue of Section 14 of the Code of 2016 and the punishment attracted under Section 74(2) thereof for violation of such provision.

158. In fact, the plaintiff's Bombay suit, for all practical purposes, does not survive upon the resolution plan pertaining to DHFL being approved by the NCLT.

159. The perception by the trial court that it would be convenient for the two suits to be tried together betrays the failure to appreciate the nature of the two actions. The Bombay suit was filed under Order XXXVII of the Code as a summary action founded on the contract between the plaintiff and DHFL qua the repayment of the amount invested by way of debentures. It is trite law that a claim in damages founded on the fraudulent conduct of the defendant or defendants can scarcely be instituted under Order XXXVII of the Code.

160. There is sufficient basis to the plaintiff's contention that the impugned judgment is perverse. It may do well to notice some of the paragraphs from the judgment, particularly paragraph 117:

"117. It would have been an appreciable legal stand if the plaintiff had instituted the suit at Mumbai impleading the DHFL as the first defendant and claiming a right to impead DHFL as a defendant in view of the Section 35 of the Companies Act 2013 and throwing an open challenge to anyone to seek to declare the suit to be held

prohibited in view of Section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016 and inviting the Court to give a finding as to whether a statutory right can also be prohibited by the provisions under Section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016.”

161. The reasoning in the quoted paragraph is unacceptable. The plaintiff had not instituted the Bombay suit against DHFL under Section 35 of the Act of 2013. By the time the plaintiff instituted the suit in this court, by virtue of the moratorium and, thereafter, the approval of the resolution plan, DHFL could no longer be sued. It cannot be appreciated as to what challenge is referred to in the quoted paragraph when Section 14 is also noticed that provides for a moratorium against any action being instituted against a corporate debtor in certain circumstances. It is true that Section 35 of the Act of 2013 gives a statutory right, but nothing in Section 35 of the Act of 2013 makes it absolute. The operation of most legal provisions are subject to other provisions and the fact that even a suit under Section 35 of the Act of 2013 may not be instituted against a corporate-debtor in view of Section 14 of the Code of

2016 could not have been doubted.

162. Though the fact that DHFL was not a party to the suit weighed heavily with the trial court, as would be evident from several pages expended in the judgment in such regard, the argument in such regard had not been made by the defendants, as would be evident from paragraph 107 of the judgment:

“107. However, that DHFL had not been made a party inspite of the statutory requirement to make the company a party to the suit as mandated under Section 35 of the Companies Act, 2013 was not putforth during arguments.”

163. Similarly, paragraph 102 of the judgment observes that the reason for DHFL not being impleaded as a defendant had not been explained by the plaintiff, though the reason was obvious and has otherwise been noticed in the judgment in its copious reference to Section 14 of the Code of 2016.

164. Again, the discussion at paragraphs 120 and 121 of the

judgment is somewhat confusing. There is an averment in the plaint to the effect that the quantum of damages that may be realised in course of the present action may be adjusted against any realisation pertaining to the debentures made by the plaintiff elsewhere. That, in essence, is a legal requirement, or else, the doctrine of unjust enrichment would apply. It does not appear that the nature of the plaintiff's claim in the present action may have been fully comprehended by the trial court. The plaintiff had made a substantial investment in debentures which the plaintiff later discovered that the plaintiff may have been induced into making on the basis of the false statements and dishonest representations contained in the prospectus relating to such issue. As a consequence, the plaintiff initiated an action for recovery of the money from the concerned company itself and, subsequently, instituted the present suit for the loss and damage that the plaintiff suffered as a result of the perceived fraudulent and dishonest representations of the defendants herein. Surely, if the entire amount due to the plaintiff under the contract with DHFL was recovered by the plaintiff in the Bombay suit, the plaintiff would not

be entitled to any penny in the present suit, notwithstanding the fraudulent conduct of the defendants, since the plaintiff would have recovered its investment and would not have suffered any loss or damage as a result.

165. There is also a rather inapposite reference to Section 19 of the Contract Act, 1872 and a discussion spread over several paragraphs thereafter which is contrary to the factual matrix. At paragraph 127 of the judgment, the plaintiff's claim is understood by the trial court to be that it subscribed to the debenture issue, based on misrepresentations in the prospectus. At paragraph 128 of the judgment it is observed that the Bombay suit was instituted on the assertion that the plaintiff was misled by the prospectus to invest in the debentures. To repeat, the Bombay suit was not based on any fraud or misrepresentation on the part of DHFL. The claim therein was confined to the agreement between the parties under which certain payments were to be made on a periodic basis. An event of default had occurred and such event of default entitled the plaintiff to immediately demand the balance amount due. Such

was the claim of the plaintiff before the Bombay High Court and not as perceived in the impugned judgment.

166. There is a further discussion at paragraphs 130 to 138 of the judgment which does not appear to be appropriate in the context of the considerations that ought to have weighed with the trial court in deciding whether to revoke the leave granted under Clause 12 of the Letters Patent or even to return the plaint for the plaintiff to carry it elsewhere. Similarly, the observations at paragraphs 139 and 140 appear to be completely out of place in the backdrop of the nature of the claim carried by the plaintiff to the Bombay High Court:

"139. Fraud/misrepresentation leading to frustration of the contract and impossibility of further performance will have to be alleged in the Court at Mumbai. Fraud/misrepresentation is the central allegation in the Court at Chennai. Fraud/misrepresentation will have to be proved in both the Courts during trial. It is not sufficient that the fact that the defendant did not pay interest alone is established in the Court at Mumbai. The reason why the plaintiff instituted the suit was that there

was no possibility of the defendant therein, DHFL, ever paying interest in the future in view of the fact that the company was tainted with fraud.

"140. In the suit in Chennai, the fact that DHFL is tainted with fraud and that facts had been misrepresented in the prospectus will also be the crux of the evidence let in by the plaintiff. Viewed from any angle, evidence overlaps."

167. In considering whether to allow a plaintiff to pursue its action in a court, upon a challenge in the nature of a demurrer thrown by a defendant, several grounds may be relevant. It could be that the jurisdiction of the court may not have been attracted by the averments in the plaint; or the ground of overwhelming inconvenience may be made out; or any form of prohibition whether in law or by agreement may be cited; or even the principle of comity of courts may be alluded to, among others. However, a court already in receipt of an action cannot shoo away the plaintiff lightly on vague and general grounds of inconvenience, particularly since the law gives the plaintiff the right to choose the forum. In

the present matter, no case of inconvenience was made out by the any of the defendants for the trial court to give any credence thereto. The principle of comity of courts may not have been a relevant consideration since the natures of the two actions were completely different. There could also be no doubt that some of the defendants were within the jurisdiction of this court at the time of the institution of this suit and Clause 12 of the Letters Patent makes no distinction as to whether the place where the defendant carries on business has any nexus with the transaction which is subject-matter of the suit. Indeed, the entirety of the cause of action in a suit may have arisen in place "A", but if sole defendant "P" resides within the jurisdiction of court "B", court "B" has full authority to entertain, try and determine the suit against such defendant.

168. With respect, the entire focus of the trial court was flawed, though it is possible to contend that, ideally, this suit should have been instituted before the Bombay High Court.

169. On the basis of the averments made in the plaint, it

cannot be said that no part of the plaintiff's cause of action had arisen within the jurisdiction of this court. Though Section 19 of the Code may not be applied to this court since the entirety of the jurisdiction of this court to receive a suit is found in Clause 12 of the Letters Patent, the place where the loss is suffered may be a part of the cause of action. For a company, as the plaintiff herein, the loss is ultimately suffered at the registered office which is within jurisdiction.

170. As to whether witnesses in droves or documents in tomes would be necessary at the trial of the suit may be somewhat gauged from the nature of the action. The allegation of the plaintiff is that the defendants were obliged to incorporate relevant information pertaining to company DHFL, its financial position and its prospects in the prospectus pertaining to the debenture issue. In view of Section 26(1)(c) of the Act of 2013, a degree of sanctity attaches to a prospectus. It is the plaintiff's case that the prospectus in respect of the said debenture issue contained mis-statements or misleading statements or omitted referring to

material facts which resulted in the plaintiff investing a substantial amount and suffering loss and damage as a consequence thereof. The extent of the loss suffered is the value of the investment and the reasonable return thereon.

171. The defendants range from the promoters to directors and auditors of company DHFL and experts, whose independent opinions weigh with investors seeking to invest in the market. At the trial, a large number of documents may be produced on behalf of the plaintiff to assert that the statements in the prospectus were false and misleading or material facts had been suppressed therein; and the defendants may also rely on voluminous papers to justify the contents of the prospectus. Even though no overwhelming ground of inconvenience was made out by the defendants – at least, none has been referred to in the impugned judgment – it is difficult to accept that in the present day and age, the plaintiff will be called upon to abandon his chosen forum, which may otherwise have authority to receive the suit, and directed to go Mumbai to file the suit on the ground that a large number of documents, more

readily available in Mumbai, may have to be brought at the trial.

172. For the reasons aforesaid, the judgment and order impugned dated April 29, 2021 cannot be sustained and none of the grounds indicated therein is acceptable for the plaintiff herein to be shown the door and required to carry the suit to the Bombay High Court. What may not have been noticed in the impugned judgment is that the Bombay suit is no more worth the paper it is printed on and if the plaintiff has to pursue any action to recover any part of its investment, it is the present action. Again, it must be conceded that the natural forum for this action may have been the Bombay High Court, but that does not imply that this court would not have jurisdiction or that the jurisdiction of this court has been improperly invoked by the plaintiff in lodging the suit here.

173. As a consequence, the appeals being OSA (CAD) No. 3 of 2021, OSA (CAD) No.4 of 2021, OSA (CAD) No.29 of 2021, OSA (CAD) No.30 of 2021 and OSA No.230 of 2019 and OSA No.208 of 2021 are dismissed as not maintainable.

174. OSA (CAD) No.1 is dismissed. OSA (CAD) No.2 and OSA (CAD) No.19 of 2021 are disposed of without interfering with the judgment and order under appeal, but with the minor modification as to the duration of the injunction.

175. OSA (CAD) No.24 of 2021, OSA (CAD) No.25 of 2021, OSA (CAD) No.26 of 2021 and OSA (CAD) No.27 of 2021 are allowed and the impugned judgment and order dated April 29, 2021 set aside.

176. There will be no order as to costs.

177. Consequently, CMP Nos.9290, 10325, 10326, 10339, 10327, 10340, 10333, 10334, 10330, 10331, 10332, 10336 and 10337, 10444 and 8495 of 2021 are closed.

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The court expresses its appreciation of the erudite assistance rendered all round, not the least by the intervenor.

(S.B., CJ) (P.D.A., J.)
23.09.2021

Index : Yes
sasi

To
The Sub Assistant Registrar
Original Side
High Court of Madras.



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OSA No.230 of 2019 etc.

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU,J.

(sasi)



OSA No.230 of 2019 etc. batch

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23.9.2021