2026:DHC:8877-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Date of decision: 6th October, 2026***

***Order Uploaded on: 8th October, 2026***

\# **CNR No. DLHC010438912026**

\+ FAO(OS) (COMM) 248/2026 CM APPL. 63066/2026 CM APPL. 63067/2026 CM APPL. 63068/2026

\# **CNR No. DLHC010438932026**

\+ FAO(OS) (COMM) 249/2026 CM APPL. 63071/2026 CM APPL. 63072/2026 CM APPL. 63073/2026

M/S SIDDHIVINAYAK COAL CARRIERS PVT. LTD. .....Appellant
M/S MAA PITAMBARA COAL CARRIERS PVT. LTD. ...Appellant

Through: None

versus

COAL INDIA LIMITED & ORS. .....Respondents

Through: None

**CORAM:**
**HON'BLE MR. JUSTICE DINESH MEHTA**
**HON'BLE DR. JUSTICE ADITI CHOUDHARY**

**J U D G M E N T**

**REPORTABLE**

***Per* Dr. ADITI CHOUDHARY, J.**

1. The present appeals are taken up together for disposal as they are based on more or less similar facts against common respondents herein and they raise a common issue of maintainability.

2. Briefly stated, the appellants are dealing in the business of transportation of coal in coordination with the Directorate General of Resettlement since 2018. In 2023, disputes arose between the

appellants/plaintiffs and the respondents/defendants *qua* certain amounts deducted by the respondents. Aggrieved, the appellants instituted summary suits which were registered as CS (COMM) 711/2026 and CS(COMM) 709/2026 respectively under Order XXXVII of the Code of Civil Procedure, 1908 (for brevity 'CPC').

3. The said suits were taken up together by the learned Single Judge of this Court on 08.07.2026. Vide the impugned orders dated 08.07.2026, the learned Single Judge held that though the said suits were filed under Order XXXVII of the CPC, the parameters of Order XXXVII of the CPC were not met and accordingly, the suits were converted into regular suits.

4. Aggrieved, the appellants filed the present appeals under Section 13 of the Commercial Courts Act, 2015 (for brevity 'the Act of 2015').

5. On 16.09.2026, upon the request of the learned counsel for the appellants time was granted to satisfy this Court with regard to the maintainability of the appeals under Section 13 of the Act of 2015. On 28.09.2026, none appeared on behalf of the appellants and in the interest of justice the matters were adjourned to today. Today also, none has appeared on behalf of the appellants.

6. What needs to be determined is whether the present appeals are maintainable in view of the *proviso* to Section 13(1A) of the Act of 2015, which provides 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 CPC and Section 37 of the Arbitration and Conciliation Act, 1996 (for brevity 'Act of 1996').

7. It would be expedient to set out the relevant provisions of law for ready

reference. Section 13 of the Act of the 2015, which creates the right of appeal, reads as follows:

> *"**13. Appeals from decrees of Commercial Courts and Commercial Divisions**.— (1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.*
> *(1-A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:*
> *Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically 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."*

7.1. Order XLIII, Rule 1 of the CPC reads as follows:

> ***"1. Appeals from orders**—An appeal shall lie from the following orders under the provisions of Section 104, namely:—*
> *(a) an Order under Rule 10 of Order VII returning a plaint to be presented to the proper Court [except where the procedure specified in Rule 10-A of Order VII has been followed];*
> *(b) [* * *]*
> *(c) an Order under Rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;*
> *(d) an Order under Rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte;*
> *(e) [* * *]*
> *(f) an Order under Rule 21 of Order XI;*
> *(g) [* * *]*
> *(h) [* * *]*
> *(i) an Order under Rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;*
> *(j) an Order under Rule 72 or Rule 92 of Order XXI setting aside or refusing to set aside a sale;*

*[(ja) an order rejecting an application made under sub-rule (1) of Rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of Rule 105 of that Order is appealable;]*
*(k) an Order under Rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;*
*(l) an Order under Rule 10 of Order XXII giving or refusing to give leave;*
*(m) [* * *]*
*(n) an Order under Rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;*
*[(na) an Order under Rule 5 or Rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent person;]*
*(o) [* * *]*
*(p) orders in interpleader-suit under Rule 3, Rule 4 or Rule 6 of Order XXXV;*
*(q) an Order under Rule 2, Rule 3 or Rule 6 of Order XXXVIII;*
*(r) an Order under Rule 1, Rule 2, [Rule 2-A], Rule 4 or Rule 10 of Order XXXIX;*
*(s) an Order under Rule 1 or Rule 4 of Order XL;*
*(t) an order of refusal under Rule 19 of Order XLI to readmit, or under Rule 21 of Order XLI to rehear, an appeal;*
*(u) an Order under Rule 23 [or Rule 23-A] of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;*
*(v) [* * *]*
*(w) an Order under Rule 4 of Order XLVII granting an application for review."*

8. The issue of maintainability of an appeal under Section 13 of the Act of 2015 against an order not specifically enumerated under Order XLIII of the CPC has been decided by the Coordinate Bench of this Court in ***HPL (India) Ltd. & Ors. v. QRG Enterprises & Anr.***, 2017 SCC OnLine Del 6955, wherein it was held as under:

*"30. We now come to the meaning to be ascribed to the proviso in Section 13(1). It clearly stipulates 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 CPC, as amended by the said Act, and Section 37 of the Arbitration and Conciliation Act, 1996. We have seen that orders' as understood under the CPC are*







*different and distinct from decrees'. And, orders are nothing but the formal expression of any decision of a Civil Court not amounting to a decree. Therefore, the amplitude and width of the expression order' is very wide under the CPC itself but not all orders are appealable. The appealable orders are enumerated in Order XLIII of the CPC. We have already pointed out above, that there are only two kinds of appeals recognized under the CPC, namely, Appeals from decrees' and Appeals from orders'. Section 104, which has been extracted earlier in this judgment, specifies the orders from which appeals lie. It clearly provides that an appeal shall lie from the orders enumerated in the said provision itself and, save as otherwise expressly provided in the body of the CPC or by any law for the time being in force, from no other orders. This means that appeals from orders are restricted to those orders which are either specified in Section 104 itself or expressly provided in the body of the Code or by any law for the time being in force. Insofar as the impugned order is concerned, it is clear that it does not fall within the orders specified under Section 104. We now have to look at Order XLIII Rule 1 which stipulates that an appeal shall lie from the orders enumerated therein under the provisions of Section 104. In other words, only an order specified under Order XLIII Rule 1 would be appealable and, read with the provisions of Section 104, no other order would be an appealable order under the CPC.* ***In this backdrop, the proviso to Section 13(1) makes it abundantly clear 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 CPC, as amended by the said Act and Section 37 of the Arbitration and Conciliation Act, 1996. Clearly, in our view, this restricts the appealable orders to only those orders which are specifically enumerated in Order XLIII. In the present case, the impugned order is admittedly not one specified under Order XLIII."***

(Emphasis added)

9. The above legal position has been affirmed by the Hon'ble Supreme Court in ***Kandla Export Corporation & Anr. v. OCI Corporation & Anr.,*** (2018) 14 SCC 715, wherein the question which was raised was whether an appeal which is not maintainable under Section 50 of the Act of 1996 would nonetheless be maintainable under Section 13(1) of the Act of 2015. Answering the question in the negative, the Hon'ble Supreme Court held as

under:

> *"**13.** Section 13(1) of the Commercial Courts Act, with which we are immediately concerned in these appeals, is in two parts. The main provision is, as has been correctly submitted by Shri Giri, a provision which provides for appeals from judgments, orders and decrees of the Commercial Division of the High Court. To this main provision, an exception is carved out by the proviso. The primary purpose of a proviso is to qualify the generality of the main part by providing an exception, which has been set out with great felicity in CIT v. Indo-Mercantile Bank Ltd. [CIT v. Indo-Mercantile Bank Ltd., 1959 Supp (2) SCR 256 : AIR 1959 SC 713] , thus: (SCR pp. 266-67 : AIR pp. 717-18, paras 9-10)*
> *"9. … The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment.*
> *'8. … it is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso.'*
> *Therefore, it is to be construed harmoniously with the main enactment. (Per Das, C.J. in Abdul Jabar Butt v. State of J&K [Abdul Jabar Butt v. State of J&K, 1957 SCR 51 : AIR 1957 SC 281 : 1957 Cri LJ 404] , SCR p. 59 : AIR p. 284, para 8). Bhagwati, J., in Ram Narain Sons Ltd. v. CST [Ram Narain Sons Ltd. v. CST, (1955) 2 SCR 483 : AIR 1955 SC 765] , said: (SCR p. 493 : AIR p. 769, para 10)*
> *'10. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.'*
> *10. Lord Macmillan in Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality [Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality, 1944 SCC OnLine PC 7 : (1943-44) 71 IA 113] laid down the sphere of a proviso as follows: (IA p. 122 : SCC OnLine PC)*
> *'… The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude, from it by implication what clearly falls within its express terms.'*
> *The territory of a proviso therefore is to carve out an exception to the*

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

***14.*** *The proviso goes on to state that an appeal shall lie from such orders passed by the Commercial Division of the High Court that are specifically enumerated under Order 43 of the Code of Civil Procedure Code, 1908, and Section 37 of the Arbitration Act.* ***It will at once be noticed that orders that are not specifically enumerated under Order 43 CPC would, therefore, not be appealable, and appeals that are mentioned in Section 37 of the Arbitration Act alone are appeals that can be made to the Commercial Appellate Division of a High Court."***

*(Emphasis added)*

10. The above judgment of the Hon'ble Supreme Court categorically lays down that the remedy of appeal under Section 13 of the Act of 2015 is available against only those orders which are specifically enumerated under Order XLIII of the CPC and Section 37 of the Act of 1996 and not from the orders which are not specified therein.

11. In the present appeals, by the orders impugned, the learned Single Judge has converted summary suits filed under Order XXXVII of the CPC into regular suits. On perusal of Order XLIII of the CPC, we find that no appeal has been provided against such orders.

12. In view of the statutory scheme and its interpretation by the Hon'ble Supreme Court in the above mentioned judgment, it is clear that as the impugned orders are not appealable under Order XLIII of the CPC, the present appeals under Section 13 of the Act of 2015 are not maintainable.

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13. Consequently, the appeals are dismissed as not maintainable. Pending applications are also disposed of as being infructuous.

**DINESH MEHTA**
**(JUDGE)**

**ADITI CHOUDHARY**
**(JUDGE)**

**OCTOBER 6, 2026/Arya**