



OSA(CAD).No.72443 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2025

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CORAM :

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

OSA.(CAD)SR.No.72443 of 2025

ITALFARMACO SPA
of the address: Viale Fulvio Testi,
330, I-20126 Milano, Italy;
Nationality: Italy
represented by their constituted
Attorney Ms.Monika Gupta

... Appellant

Vs.

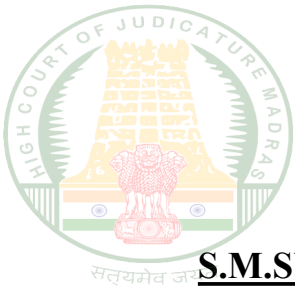
Deputy Controller of Patents & designs
The Patent Office,
Intellectual IProperty Building,
G.S.T.Road, Guindy,
Chennai – 600 032.

.. Respondent

Prayer: Appeal filed under Section 13 of the commercial Curts Act, 2015
and read with Clause 15 of Letters Patent against the order passed by this
Court in CMA(PT)No.45 of 2023 dated 20.12.2024

For Appellant : Mr.Arun C.Mohan

For Respondent : Mr.S.Diwakar,
CGSPC

**ORDER****S.M.SUBRAMANIAM,J.**

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The Original Side Appeal(CAD)SR.No72443 of 2025 has been instituted challenging the appeal order passed by the learned Single Judge of the High Court of Madras in CMA(PT) No.45 of 2023 dated 20.12.2025 under Section 117A of the Patents Act,1970. C.M.A. was filed against the order dated 20.12.2024 of the Deputy Controller of Patents & Designs passed under section 15 of 1970, rejecting the grant of patent in the matter of Patent Application No.10810/CHENP/2012.

2. Registry, High Court raised an objection regarding the maintainability of the Original Side Appeal on the ground that “It may be stated how the OSA is maintainable under clause 15 of Letters Patent against the judgment passed in CMA(PT).”

3. In reply to the maintainability note, the learned counsel for the appellant would mainly contend that the order of the learned Single Judge in the Civil Miscellaneous Appeal is to be construed as an Order-in-original. Therefore, the intra-Court appeal would lie under Clause 15 of Letters Patent. He would further contend that the learned Single Judge decided the correctness of the order passed by the Deputy Controller of Patents & Designs under Patent Act. Therefore, an intra-Court appeal would lie against the order of the learned Single Judge akin to that of an



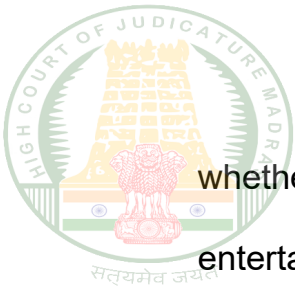
order passed in the writ petition, which can be taken by way of an intra-Court appeal under Clause 15 of Letters Patent.

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4. In the absence of any provision for intra-Court appeal, no appeal would lie. In this context, it is necessary for this Court to examine the provisions of law to decide the maintainability issue raised by the Registry, Madras High Court.

5. Section 117A contemplates appeal against the order passed by the authority under Clause 15 of the Patent Act, 1970. In the present case, the Deputy Controller Patents and Designs, admittedly, passed the order under Section 15 of the Patents Act. Therefore, Appeal under Section 117A of the Patent Act has been entertained, numbered as miscellaneous appeal, adjudicated and a final order has been passed by the learned single Judge of this Court.

6. Learned counsel appearing for the appellant would rely on section 13 of the Commercial Courts Act 1913 by stating that intra-Court Appeal under Clause 15 of Letters Patent would lie. No doubt, issue relating to copyright, patent, design is defined as “commercial dispute” within the meaning of Section 2(1)(xvii) of the Commercial Courts Act, 1950. Therefore, the present appeal has been filed as Original Side Appeal (Commercial Appellate Division). Thus, it is to be examined



whether the appeal under Section 13 of the Commercial Courts Act is entertainable or not.

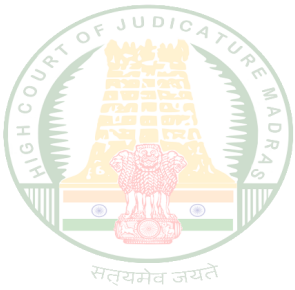
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7. The Commercial Courts Act is a special enactment and would prevail over the Letters Patent. Chapter IV of the Commercial Courts Act provides Appeal. Section 13 reads as follows:

13. Appeals from decrees of Commercial Courts and Commercial Divisions.— (1) 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



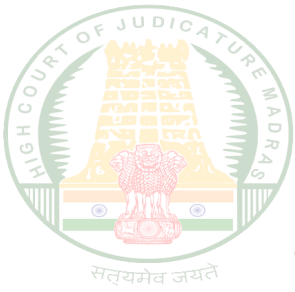
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Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.

8. Sub Section (1) to Section 13, no doubt, enumerates that an aggrieved person may prefer an appeal to the Commercial Appellate Division of the High Court against the judgment or order passed by the Commercial Division of the High Court. However, proviso clause denotes that the appeal shall lie from such order passed by the Commercial Division that are specifically provided under Order XLIII of the Code of Civil Procedure. Sub Section(2) to Section 13 makes it clear that Commercial Courts Act will prevail over Letters Patent of the High Court. That being the clear intent explicitly provided under Section 13 of the Commercial Courts Act, the present Appeal is not maintainable, since in the present case, an appeal has been provided to the High Court under Section 117A of the Patents Act , 1970. High Court vest with the powers to entertain regular appeal under Patent Act and such appeal has been numbered as Miscellaneous Appeal and decided by the learned single Judge of the High Court of Madras and Section 13 of the Commercial Courts Act contemplates that an appeal shall lie from such order passed by the Commercial Division that are specifically provided under Order 43 of the Code of Civil Procedure, the present intra-Court Appeal under Section 15 of the Letters Patent is not maintainable.



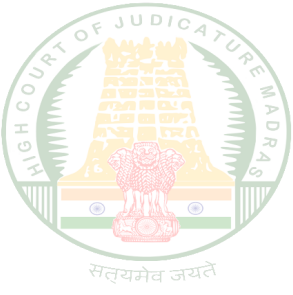
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9. Any expansion of scope of the Commercial Courts Act will defeat its objectives and there is no ambiguity regarding appeals from decrees of Commercial Courts and Commercial Divisions under Section 13 of the said Act. There is no scope to invoke Clause 15 of Letters Patent for the purpose of entertaining the present Original Side Appeal.

10. Section 13(1A) as well as sub Section(2) of the Commercial Courts Act would unambiguously speak about the scope of preferring an appeal before the Commercial Appellate Division. Thus, the intra-Court Appeal under Clause 15 of Letters Patent Appeal is not maintainable, since it is not contemplated. That being the legal position and the law to be applied, the objection note raised by the Registry of High Court of Madras regarding maintainability is in consonance with the provisions of law and therefore, stands affirmed. Consequently, OSA(CAD)SR. No.72443 of 2025, is rejected.

(S.M.S.,J.) (C.K.,J.)
12.12.2025

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Index : Yes
Speaking order : Yes



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