

(2012) 03 BOM CK 0124

In the Bombay High Court

Case No : Appeal No. 806 of 2011 in Notice of Motion No. 3709 of 2010 in Suit No. 2358 of 2010

Conros Steels Pvt. Ltd.

APPELLANT

Vs

Lu Qin (Hong Kong) Co. Ltd. and Others

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16(2), 16(3), 17, 19, 2
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2013) 1 ARBLR 236 : (2012) 6 BomCR 149 : (2012) 114 BOMLR 1287

Hon'ble Judges : R.Y.Ganoo, J;D.K. Deshmukh, J

Bench : Division Bench

Advocate : Usha Srivastav instructed by M/s. Consulta Juris, for the Appellant; V.P. Sawant, Rajat Taimni, Mahendra Singh, Keanan Nagporwala instructed by . M/s. Tuli and co., for the Respondent

Judgement

D.K. Deshmukh, J.—When this appeal was called for admission, on behalf of the respondents an objection to the maintainability of this appeal was raised. It was contended that in view of the provisions of Section 37 of the Arbitration and Conciliation Act 1996, the present appeal is not maintainable. We heard the learned Counsel appearing for both the sides at length on this preliminary objection. In view of the order that we propose to make the following would be the relevant facts:-

2. The present appellant-Conros Steels Pvt.Ltd. filed Civil Suit no. 2358 of 2010 in this Court seeking money decree in the amount of Rs. 4.19 crores. against the first defendant together with interest. The second and third defendants to the suit are bankers and there is an express averment made in paragraph 1 of the plaint that no relief is claimed against the second and third defendants. In the suit, Notice of motion no. 3709 of 2010 was taken out by defendant no. 1. The principal reliefs that were claimed were claimed by prayer clauses (a) & (b). Prayer clauses (a) & (b) read as under:-

a) That the disputes sought to be raised by the Plaintiff in the present suit being C.S. no. 2358 of 2010 be referred to arbitration in accordance with the arbitration agreement between the parties as stipulated in the Sales Contracts dated 28th April, 2010.

b) Thereupon the current proceedings being C.S.No. 2358 of 2010 be terminated.

In the affidavit filed in support of the notice of motion, the defendant no. 1 stated that the notice of motion has been taken out for an order referring the parties to arbitration in view of the existing arbitration agreement between the parties and for termination of the civil suit. The notice of motion was opposed by the plaintiff. The learned Single Judge of this Court decided that notice of motion by order dated 11/14th March, 2011. The learned Single Judge for the reasons that he has given in his order, granted the notice of motion in terms of prayer clause (a) and (b). The present appeal is filed by the original plaintiff challenging that order.

3. As observed above, a preliminary objection to the maintainability of this appeal has been raised on behalf of respondent no. 1 relying on the provisions of Section 37 of the Arbitration and Conciliation Act, 1996. It is submitted on behalf of respondent no. 1 that the present appeal has been filed by the appellant under Clause 15 of the Letters Patent and in view of the provisions of Section 37 of the Arbitration and Conciliation Act the present appeal is not maintainable. It is claimed that Section 37 of the Arbitration and Conciliation Act provides for appeal only against the orders granting or refusing to grant any measure u/s 9 of the Arbitration and Conciliation Act and against the order setting aside or refusing to set aside the Arbitral Award u/s 34 of the Arbitration and Conciliation Act, and it also, by necessary implication, bars appeal being filed against the orders that may have been made under any other provisions of the Arbitration and Conciliation Act. In support of this objection, the learned Counsel appearing on behalf of respondent no. 1 relied on the following judgments:-

1. Union of India (UOI) Vs. Mohindra Supply Company, .
2. Smt. Sudarshan Chopra & Ors. Vs. Vijay Kumar Chopra & Ors. (2003) 117 Comp Cas 660.
3. Canbank Financial Services Ltd. Vs. Haryana PetroChemicals Ltd. and Another, ,
4. International Thermal Technology Kircher Italia, Branch, S.P.A. Vs. Esteem Projects Pvt. Ltd Appeal No. 485 of 2005, order dated 19.3.2009,
5. Rites Limited Vs. JMC Projects (India) Ltd. .
6. Jet Airways (India) Ltd. Vs. Sahara Airlines Ltd. 2011 (6) Bom.L.R. 3835.
7. Fuerst Day Lawson Ltd. and Others Vs. Jindal Exports Ltd. and Others etc. etc., .

4. On behalf of the appellant, on the other hand, it is submitted that the order which is impugned in the appeal results in terminating/disposing of the suit filed by the plaintiff/appellant and therefore, under Clause 15 of the Letters Patent the order amounts to judgment and therefore, the appeal is maintainable. It is submitted that the notice of motion that is taken out by defendant no. 1, is taken out in civil suit, it may have been taken out because of the provisions of Section 8 of the Arbitration & Conciliation Act but the order that is passed by the learned Single Judge is passed in the notice of motion taken out in civil suit and the result of the order is that the suit of the plaintiff is disposed of. Therefore, in effect the order is passed in the civil suit and therefore, the appeal under Clause 15 of the Letters Patent is maintainable. It is submitted that Section 37 of the Arbitration & Conciliation Act only provides for an appeal against certain orders passed under the provisions of the Arbitration & Conciliation Act. Section 37 of the Arbitration & Conciliation Act provides for an appeal against an order granting or refusing to grant interim measures u/s 9 of the Act. According to the appellant for invoking jurisdiction of the Court u/s 9, an application is to be independently filed by the petitioner for interim measures, that application is not to be filed in any civil suit or any other proceedings. Similarly, Section 37 provides for an appeal against an order setting aside or refuse to set aside an Arbitral Award passed u/s 34. In order to get an order from the Court setting aside the Award, a petition is to be filed u/s 34. Thus, Section 37 provides for appeal against orders which are passed in the proceedings which are instituted under the provisions of Arbitration & Conciliation Act and those proceedings do not arise in a pending civil suit. The learned Counsel relied on the following judgments in support of her submissions:

1. Shin-Estu Chemical Co. Ltd. Vs. Vindhya Telelinks Ltd. & Ors. (2009) 14 SCC 16,
2. I.T.I. Ltd. Vs. Siemens Public Communications Network Ltd., ,
3. Nirma Ltd. Vs. Lurgi Lentjes Energietechnik GMBH and Another, ,
4. Shyam Sunder Agarwal and Co. Vs. Union of India, ,
5. M/s. Sundaram Finance Ltd. Vs. M/s. NEPC India Ltd., ,
6. Firm Ashok Traders and Another etc. Vs. Gurumukh Das Saluja and Others etc., ,
7. Bhatia International Vs. Bulk Trading S.A. and Another, .

Notice of motion no. 3709 of 2010 was taken out by defendant no. 1 because of the provisions of Section 8 of the Arbitration & Conciliation Act. Section 8 of the Arbitration & Conciliation Act reads as under:-

8. Power to refer parties to arbitration where there is an arbitration agreement-

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than

when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under subsection (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

Perusal of the above quoted provision shows that in case there is a suit pending before a Court and application is made by one of the parties to the suit pointing out that there is an arbitration agreement between the parties in relation to the subject matter of that civil suit and if the applicant complies with the other requirements of the provisions then the Court refers the parties to arbitration. Section 5 of the Arbitration and Conciliation Act lays down that "notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part no judicial, no judicial authority shall intervene except where so provided in this Part." Thus, once the Court finds that there is an arbitration agreement on the subject matter of the suit and refers the parties to arbitration then because of the provisions of Section 5, the Court will lose jurisdiction to keep the civil suit pending and the Court will have to terminate the civil suit. This Court derives its jurisdiction to entertain civil suit because of Clause 12 of the Letters Patent. Clause 12 of the Letters Patent reads as under:-

12. Original jurisdictions as to suits:- And we do further ordain that the said High Court of Judicature at Bombay, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits for every description, if, in the case of suits for land or other immovable property such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court or if the defendant at the time of commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Bombay, or the Bombay City Civil Court.

Clause 19 of the Letters Patent declares that this Court can exercise ordinary original civil jurisdiction. Clause 19 of Letters Patent reads as under:-

19. By the High Court in the exercise of ordinary original civil jurisdiction:- And we do further ordain that with respect to the law or equity to be applied to each case coming before the said High Court of Judicature at Bombay in the exercise of its ordinary original civil jurisdiction, such law or equity shall be the law or equity which would have been applied by the said High Court to such case if these Letters Patent had not issued.

Clause 15 of the Letters Patent deals with the appeals. It provides for an appeal to the Division Bench against the judgment made by learned Single Judge of this Court in exercise of the original civil jurisdiction. Section 37 of the Arbitration and Conciliation Act is the provision dealing with the appeals against the orders passed by Court under certain provisions of the Arbitration and Conciliation Act. Section 37 of the Arbitration and Conciliation Act reads as under:-

37. Appealable orders- (1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:-

(a) granting or refusing to grant any measure u/s 9;

(b) setting aside or refusing to set aside an arbitral award u/s 34.

(2) An appeal shall also lie to a Court from an order of the arbitral tribunal-

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure u/s 17.

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

Thus, Section 37 provides appeal to the Court to which ordinarily an appeal lies from the order or decree of the Court which passes the order. Therefore, to decide to which Court appeal lies u/s 37, one has necessarily to refer to the enactment which deals with appeal, it may either be Letters Patent or the Civil Procedure Code. It was, therefore, submitted before us that it will not be proper to say that the Arbitration & Conciliation Act generally and specially Section 37 is a Code complete in itself, because even for deciding the Court to which appeal lies, one has to refer to some other enactment than the Arbitration & Conciliation Act. It was contended that the judgment of the Supreme Court in the case of *Fuerst Day Lawson Ltd. and Others Vs. Jindal Exports Ltd. and Others etc. etc.*, "cannot be taken to lay it down as law that an appeal under Clause 15 of the Letters Patent would not lie against an order made in a civil suit, on a motion taken out because of Section 8 of the Arbitration & Conciliation Act. By referring to the observations of the Supreme Court in paragraph 33 in its judgment in "*Fuerst Day Lawson*" referred to above, it was claimed that whatever observation has been made in that paragraph about the maintainability of appeal u/s 37 of the Arbitration & Conciliation Act is on concession. It was further submitted that the Supreme Court in its judgment in "*Fuerst Day Lawson*" in paragraph 29 enumerated the broad principles which can be culled out from various judgments of the Supreme Court. It was stated that one of the exceptions to the well established rule that the limitation on right to appeal in absence of any provision in a Statute can not be readily inferred and the appellate jurisdiction of Superior Court cannot be taken as excluded simply because a subordinate court exercised

special jurisdiction where a Special Act sets out a self contained Code and in that event the applicability of the general law procedure would be impliedly excluded. It was submitted that perusal of the observations of the Supreme Court in paragraphs 72 and 73 in its judgment in "Fuerst Day Lawson" shows that the finding that 1996's Arbitration Act is a self contained Code, is recorded solely based on the finding recorded in P.S. Sathappan (Dead) by Lrs. Vs. Andhra Bank Ltd. and Others, ." wherein it is held that the Arbitration Act, 1940 is a self contained Code. It was pointed out that, however, the Supreme Court in its judgment in the case "Fuerst Day Lawson" did not take into consideration the observations made by the Supreme Court in its judgment in the case "M/s. Sundaram Finance Ltd. Vs. M/s. NEPC India Ltd. AIR 1999 Supreme Court 565", specially the observations in paragraphs 8 & 9 of that judgment. Paragraphs 8 & 9 of that judgment read as under:-

8. Prior to the promulgation of the 1996 Act the law on arbitration in India was substantially contained in three enactments, namely, the Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. In the Statement of Objects and Reasons appended to the Bill it was stated that the 1940 Act, which contained the general law of arbitration, had become outdated. The said objects and reasons noticed that the United Nations Commission on International Trade Law (UNCITRAL) adopted in 1985 the Model Law on International Commercial Arbitration. The General Assembly had recommended that all countries give due consideration to the said Model Law which, alongwith with the rules, was stated to have harmonised concepts on arbitration and conciliation of different legal systems of the world and thus contained provisions which were designed for universal application. The above said Statement of Objects and Reasons in para.3 states that "Though the said UNCITRAL Model Law and Rules are intended to deal with international commercial arbitration and conciliation, they could with appropriate modifications, serve as a model for legislation on domestic arbitration and conciliation. The present Bill seeks to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and to define the law relating to conciliation, taking into account the said UNCITRAL Model law and Rules.

9. The 1996 Act is very different from the Arbitration Act, 1940. The provisions of this Act have, therefore, to be interpreted and construed independently and in fact reference to 1940 Act may actually lead to misconstruction. In other words the provisions of 1996 Act have to be interpreted being uninfluenced by the principles underlying the 1940 Act. In order to get help in construing these provisions it is more relevant to refer to the UNCITRAL Model Law rather than the 1940 Act.

It was pointed out that the Supreme Court in its judgment in the case Firm Ashok Traders and Another etc. Vs. Gurumukh Das Saluja and Others etc., " has observed in paragraph 13 that "A and C Act, 1996 is a long leap in the direction

of alternate dispute resolution systems. It is based on UNCITRAL Model. The decided cases under the preceding Act of 1940 have to be applied with caution for determining the issues arising for decision under the new Act." It was submitted that the Supreme Court, in any case, was not considering in "Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd. " the maintainability of appeal against the order passed in civil suit because of provisions of Section 8 of the Arbitration and Conciliation Act, 1996. Our attention was also invited on behalf of the appellant to the judgment of the Supreme Court in the case of "Shin-Etsu Chemical Company Ltd(2) and Ors. Vs. Vindhya Telelinks Ltd. & Ors. (2009) 14 SCC 16 " wherein the Supreme Court has held that the jurisdiction of the High Court to entertain a revision application against an order passed under the Arbitration and Conciliation Act against which there is no appeal provided, is in tact. It was submitted that if the Arbitration and Conciliation Act is taken to be a Code complete in itself then even the Revision provided by Section 115 of the CPC would not be maintainable. Our attention was also invited to the decision of the Supreme Court in its Judgment in the case I.T.I. Ltd. Vs. Siemens Public Communications Network Ltd., " wherein again it is held that an order passed under the Arbitration and Conciliation Act against which no appeal is provided by the Arbitration and Conciliation Act, power of the High Court under the C.P.C. to entertain Revision is not taken away. Our attention was also invited to the Judgment of the Supreme Court in the case Nirma Ltd. Vs. Lurgi Lentjes Energietechnik GMBH and Another, " wherein the same proposition has been laid down. Our attention was also invited to the observations of the Supreme Court in paragraph 15 in its judgment in the case Bhatia International Vs. Bulk Trading S.A. and Another, ". It was pointed out that application of the CPC to the proceedings before the Arbitrator is ruled out by the provisions of Section 19 of the Arbitration & Conciliation Act. However, to the proceedings in Court either u/s 9 or u/s 34 or appeal u/s 37 of the Arbitration & Conciliation Act, the CPC and the Rules framed by the Court will continue to apply. In so far as the judgment of the Division Bench of this Court in the case "International Technology Kirchner Italia Branch, S.P.A. Vs. Esteem Projects Pvt.Ltd. delivered on 19.3.2009 is concerned, it is submitted that that judgment is entirely based on the judgment of "Punjab and Haryana High Court in the case of "Hind Samachar Ltd., Jalandhar - Smt. Sudarshan Chopra & Ors. Vs. Vijay Kumar Chopra & Ors. (2002) 4 CLJ 1 ". It is submitted that it does not take into consideration the provisions of Letters Patent. It also does not take into consideration that the order is passed in a civil suit and the order has effect of either terminating the civil suit or declining to terminate the civil suit. In so far as the judgment of Division Bench in the case of "Jet Airways (India) Ltd. Vs. Sahara Airlines Ltd. 2011 113 (6) Bom.L.R. " is concerned, it was submitted that that judgment does not consider the question "whether an appeal under clause 15 of the Letters Patent would lie against an order passed in a civil suit because of the provisions of Section 8 of the Arbitration and Conciliation Act?". The question considered in that judgment is "whether against an order passed in execution proceedings by a Single Judge taken up for executing an Award made under the Arbitration Act, an appeal

under Clause 15 of the Letters Patent would lie?." It is submitted that the reasons given by the Division Bench for holding that an appeal does not lie, are entirely based on the judgment of the Supreme Court in the case "Fuerst Day Lawson Ltd."

5. The question to be considered is "whether against an order passed by the learned Single Judge of this Court in a civil suit terminating that civil suit or refusing to terminate the civil suit because of the provisions of Section 8 of the Arbitration and Conciliation Act, an appeal under Clause 15 of the Letters Patent would lie or it can be said that such an appeal is barred by the provisions of Section 37 of the Arbitration and Conciliation Act. Perusal of Section 37 which we have quoted above shows that that provision provides for an appeal against final order passed in the proceedings instituted under Sections 9 and 34 of the Arbitration and Conciliation Act. Subsection 3 of Section 37 lays down that no second appeal shall lie from an order passed in appeal. In so far as section 8 is concerned, perusal of that provision shows that the proceedings because of the provisions of section 8 are not to be instituted necessarily in the Court, they are to be instituted in a pending suit before a judicial authority. That judicial authority may be a Court within the meaning of Section 2(e) of the Arbitration and Conciliation Act or may not be a Court within the meaning of Section 2(e) of the Arbitration & Conciliation Act. Perusal of the definition of term "Court" shows that the Court has been defined to mean a principal civil Court of original jurisdiction in a district and includes the High Court which has original civil jurisdiction. Therefore, in a district, the Court of District Judge would be the Court of original civil Jurisdiction and where the High Court has original civil jurisdiction, the High Court will be the Court of original civil jurisdiction. Perusal of the definition of term "Court" further shows that any court which is inferior to the principal civil Court or any Small Causes Court is not a court within the meaning of Section 2(e). A civil suit where an application u/s 8 of the Arbitration and Conciliation Act can be made, therefore, may not be the Court within the meaning of Section 2(e). For example, if a suit is pending in a small causes court and in that suit if because there is an arbitration clause between the parties in relation to the subject matter of that suit, an application u/s 8 is made and an order passed by such a small causes court on that application, terminating the suit, will not be the order passed by the Court. Therefore, such an eventuality would not at all be covered by the provisions of Section 37 of the Arbitration and Conciliation Act because section 37 contemplates that the authority which is passing the order should be "Court" as also the authority which is hearing the appeal should also be "Court", because it says "an appeal shall lie to the Court authorised by law to hear appeals from original decrees of the Court passing the orders. Therefore, if the order u/s 8 is not made by the Court, there is no question of section 37 being attracted. Perusal of provisions of section 37 in the scheme of Part I shows that it deals with only those orders which are passed by the Court. Section 9 confers power to make interim orders only on Court. Section 34 confers power, to entertain an application against an award, only on a Court.

Therefore, at least a general statement cannot be made that because of Section 37, appeal against all orders passed u/s 8 is barred. Minimum that can be said is that where an order u/s 8 is not made by the Court, section 37 will not be attracted. For example, if in a suit in the Court of Civil Judge, Junior Division an order terminating that suit is passed because of section 8 by the Civil Judge, Jr. Division, that order would be appealable before the District Judge and the appeal would not be barred by Section 37 because the Court of Civil Judge, Jr. Division is not "Court" within the meaning of section 2(e). Thus, appeal against order passed because of the provisions of Section 8 in some civil suits by some civil Courts which are not "Court" within the meaning of section 2(e) would be maintainable while appeals against the orders passed by those Courts which are "Court" within the meaning of Section 2(e) because of the provisions of Section 8 in the civil suit would not be maintainable. It appears from section 37 that it may not be the intention of the legislature to bar appeals against the orders passed in the proceedings which are not instituted under the Arbitration and Conciliation Act. As observed above, the proceedings u/s 8 are not independently instituted under the Arbitration and Conciliation Act, an application u/s 8 is necessarily to be made in a pending civil suit, and therefore, an order made on that application would be the interim or final order made in the civil suits. In case the application u/s 8 is rejected it would be an interim order or it may be the final order made in civil suit if the application is granted. The result of the order may be to terminate the civil suit. From the judgments that have been pointed out to us, it is only the judgment of the Division Bench of this Court in the case of "International Thermal Technology Kircher Italia, Branch, S.P.A. Vs. Esteem Projects Pvt. Ltd. passed on 19.3.2009 in Appeal no. 485 of 2005" which directly deals with the maintainability of an appeal against an order passed u/s 8. Perusal of that judgment, however, shows that it does not take into consideration that an application u/s 8 is made in a civil suit and may have the effect of terminating the civil suit itself. The Division Bench relied on the judgment of Division Bench of this Court in the case of State of Maharashtra and Another Vs. Ramdas Construction Co. and Another, . Perusal of that judgment shows that that judgment relying on the provisions of section 37 holds that an order made by the learned Single Judge refusing to condone the delay in filing an application u/s 34 is not appealable. That judgment does not take into consideration the provisions of the Letters Patent. It merely holds that because Section 37 does not contemplates an appeal being filed against an order rejecting an application for condonation of delay in filing an application u/s 34, the appeal is not maintainable. It does not examine the question "whether such an order would be appealable under the Letters Patent because the learned Single Judge in considering the application for condonation of delay was exercising original Civil jurisdiction". In our opinion, therefore, the question of maintainability of an appeal against an order passed in a Civil suit needs to be reexamined. Considerable emphasis was placed by the learned Counsel appearing for respondents on the judgment of the Division Bench in the case of "Jet Airways (India) Ltd." referred to above. In that judgment, the Divisions Bench was

considering the question of maintainability of an appeal against an order passed by a Single Judge in the proceedings instituted for execution of an Award passed under the Arbitration Act which has become final. The Division Bench has concluded that any order passed in the proceedings filed for execution of an Award made under the Arbitration Act are to be treated as orders passed u/s 36 of the Arbitration Act and in view of the provisions of Section 37 no appeal lies against any order passed u/s 36. For recording this conclusion, the Division Bench has entirely relied on the judgment of the Supreme Court in the case "Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd. " referred to above. We find from the judgment of the Division Bench in the case "Jet Airways (India) Ltd." that the Division Bench has also not taken into consideration the possibility of the execution proceedings being filed before the judicial authority which is not a court within the meaning of Section 2(e) of the Arbitration Act, and therefore, not at all attracting the provisions of Section 37. Under the Civil Procedure Code, an application for execution of a decree can be filed before the Trial Court which can transfer it to the appropriate Court where the property against which the decree is to be executed is situated. Now the Court to which the execution proceedings are transferred may not be the principal civil court of original jurisdiction and if such a court passes an order, the provisions of Section 37 may not be attracted at all. We also find considerable force in the submissions made on behalf of the petitioner that the observations of the Supreme Court in the judgment in the case of "M/s.Sundaram Finance Ltd. Vs. M/s. NEPC India Ltd." referred to above, have also to be seen before basing any conclusion in relation to the provisions of 1996's Act on the conclusion which are recorded considering the provisions of 1940's Act.

6. Taking overall view of the matter, therefore, in our opinion, considering that the question frequently arises before this Court and non maintainability of an appeal against the order which is passed by the learned Single Judge in a civil suit results in prejudice to the interest of the litigants, it would be appropriate if the question is considered by a larger bench. In our opinion, therefore, the following question can be referred for consideration to a larger bench:-

Whether an appeal under the provisions of clause 15 of the Letters Patent, against an order passed by the learned Single Judge of this Court in a civil suit in an application filed in that civil suit because of the provisions of section 8 of the Arbitration and Conciliation Act, is maintainable or not?

The office is, therefore, directed to place the papers before the Hon"ble the Chief Justice for appropriate orders.