

(2021) 03 DEL CK 0128

In the Delhi High Court

Case No : First Appeal From Order (COMM) No. 64 Of 2021

Satish Seth (Since Deceased Through His Lrs.) & Ors

APPELLANT

Vs

Indu Kapoor & Ors

RESPONDENT

Date of Decision : 08-03-2021

Acts Referred:

Constitution Of India, 1950 — Article 227

Code Of Civil Procedure, 1908 — Order 43, Order 43 Rule 1, Order 7 Rule 11

Commercial Courts Act, 2015 — Section 13

Citation : (2021) 03 DEL CK 0128

Hon'ble Judges : Rajiv Sahai Endlaw, J; Amit Bansal, J

Bench : Division Bench

Advocate : Shahid Ali, Rohan Ganpathy

Final Decision : Dismissed

Judgement

CM No.9416/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.

2. The application is disposed of.

FAO (COMM) No.64/2021

3. This proceeding, given the nomenclature of 'FAO(COMM) ' impugns the order dated 16th January, 2021 of the Additional District Judge-03 (Central), Tis Hazari Courts, Delhi in CS No.6369/2018, of rejecting the objection of the appellants/defendants to the admission of the suit, on the ground of being barred by limitation.

4. The appeal has been preferred, invoking Section 13 of the Commercial Courts Act, 2015.

5. We have enquired from the counsel for the appellants, whether not under Section 13 supra, appeals can be entertained only from orders of the Commercial Court and whether not such appeals can be only those which lie under Order

XLIII Rule 1 of the Code of Civil Procedure, 1908 (CPC). Under Order XLIII Rule 1 of the CPC, rejection of a plea under Order VII Rule 11 of the CPC, is not appealable.

6. The counsel for the appellants has referred to Arun Dev Upadhyaya Vs. Integrated Sales Service Limited (2016) 9 SCC 524 to contend that as per the said dicta, an appeal under Section 13 of the Act lies also against the orders which have the character of a judgment i.e. which have attained finality.

7. We have perused the aforesaid judgment and neither find the same to be applicable nor find the same to be holding what the counsel for the appellant contends. Supreme Court, in BGS SGS Soma JV Vs. NHPC Ltd. (2020) 4 SCC 234 has held that orders that are not specifically enumerated under Order XLIII of the CPC would not be appealable before the commercial division under Section 13 of the Commercial Courts Act, 2015.

8. Be that as it may, under Section 13 of the Act, we are authorised to hear only appeals against the orders of the Commercial Court. Else, against an order of rejection of a plea under Order VII Rule 11 of the CPC in an ordinary (non-commercial suit), the remedy would be of Article 227 of the Constitution of India.

9. The counsel for the appellants states that the appellants had earlier filed CS(COMM) No.515/2016 in this Court but plaint therein was returned to the appellants for filing in the Court of appropriate pecuniary jurisdiction and whereafter the suit from which this appeal arises was instituted. Attention is invited to the order dated 11th May, 2016 in CS(COMM) No.515/2016, of return of the plaint, for filing in a Commercial Court. It is thus contended that the suit from which this appeal arises, is a commercial suit.

10. We are unable to agree. The fact of the matter is, that the suit is not pending before the Commercial Court but before an Ordinary Court, and this appeal would not be maintainable.

11. We have during the hearing also telephonically confirmed from the worthy Registrar General of this Court, that the concerned Court is not a Commercial Court.

12. The appeal is thus rejected as not maintainable. The appellants of course would have remedies in accordance with law.