IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

HON'BLE SRI JUSTICE K. LAKSHMAN
AND
HON'BLE JUSTICE B.R. MADHUSUDHAN RAO

ORIGINAL SIDE APPEAL Nos. 2 OF 2025 AND 1 OF 2026

Between in Both the appeals:

M/s. Nagarjuna Fertilizers and Chemicals Ltd. ….Appellant

and

M/s. Tecnimont S.P.A. and others ..Respondents

DATE OF COMMON ORDER PASSED**:** **03.08.2026**
SUBMITTED FOR APPROVAL.

THE HON'BLE SRI JUSTICE K.LAKSHMAN

1 Whether Reporters of Local newspapers may be allowed to see the Judgment? Yes/No

Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3 Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

JUSTICE K.LAKSHMAN

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% Delivered on: 03-08-2026

Between in Both the appeals:

#M/s. Nagarjuna Fertilizers and Chemicals Ltd. ….Appellant

and

$ M/s. Tecnimont S.P.A. and others ..Respondents

! For Appellant Mr. Sunil B.Ganu, learned Senior counsel representing Mr. K.S.Vishwajit, and Mr. Jai Kishan Solanki, learned counsel for the appellant.

^ For Respondents Mr. Duvva Pavan Kumar, learned counsel representing M/s.MZM Legal Hyderabad LLP,

<Gist :

> Head Note

1. (2011) 8 SCC 333
2. (2017) 14 SCC 225
3. (2018) 14 SCC 715
4. (2011) 113 (6) Bom. LR 3835
5. Judgment dated 31.12.2018 in ICOMA Appeal No. 1 of 2018 passed by the High Court of Judicature at Hyderabad
6. Judgment dated 01.05.2025 in W.A. No. 520 of 2025 passed by the High Court for the State of Telangana
7. 2020 SCC OnLine Del. 477
8. (2023) 1 SCC 634

9. (1981) 4 SCC 8
10. (1988) 2 SCC 1
11. (2003) 10 SCC 361
12. (2004) 11 SCC 672
13. 2023 SCC OnLine Del 511
14. 2025 SCC OnLine Del 9140
15. 2022 SCC OnLine Bom 3152
16. (1989) 1 SCC 101
17. (1990) 1 SCC 193
18. (2011) 11 SCC 198
19. (2002) 4 SCC 388
20. (2021) 16 SCC 536
21. 2022 SCC OnLine Kar 1631
22. 2024 SCC OnLine AP 4121

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HON'BLE SRI JUSTICE K. LAKSHMAN
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ORIGINAL SIDE APPEAL Nos. 2 OF 2025 AND 1 OF 2026
Date:03.08.2026

Between:

M/s. Nagarjuna Fertilizers and Chemicals Limited
…Appellant

and

M/s. Tecnimont S.P.A. and others ...Respondents

ORIGINAL SIDE APPEAL No. 1 of 2026

Between:
M/s. Nagarjuna Fertilizers and Chemicals Limited
…Appellant

And

M/s. Tecnimont SPA and others …Respondents

COMMON JUDGMENT
(Per Hon'ble Sri Justice K. Lakshman)

Heard Mr. Sunil B.Ganu, learned Senior counsel representing Mr. K.S.Vishwajit and Mr. Jai Kishan Solanki, learned counsel for the appellant and Mr. Duvva Pavan Kumar, learned counsel representing M/s.MZM Legal Hyderabad LLP, appearing on behalf of respondents, in both the appeals.

2-A.**OSA No. 2 of 2025** has been filed by the Appellant challenging the order dated 27.06.2025 passed by the learned Single Judge in EXEP No. 1 of 2018. *Vide* the said order, the learned Single Judge held that the execution petition filed by Respondent No. 1 herein was maintainable.

2-B. **OSA No. 1 of 2026** has been file by the Appellant challenging the order dated 10.12.2025 passed by the learned Single Judge in EXEP No. 1 of 2018. *Vide* the said order, the learned Single Judge directed provisional attachment of all the bank accounts of the Appellant.

3. Since both the impugned orders were passed against the Appellant and arose out of EXEP No. 1 of 2018, they were heard together and are being disposed of by this common judgment.

4. We have heard Mr. Sunil B. Ganu, learned Senior Counsel representing Mr. K.S. Vishwajit and Mr. Jai Kishan Solanki, learned Counsel for the Appellant in OSA No. 2 of 2025 and OSA No. 1 of 2026, respectively. Also, heard Mr. Duvva Pavan Kumar, representing M/s MZM Legal Hyderabad LLP, learned counsel for Respondent No. 1.

5. The Appellant herein is a company incorporated in India. Respondent No. 1 is a company incorporated in Italy. Both the companies entered into two agreements, dated 15.12.2013, titled "Early Works of Services" for providing onshore and offshore services in relation to Fertilizer Project-3 at Kakinada, Andhra Pradesh. Disputes arose between the parties on the issue of payments. As such, Respondent No. 1 initiated arbitration proceedings against the Appellant.

6. Clause 9 (g) of the agreement provides that the governing law is the Indian law and the Courts at Hyderabad shall have exclusive jurisdiction. Likewise, Clause 9 (h) provided that the resolution of disputes shall be through arbitration. The said clauses are extracted below:

> "9(g)…….. This Work Order shall be governed by and be construed in accordance with the laws of India. The parties subject themselves to the exclusive jurisdiction of the Courts at Hyderabad, Andhra Pradesh to the exclusion of others."
>
> "9 (h) Disputes and Arbitration
>
> 1. The Parties agree to seek to resolve any dispute arising between them by mutual

consultation, to be commenced by the delivery of a written notice by one Party to the other that a Dispute has arisen.

2. Any disputes or differences arising out of or relating to this Work Order that cannot be settled amicably by the Parties be referred to final determination by arbitration in accordance with this clause.

3. The arbitration shall be conducted according to the LCIA Rules. The seat of the arbitration shalt be New Delhi or such other place as may be mutually agreed by the Parties in India. The language of the arbitration shall be English. In case of conflict between the LCIA Rules and the provisions of this clause, the provisions hereof shall prevail. The provisions of the Arbitration and Conciliation Act, 1996 shall apply to such arbitration.

4. The arbitral tribunal shall consist of three arbitrators. Each Party shall nominate one arbitrator. The two arbitrators so nominated shall, in turn, nominate the third arbitrator who shall serve as the chairman of the arbitral tribunal. If a Party fails to nominate its arbitrator within a period of twenty (20) days after receiving notice of the arbitration, or if the two arbitrators appointed cannot agree on the third arbitrator within a period of twenty (20) days after appointment of the second arbitrator, then such arbitrator shall be appointed in accordance with the Arbitration and Conciliation Act, 1996.

5. Arbitrators nominated or appointed by NFCL, the Contractor, or the LCIA, as the case may be, shall be persons with experience

> of the interpretation of contracts. No arbitrator shall be a present or former employee or agent of, or consultant or counsel to, any Party or any affiliate thereof:
> 6. The Parties and the arbitral tribunal shall keep confidential all matters relating to arbitration proceedings commenced including any award made by the arbitral tribunal and any related court proceedings.
> 7. The Parties shall bear respective cost for Arbitration pending the Arbitral award.
> 8. The arbitral tribunal shall have power to direct a party to pay some or all of the other Party's costs, and to direct which Party (or in which proportions the Parties) should pay the arbitrators fees and expenses."

7. It is apt to note that as Respondent No. 1 is a foreign party, i.e., a company incorporated in Italy, the arbitration proceedings between the parties constituted an international commercial arbitration under Section 2(1)(f) of the Arbitration & Conciliation Act, 1996 [hereinafter "the Act, 1996"]. Further, as the seat of arbitration was New Delhi, India, Part I of the Act, 1996, applies to the arbitral proceedings.

8. The Arbitral Tribunal, constituted under the aegis of the LCIA, passed an award dated 21.10.2017 in favour of Respondent No. 1 herein. *Vide* the said award, Respondent No. 1 was awarded:

(i) Principal amount of USD 877,500/- along with interest up to the date of award – USD 577,400/-; (ii) Principal amount of EUR 455, 000/- along with interest up to the date of award – EUR 299,000/-; (iii) further interest @12% per annum from the date of award till payment; and (iv) costs of £ 26332.90/- .

9. Aggrieved by the award dated 21.10.2017, the Appellant herein filed C.O.P. No. 15 of 2018 under Section 34 of the Act, 1996, before the Commercial Court, seeking to set aside the same. The learned Commercial Court *vide* order dated 14.06.2018 dismissed C.O.P. No. 15 of 2018 as not maintainable. It held that, as the arbitral proceedings between the parties constituted international commercial arbitration, an application under Section 34 of the Act, 1996, lies before the High Court.

10. Thereafter, the Appellant filed ICOMAOA No. 3 of 2018, under Section 34 of the Act, 1996, before this Court. Along with the said application filed under Section 34 of the Act, 1996, the Appellant had filed I.A. No. 1 of 2018, i.e., an application under Section 36(2) of the Act, 1996, seeking stay of the operation of the award dated 21.10.2017. *Vide* order dated 05.10.2018, the

learned Single Judge had stayed the operation of the award on a condition to deposit 75% of the awarded amount within a period 06 weeks from the date of the order. Instead of complying with the same, the Appellant had challenged the said order before a Division Bench of this Court. *Vide* order dated 16.11.2018, the stay order dated 05.10.2018 was modified. The condition to deposit 75% of the awarded amount was reduced to 50% to be deposited in two instalments of 25% each. The first instalment was to be paid within 06 weeks from the date of the order, i.e., on or before 28.12.2018, and the second instalment in the next 06 weeks. The Appellant failed to deposit the awarded amount in terms of the Division Bench's order. Therefore, the appeal filed by the Appellant was dismissed. It is pertinent to note that, as the awarded amount was not deposited, no stay operated on the award dated 21.10.2017.

11. While the proceedings before the learned Commercial Court were pending, Respondent No. 1 (the award-holder) had already filed an application under Section 36(1) of the Act, 1996, seeking enforcement of the award dated 21.10.2017. The said

enforcement application was filed before this Court as EXEP No. 1 of 2018. Along with the said application, Respondent No. 1 filed I.A. No. 1 of 2018 seeking attachment of the properties of the Appellant. *Vide* order dated 08.11.2024, the learned Single Judge, noting that no stay operated on the award dated 21.10.2017, directed the Appellant to file an affidavit disclosing its moveable and immovable assets. Instead of complying with the said order, the Appellant filed I.A. No. 1 of 2024 seeking to recall the order dated 08.11.2024. The learned Single Judge *vide* order dated 12.12.2024 dismissed I.A. No. 1 of 2024.

12. Against the said orders dated 12.12.2024 and 08.11.2024, the Appellant filed OSA No. 3 of 2024 and OSA No. 4 of 2024, respectively, before a Division Bench of this Court. *Vide* common order dated 18.12.2024, recording the consent of learned counsel appearing for the parties, the Division Bench disposed of OSA Nos. 3 and 4 of 2024, directing the learned Single Judge to first decide the issue of maintainability of EXEP No. 1 of 2018. Likewise, the learned Single Judge was also directed to rehear the parties on I.A. No. 1 of 2024 in EXEP No. 1 of 2018.

13. On remand, the learned Single Judge *vide* the impugned order dated 27.06.2025 held that the execution petition bearing EXEP No. 1 of 2018, filed by Respondent No. 1, was maintainable. The learned Single Judge held that under Section 2(1)(e) of the Act, 1996 r/w Section 10(1) of the Commercial Courts Act, 2015 [hereinafter "the Act, 2015"], an enforcement application/ execution petition in relation to the final award passed in an international commercial arbitration is the jurisdictional High Court.

14. Aggrieved by the finding that EXEP No. 1 of 2018 was maintainable, the Appellant has filed the present Original Side Appeals. It is pertinent to note that OSA No. 2 of 2025 has been filed under Clause 15 of the Letters Patent.

15. While OSA No. 2 of 2025 was pending, the learned Single Judge had passed the impugned order dated 10.12.2025 directing provisional attachment of the bank accounts of the Appellant. Aggrieved by the same, the Appellant filed OSA No. 1 of 2026.

16. Respondent No. 1, *vide* I.A. No. 4 of 2025, raised a preliminary objection regarding the maintainability of OSA No. 2 of 2025. The issue of maintainability was also raised in relation to OSA No. 1 of 2026. Without delving into the merits raised in the present appeals against the correctness of the impugned orders, this Court deems it appropriate to decide the issue of maintainability of the present Original Side Appeals, filed under Clause 15 of the Letters Patent.

17. According to Respondent No. 1, a Letters Patent Appeal is not maintainable against the impugned orders. It was contended that the execution proceedings (EXEP No. 1 of 2018) are pending before the Commercial Division of this Court. According to Respondent No. 1, the learned Single Judge passed the impugned orders while exercising jurisdiction under the Act, 2015. As per the Proviso to Section 13(1A) of the Act, 2015, an appeal to the Commercial Appellate Division of the High Court against any order passed by the Commercial Division of the High Court lies only if such order is appealable under Order XLIII of the Code of Civil Procedure [hereinafter "the CPC"] or if such order is

appealable under Section 37 of the Act, 1996. Further, Section 13(2) of the Act, 1996, bars a Letters Patent Appeal against any order passed by the Commercial Division otherwise than in accordance with the Act, 2015. Therefore, as the impugned orders are neither appealable under Order XLIII nor under Section 37 of the Act, 1996, the present Original Side Appeals, under Clause 15 of the Letters Patent of this Court, are also not maintainable.

18. Respondent No. 1 also argued that the Act, 1996, and the Act, 2015, are self-contained codes which provide the remedy of appeal and the manner in which the appeal is to be presented. A Letters Patent Appeal, against an order passed under such self-contained codes, is not maintainable.

19. In support of its arguments on maintainability, Respondent No. 1 relied upon the following judgments:

i. **Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.**[1]

ii. **Union of India v. Simplex Infrastructures**[2]

iii. **Kandla Export Corporation v. OCI Corporation**[3]

[1] (2011) 8 SCC 333
[2] (2017) 14 SCC 225
[3] (2018) 14 SCC 715

iv. **Jet Airways (India) Ltd. v. Sahara Airlines Ltd.**[4]

v. **Nagarjuna Fertilizers & Chemicals Ltd. v. Tecnimont SpA & Ors.**[5]

vi. **Residents Welfare Association v. The State of Telangana & Ors.**[6].

20. The Appellant, on the other hand, contended that the present Original Side Appeals are maintainable. It is pertinent to note that, the Appellant, in its Counter Affidavit filed in reply to I.A. No. 4 of 2025 in OSA No. 2 of 2025 and its Written Submissions, does not dispute the applicability of the Act, 2015. According to the Appellant, Section 13(1A) of the Act, 2015, cannot be read as limiting the right of appeal. Despite the bar under Section 13(2) of the Act, 2015, a Letters Patent Appeal, according to the Appellant, is maintainable as the impugned orders qualify as a “judgment”.

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[4] (2011) 113 (6) Bom. LR 3835

[5] Judgment dated 31.12.2018 in ICOMA Appeal No. 1 of 2018 passed by the High Court of Judicature at Hyderabad

[6] Judgment dated 01.05.2025 in W.A. No. 520 of 2025 passed by the High Court for the State of Telangana

21. In support of its contentions on maintainability, the Appellant relied upon the following judgments:

i. **D & H India Ltd. v. Superon Schweisstechnik India Ltd.**[7]

ii. **Shyam Sel and Power Ltd. v. Shyam Steel Industries Ltd.**[8]; and

iii. **Shah Babulal Khimji v. Jayaben D. Kania**[9].

22. We have heard learned Senior Counsel for the Appellant and learned counsel appearing for the respondents extensively and gave thoughtful consideration of the same including the principle laid down in the aforesaid judgments.

23. After examining the law and the contentions raised by the parties, this Court holds that the present Original Side Appeals filed under Clause 15 of the Letters Patent are not maintainable. The arguments advanced on behalf of the Appellant are misconceived.

24. It is undisputed that the execution proceedings before the learned Single Judge were initiated under the Act, 1996. The Act,

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[7] 2020 SCC OnLine Del. 477
[8] (2023) 1 SCC 634
[9] (1981) 4 SCC 8

1996, is a self-contained code which governs all matters pertaining to arbitration, including the right to file appeals. It is trite law that a self-contained code is a special enactment. Such special enactment prevails over general enactments. The Act, 1996, is a special enactment which prevails over the general law of the Letters Patent. Therefore, if right to appeal is not provided under the Act, 1996, no appeal can be filed invoking the Clause 15 of the Letters Patent.

25. In this regard, it is apposite to refer to the Hon’ble Supreme Court’s decision in **Fuerst Day Lawson Ltd.**(supra). The question before the Court was whether an order which is not appealable under the Act, 1996, would nonetheless be appealable under the Letters Patent. Noting that the Act, 1996, is a self-contained code which prevails over the provisions of the Letters Patent, the Court held that no appeal under the Letters Patent would lie against an order passed under the Act, 1996. The relevant paragraphs are extracted below:

> “Leave granted in SLP (C) No. 31068 of 2009 and SLP (C) No. 4648 of 2010. The common question that arises for consideration by the Court in this batch of cases is

whether an order, though not appealable under Section 50 of the Arbitration and Conciliation Act, 1996 (hereinafter “the 1996 Act”), would nevertheless be subject to appeal under the relevant provision of the Letters Patent of the High Court. In other words even though the Arbitration Act does not envisage or permit an appeal from the order, the party aggrieved by it can still have his way, bypassing the Act and taking recourse to another jurisdiction.

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3. A correct answer to both the questions would depend upon how the 1996 Act is to be viewed. Do the provisions of the 1996 Act constitute a complete code for matters arising out of an arbitration proceeding, the making of the award and the enforcement of the award? If the answer to the question is in the affirmative then, obviously, all other jurisdictions, including the Letters Patent jurisdiction of the High Court would stand excluded but in case the answer is in the negative then, of course, the contention of Mr Sundaram must be accepted.

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36. The decisions noticed so far lay down certain broad principles that may be stated as follows:

(*i*) Normally, once an appeal reaches the High Court it has to be determined according to the rules of practice and procedure of the High Court and in accordance with the provisions of the charter under which the High Court is constituted and which confers on it power in respect to the method and manner of exercising that power.

(*ii*) When a statute merely directs that an appeal shall lie to a court already established then that appeal must be regulated by the practice and procedure of that court.

(*iii*) The High Court derives its intra-court appeal jurisdiction under the Charter by which it was established and its powers under the Letters Patent were recognised and saved by Section 108 of the Government of India Act, 1915, Section 223 of the Government of India Act, 1935 and finally, by Article 225 of the Constitution of India. The High Court, therefore, cannot be divested of its Letters Patent jurisdiction unless provided for expressly or by necessary intendment by some special statute.

(*iv*) If the pronouncement of the Single Judge qualifies as a "judgment", in the absence of any bar created by a statute either expressly or by necessary implication, it would be subject to appeal under the relevant clause of the Letters Patent of the High Court.

(*v*) Since Section 104(1) CPC specifically saves the letters patent appeal; it could only be excluded by an express mention in Section 104(2). In the absence of any express mention in Section 104(2), the maintainability of a letters patent appeal is saved by virtue of Section 104(1).

(*vi*) Limitation of a right of appeal in absence of any provision in a statute cannot be readily inferred. The appellate jurisdiction of a superior court cannot be taken as excluded simply because a subordinate court exercises its special jurisdiction.

(*vii*) The exception to the aforementioned rule is where the special Act sets out a self-contained code and in that event the applicability of the general law procedure would be impliedly excluded. The express provision need not refer to or use the words "letters patent" but if on a reading of the provision it is clear that all further appeals are barred then even a letters patent appeal would be barred.

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38. In *Mohindra Supply Co.* [AIR 1962 SC 256 : (1962) 3 SCR 497] , a Bench of four Judges of this Court held that a letters patent appeal against an order passed by a Single Judge of the High Court on an appeal under Section 39(1) of the 1940 Act was barred in terms of sub-section (2) of Section 39. This decision is based on the bar against further appeals as contained in sub-section (2) of Section 39 of the 1940 Act and, therefore, it may not have a direct bearing on the question presently under consideration.

39. More to the point are two later decisions. In *Gourangalal Chatterjee* [(1993) 3 SCC 1] , a Bench of two Judges of this Court held that an order, against which no appeal would lie under Section 39(1) of the 1940 Act, could not be taken in appeal before the Division Bench of the High Court under its Letters Patent. The same view was reaffirmed by a Bench of three Judges of this Court in *Aradhana Trading Co.* [(2002) 4 SCC 447]

40. In regard to these two decisions, Mr Sundaram took the position that both *Gourangalal Chatterjee*[(1993) 3 SCC 1] and *Aradhana Trading Co.* [(2002) 4 SCC 447] were rendered on Section 39 of the 1940 Act, the equivalent of which is Section 37 of the 1996 Act. In view of the two decisions, he conceded that in the event an order was not appealable under Section 37(1) of the 1996 Act, it would not be subject to appeal under the Letters Patent of the High Court.

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89. It is, thus, to be seen that Arbitration Act, 1940, from its inception and right through to 2004 (in *P.S. Sathappan* [(2004) 11 SCC 672]) was held to be a self-contained code. Now, if the Arbitration Act, 1940 was held to be a self-contained code, on matters pertaining to arbitration, the Arbitration and Conciliation Act, 1996, which consolidates, amends and designs the law relating to arbitration to bring it, as much as possible, in harmony with the Uncitral Model must be held only to be more so. Once it is held that the Arbitration Act is a self-

contained code and exhaustive, then it must also be held, using the lucid expression of Tulzapurkar, J., that it carries with it "a negative import that only such acts as are mentioned in the Act are permissible to be done and acts or things not mentioned therein are not permissible to be done". In other words, a letters patent appeal would be excluded by the application of one of the general principles that where the special Act sets out a self-contained code the applicability of the general law procedure would be impliedly excluded.

90. We, thus, arrive at the conclusion regarding the exclusion of a letters patent appeal in two different ways; one, so to say, on a micro basis by examining the scheme devised by Sections 49 and 50 of the 1996 Act and the radical change that it brings about in the earlier provision of appeal under Section 6 of the 1961 Act and the other on a macro basis by taking into account the nature and character of the 1996 Act as a self-contained and exhaustive code in itself.

91. In light of the discussions made above, it must be held that no letters patent appeal will lie against an order which is not appealable under Section 50 of the Arbitration and Conciliation Act, 1996."

26. It is also noteworthy that the jurisdiction conferred on the High Courts under Section 2(1)(e) of the Act, 1996, in relation

to international commercial arbitration is special jurisdiction. This special jurisdiction is also conferred under Section 10(1) of the Act, 2015, which states that all matters pertaining to an international commercial arbitration shall be heard by the Commercial Division of the High Court. No Letters Patent Appeal would lie against an order passed in exercise of such special jurisdiction, unless a right to appeal under the Letters Patent is expressly provided.

27. In **Upadhyaya Hargovind Devshanker v. Dhirendrasinh Virbhadrasinhji Solanki**[10], the issue before the Hon’ble Supreme Court was whether a Letters Patent Appeal would lie against an order passed by the High Court under the Representation of Peoples Act, 1951. The Court held that High Courts exercise special jurisdiction while dealing with election petitions. Therefore, no Letters Patent Appeal would lie. The relevant paragraph is extracted below:

> **17.** The relevant part of clause 15 of the Letters Patent which is referred to above provides for an appeal against a judgment passed by a Single Judge of a High Court to

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[10] (1988) 2 SCC 1

the same High Court and the scope of the said appellate power has been explained by this Court in *Shah Babulal Khimji* v. *Jayaben D. Kania* [(1981) 4 SCC 8 : AIR 1981 SC 1786 : (1982) 1 SCR 187] An appeal no doubt lies under that clause from an order of a Single Judge of the High Court exercising original jurisdiction to the High Court itself irrespective of the fact that the judgment is preliminary or final or that it is one passed at an interlocutory stage provided it satisfies the conditions set out in the above **decision but the said provision cannot be extended to an election petition filed under the Act. Conferment of the power to try an election petition filed under the Act does not amount to enlargement of the existing jurisdiction of the High Court. The jurisdiction exercisable by the Single Judge under the Act is a special jurisdiction conferred on the High Court by virtue of Article 329(*b*) of the Constitution. Having regard to the history of the legislation and the limited nature of the appeal expressly provided in Section 116-A of the Act it should be held that any other right of appeal (excluding that under the Constitution) is taken away by necessary implication. We, therefore, find it difficult to subscribe to the view that when once the jurisdiction to try an election petition is conferred on the High Court all other powers incidental to the ordinary original jurisdiction exercised by a Single Judge to a High Court would become applicable to**

<u>an election petition filed under the Act.</u> It is no doubt true that in *Dr Chotalal Jivabhal Palel case* [12 Guj LR 850] the Division Bench to the High Court of Gujarat applied to the rule laid down in *National Telephone Company Ltd.*v. *Postmaster General* [1913 AC 546, 552] , namely : "When a question is stated to be referred to an established court *without more*, it, ... imports that the ordinary incidents of the procedure of that court are to attach, and also that any general right of appeal from its decisions likewise attaches." (emphasis added) to an election petition filed under the Act which the High Court could try in exercise of the special jurisdiction conferred on it by the Act and held that except an order under Section 98 or Section 99 of the Act which was made expressly appealable under Section 116-A of the Act to this Court all other orders passed by the Judge trying an election petition would be appealable to the High Court under clause 15 of the Letters Patent. The principle applied by the High Court is not an unqualified case. That rule itself suggests that even where a court is asked to hear a case, it is quite possible that the nature of the jurisdiction may be such that all the incidents of procedure or any general right of appeal from its decision may not be attracted. Perhaps the Division Bench would not have reached the said conclusion if it had considered the effect of Article 329(*b*) of the Constitution which authorised the creation of an authority for trying disputes arising out of elections to the Houses of Parliament and to the Houses of State Legislatures and the history and the scheme of the Act and the limited right of appeal provided in Section 116-A of the Act. We do not find any discussion about the effect of the constitutional provision in Article 329(*b*) in the course of the said decision. There was also no adequate appreciation of the need to construe the Act as a complete code regarding all matters relating to settlement of election disputes. It is significant that in sub-section (7) of Section 86 of the Act it is stated that every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial. **If Parliament intended that the Division Bench of the High Court should exercise its appellate jurisdiction under clause 15 of the Letters Patent of the High Court probably it would not have enacted sub-section (7) of Section 86 of the Act having regard to the well-known tendency of one or the other party to an election petition preferring appeals against interlocutory orders to the Division Bench. The presence of such a remedy is enough to defeat the object of enacting sub-section (7) of Section 86. If such appeals against interlocutory orders to the High Court are permitted perhaps no election dispute will be finally settled until the next election becomes due. The intention of Parliament is that at the level of the**

High Court only the Judge who is asked by the learned Chief Justice to try an election petition should be the sole judge to decide any question arising out of any such election petition and that at the appellate stage the Supreme Court alone should deal with any matter arising out of the election petition. We are of the view that as regards the jurisdiction to try an election petition and the right of appeal of the parties to an election petition, the provisions of the Act (apart from the provisions in the Constitution) constitute a complete code and no other Judge or Judges other than the Single Judge of the High Court who is asked to try an election petition and the Supreme Court exercising appellate powers under Section 116-A of the Act in respect of orders passed under Section 98 or Section 99 of the Act or under Article 136 of the Constitution in respect of other orders can have any jurisdiction to deal with any matter arising out of an election petition filed under the Act. We do not therefore agree with the view expressed on this question by the High Court of Gujarat in *Dr Chotalal Jivabhai Patel case* [12 Guj LR 850] . We therefore overrule the said decision. We also overrule the decision of the Madras High Court in *Kadiravan alias Shamsudeen* v. *B. Thirumalaikumar* [ILR (1970) 2 Mad 183] and the decision of the Madhya Pradesh High Court in *Laxmi Narayan Nayak* v. *Ramratan Chaturvedi* [AIR 1986 MP

> 165 (FB)] which have taken the same view as in *Dr Chotalal Jivabhai Patel case* [12 Guj LR 850] . We are, however, in agreement with the view expressed by the High Court of Allahabad in *Siaram* v. *Nathuram* [1968 All LJ 576] and by the High Court of Rajasthan in *Ramdhan* v. *Bhanwarlal* [AIR 1985 Raj 185] which have held that by necessary implication an appeal to the High Court from an interlocutory order passed by the Single Judge of the High Court in the course of a trial of an election petition filed under the Act is excluded. The reasons given in the latter case by the Full Bench of the Rajasthan High Court are indeed quite substantial.

28. Apart from the fact that the Act, 1996, is a self-contained code, a Letters Patent Appeal against interlocutory orders is expressly barred under the Act, 2015. The applicability of the Act, 2015, is not disputed by the parties. Sections 13(1A) r/w 13(2) of the Act, 2015, explicitly bars a Letters Patent Appeal against an order passed by the Commercial Division of the High Court, unless the said order is appealable under Order XLIII of the CPC or the order is appealable under Section 37 of the Act, 2015. It is pertinent to note that the object behind the Act, 2015, is to establish Commercial Courts and Commercial Divisions & Commercial Appellate Divisions at the High Courts, for speedy

disposal of commercial disputes including cases pertaining to arbitration. Pursuant to the said object, Sections 10 and 13 were incorporated in the Act, 2015, in order to restrict the right of appeal to orders passed under Order XLIII and Section 37 of the Act, 1996.

29. The Hon’ble Supreme Court in **Kandla Export Corpn.** (supra), explaining the scope of Section 13 of the Act, 2015, held that an appeal lies only against orders enumerated in Order XLIII of the CPC and orders appealable under Section 37 of the Act, 1996. The relevant paragraphs are extracted below:

> **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.**
>
> **15.** Thus, an order which refers parties to arbitration under Section 8, not being appealable under Section 37(1)(*a*), would not be appealable under Section 13(1) of the Commercial Courts Act. Similarly, an appeal rejecting a plea referred to in sub-sections (2) and (3) of Section 16 of the Arbitration Act would equally not be appealable under Section 37(2)(*a*) and, therefore, under Section 13(1) of the Commercial Courts Act.

30. In the present case, the impugned order dated 27.06.2025 only decides the issue of maintainability of the execution petition (EXEP No. 1 of 2018). Likewise, the impugned order dated 10.12.2025 directs provisional attachment of bank accounts of the Appellant. The said orders are not appealable either under Order

XLIII of the CPC or under Section 37 of the Act, 1996. Therefore, the present appeals are not maintainable.

31. Relying on **Shah Babulal Khimji** (Supra) and **D & H India Ltd.** (Supra), it was vehemently contended on behalf of the Appellant that, notwithstanding the bar under Section 13(2) of the Act, 2015, the present appeal would be maintainable, as the impugned orders have trappings of finality. As such, the same can be termed as “judgments”, which are appealable under Clause 15 of the Letters Patent. According to this Court, the reliance on the said decisions is misplaced.

32. In **Shah Babulal Khimji** (Supra), the Hon’ble Supreme Court held that a Letters Patent Appeal would be maintainable even against an interlocutory order if it possesses the trappings of finality. However, the Court in subsequent decisions made it clear that where a statute expressly or by necessary implication excludes the right of appeal under the Letters Patent, no such appeal would be maintainable notwithstanding the nature of the impugned order.

33. In **Subal Paul v. Malina Paul**[11], the Hon'ble Supreme Court held as follows:

> 35. In Shah Babulal Khimji case [(1981) 4 SCC 8] the Apex Court in no uncertain terms referred to the judgment under the special Act which confers additional jurisdiction on the High Court even in internal appeals from an order passed by the trial Judge to a larger Bench. Letters Patent has the force of law. **It is no longer res integra. Clause 15 of the Letters Patent confers a right of appeal on a litigant against any judgment passed under any Act unless the same is expressly excluded**. Clause 15 may be subject to an Act but when it is not so subject to the special provision the power and jurisdiction of the High Court under clause 15 to entertain any appeal from a judgment would be effective.

34. A Constitution Bench of the Hon'ble Supreme Court, in **P.S. Sathappan v. Andhra Bank Ltd.**[12], held that Letters Patent Appeal can be specifically excluded by a subsequent enactment. The relevant paragraph is extracted below:

> **30.** As such if an appeal is expressly saved by Section 104(1), sub-section (2) cannot apply to such an appeal.

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[11] (2003) 10 SCC 361

[12] (2004) 11 SCC 672

Section 104 has to be read as a whole. Merely reading sub-section (2) by ignoring the saving clause in sub-section (1) would lead to a conflict between the two sub-sections. Read as a whole and on well-established principles of interpretation it is clear that sub-section (2) can only apply to appeals not saved by sub-section (1) of Section 104. The finality provided by sub-section (2) only attaches to orders passed in appeal under Section 104 i.e. those orders against which an appeal under "any other law for the time being in force" is not permitted. Section 104(2) would not thus bar a letters patent appeal. Effect must also be given to legislative intent of introducing Section 4 CPC and the words "by any law for the time being in force" in Section 104(1). This was done to give effect to the Calcutta, Madras and Bombay views that Section 104 did not bar a Letters Patent. As appeals under "any other law for the time being in force" undeniably include a letters patent appeal, such appeals are now specifically saved. Section 104 must be read as a whole and harmoniously. If the intention was to exclude what is specifically saved in sub-section (1), then there had to be a specific exclusion. A general exclusion of this nature would not be sufficient. We are not saying that a general exclusion would never oust a letters patent appeal. However, when Section 104(1) specifically saves a letters patent appeal then the only way such an appeal could be excluded is by express mention in Section 104(2) that a letters patent appeal is also prohibited. It is for this reason that Section 4 of the Civil Procedure Code provides as follows:

"4. *Savings*.—(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land."

As stated hereinabove, a specific exclusion may be clear from the words of a statute even though no specific reference is made to Letters Patent. But where there is an express saving in the statute/section itself, then general words to the effect that "an appeal would not lie" or "order will be final" are not sufficient. In such cases i.e. where there is an express saving, there must be an express exclusion. Sub-section (2) of Section 104 does not provide for any express exclusion. In this context reference may be made to Section 100-A. The present Section 100-A was amended in 2002. The earlier Section 100-A, introduced in 1976, reads as follows:

"100-A. *No further appeal in certain cases*.—Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such Single Judge in such appeal or from any decree passed in such appeal."

It is thus to be seen that when the legislature wanted to exclude a letters patent appeal it specifically did so. The words used in Section 100-A are not by way of abundant caution. By the Amendment Acts of 1976 and 2002 a specific exclusion is provided as the legislature knew that in the absence of such words a letters patent appeal would not be barred. The legislature was aware that it had incorporated the saving clause in Section 104(1) and incorporated Section 4 CPC. Thus now a specific exclusion was provided. After 2002, Section 100-A reads as follows:

"100-A. *No further appeal in certain cases*.—Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge."

> **<u>To be noted that here again the legislature has provided for a specific exclusion. It must be stated that now by virtue of Section 100-A no letters patent appeal would be maintainable.</u>** However, it is an admitted position that the law which would prevail would be the law at the relevant time. At the relevant time neither Section 100-A nor Section 104(2) barred a letters patent appeal.

35. The decision in **D & H India Ltd.** (Supra) also does not help the Appellant. In the said decision, the Delhi High Court held that Section 13(1A) of the Act, 2015, shall be read in an expansive manner. The relevant paragraph relied upon by the Appellant is extracted below:

> **"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*.”

36. The subsequent decisions of the Delhi High Court have held that the decision in **D & H India Ltd.** (Supra) does not lay down the correct law. In **H.P. Cotton Textile Mills Ltd. v. Oriental Insurance Co. Ltd.**[13], the Delhi High Court held as follows:

> **7.** The learned counsel appearing for the appellant contended that the proviso to Section 13(1-A) of the Commercial Courts Act does not restrict the main provision and the same must be read in an expansive

[13] 2023 SCC OnLine Del 511

manner. He further referred to the decision of a Coordinate Bench of this Court in *D&H India Ltd.* v. *Superon Schweisstechnik India Ltd.* [*D&H India Ltd.* v. *Superon Schweisstechnik India Ltd.*, 2020 SCC OnLine Del 477] , and drew the attention of this Court to paras 44 and 45 of the said decision. In particular, she referred to the following observations:

"*44.* … We see no reason to exclude orders passed by the learned Single Judge, exercising commercial jurisdiction, which have not been passed under any of the provisions of the CPC, from the expansive sweep of Section 13(1-A) of the Commercial Courts Act, within which such orders would undoubtedly stand covered.

45. ***

(*iii*) The proviso to Section 13(1-A) cannot, in our view, be read as limiting the right to appeal, conferred by Section 13(1-A). The said proviso merely states that, from orders passed by the Commercial Division of the High Court, as are specifically enumerated under Order 43CPC, an appeal would lie under Section 13(1-A). In our view, the proviso cannot be read as meaning that no appeal would lie in any other case, especially where the order under appeal has not been passed under the CPC at all, but under Rule 5 in Chapter II of the 2018 Original Side Rules."

8. The observations, to the effect that Section 13(1-A) of the Commercial Courts Act has to be read in an

> **expansive manner and the proviso to Section 13(1-A) cannot be read as limiting the right to appeal conferred under Section 13(1-A), are contrary to the decision of the Supreme Court in *Kandla Export Corpn.* v. *OCI Corpn.*[*Kandla Export Corpn.* v. *OCI Corpn.*, (2018) 14 SCC 715 : (2018) 4 SCC (Civ) 664] It also apparent that the said decision of the Supreme Court was not brought to the notice of this Court in *D&H India Ltd.* v. *Superon Schweisstechnik India Ltd.* [*D&H India Ltd.* v. *Superon Schweisstechnik India Ltd.*, 2020 SCC OnLine Del 477]**

37. Likewise, in **Ramacivil India Construction (P) Ltd. v. Union of India[14],** the Delhi High Court held as follows:

> **36.** Similar is the opinion expressed in a judgment by another Coordinate Bench of this Court in *Synergies Casting Ltd.* v. *National Research Development Corpn.,* 2025 SCC OnLine Del 177. Our view is also supported by another Division Bench judgment of this Court in *Prasar Bharati* v. *Stracon India Ltd.,* 2020 SCC OnLine Del 737, which relies upon *Kandla Export* (supra). Yet a Division Bench of this Court in *H.P. Cotton Textile Mills Ltd.* v. *Oriental Insurance Co. Ltd.,* (2023) 1 HCC (Del) 506, has expressed the same view as ours.

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[14] 2025 SCC OnLine Del 9140

37. Reference may also be had to a judgment of a Division Bench of the Bombay High Court in *Bank of India &Anr.* v. *Maruti Civil Works*, 2023 SCC OnLine Bom 2667, where similar view has been taken.

38. The appellants, in support of their submission regarding maintainability of these appeals, have placed heavy reliance on a Division Bench judgment of this Court dated 05.07.2020 in *Delhi Chemical and Pharmaceutical Works Pvt. Ltd.* v. *Himgiri Realtors Pvt. Ltd.*, EFA (OS) (COMM) NO. 4/2021. However, when we examine *Delhi Chemical and Pharmaceutical* (supra), what we find is that the same is based on yet another Division Bench judgment of this Court in *D & H India Ltd.* v. *Superon Schweisstechnik India Ltd.*, 2020 SCC OnLine Del 477 : (2020) 268 DLT 15 (DB). *Delhi Chemical and Pharmaceutical* (supra) itself has doubted the correctness of the view taken in *D & H India Ltd.* (supra). However, the Division Bench in *Delhi Chemical and Pharmaceutical* (supra) did not feel any need to make a reference to the question to a larger bench disclosed in the said judgment. Paragraph 25 of the judgment in *Delhi Chemical and Pharmaceutical* (supra) is extracted herein below:—

"***25.*** *Though we, with due deference to the members of the Division Bench in* D&H India Ltd. *supra, entertain doubts as to the correctness of the view taken*

> *in D&H India Ltd. but do not, in the facts of the present case, feel the need to make a reference of the question to a larger bench; the reason is, that* Bhandari Engineers & Builders Pvt. Ltd. *supra, on which the impugned orders are based, while laying down the law laid down therein, also directs all Courts to abide thereby, resulting in plethora of similar challenges as made herein and it is deemed expedient to settle the law in that regard and which would remain pending if the question of maintainability of the appeal were to be referred to a larger bench."*
>
> **39. The judgment by Bombay High Court in *Bank of India* (supra) has taken a note of the said fact and, after considering *D & H India Ltd.* (supra), held that an appeal under Section 13 of the Commercial Courts Act, 2015 will be maintainable only against the orders which are enumerated or enlisted in Order XLIII of the CPC.**

38. The Bombay High Court in **Skil-Himachal Infrastructure & Tourism Ltd. v. IL&FS Financial Services Ltd.**[15], has held that only orders which are enumerated under Order XLIII of the CPC and which are appealable under Section 37 of the Act, 1996, can be appealed under Section 13 of the Act, 2015. The Court therein also held that no Letters Patent Appeal would lie

[15] 2022 SCC OnLine Bom 3152

against orders not covered under Section 13 of the Act, 2015. The relevant paragraphs are extracted below:

> **52.** Our conclusions are:
>
> **52.1** An appeal from an order granting conditional leave to defend in a Summons for Judgment in a Commercial Summary Suit is not maintainable in view of Section 13 of the Commercial Courts Act.
>
> **52.2** No appeal under Clause 15 of the Letters Patent is maintainable under Section 13 of the Commercial Courts Act, i.e., in a Commercial Suit.
>
> **52.3** Section 13 of the Commercial Courts Act permits only appeals (i) against decrees; (ii) against orders specifically enumerated in Order 43 of the Civil Procedure Code, 1908; and (iii) under Section 37 of the Arbitration Act.

39. Relying on the common order dated 18.12.2024 in OSA Nos. 3 and 4 of 2024, the Appellant contended that the said appeals were filed under Clause 15 of Letters Patent. As the same were heard and disposed of, the present appeal is also maintainable. The said contention is also liable to be rejected.

40. The order dated 18.12.2024 in OSA Nos. 3 and 4 of 2024 was passed based on the consent of the counsel appearing therein.

Vide the said order, the rights of the parties were not adjudicated. The issue of maintainability was not raised and not decided in the said order. It is trite that a judicial order passed with the consent of the parties does not operate as a binding precedent. In **MCD v. Gurnam Kaur**[16], the Hon'ble Supreme Court held as follows:

> **10.** **It is axiomatic that when a direction or order is made by consent of the parties, the court does not adjudicate upon the rights of the parties nor does it lay down any principle.** Quotability as "law" applies to the principle of a case, its ratio decidendi. The only thing in a judge's decision binding as an authority upon a subsequent judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an investigation into the facts, as in the present case, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice. That being so, the direction made by this Court in *Jamna Das case* [Writ Petitions Nos. 981-82 of 1984] could not be treated to be a precedent. The High Court failed to realise that the direction in *Jamna Das case* [Writ Petitions Nos. 981-82 of 1984] was made not only with the consent of the

[16] (1989) 1 SCC 101

> parties but there was an interplay of various factors and the court was moved by compassion to evolve a situation to mitigate hardship which was acceptable by all the parties concerned.

41. Further, it is a settled position of law that consent of parties cannot confer jurisdiction, where none exists under the law. In this regard, we rely on the decisions in **Sushil Kumar Mehta v. Gobind Ram Bohra**[17] and **Sarup Singh v. Union of India**[18].

42. Therefore, this Court holds that the present Original Side Appeals are not maintainable.

43. At this stage, it is apposite to advert to I.A. No. 1 of 2026 filed by the Appellant. *Vide* the said interlocutory application, the Appellant prayed as follows:

> "It is therefore prayed that this Hon'ble Court may be pleased to convert the present original side appeal into a writ petition and pass such other order or orders as this Hon'ble Court may deem fit in the circumstances of the case."

44. I.A. No. 1 of 2026 is not maintainable. It is no longer res integra that a writ petition does not lie against a judicial order

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[17] (1990) 1 SCC 193
[18] (2011) 11 SCC 198

passed by the High Court. In **Rupa Ashok Hurra v. Ashok Hurra**[19], a Constitution Bench of the Supreme Court held that one Bench of the High Court cannot issue a writ to another Bench of the High Court. The relevant paragraph is extracted below:

> **7. <u>Having carefully examined the historical background and the very nature of writ jurisdiction, which is a supervisory jurisdiction over inferior courts/tribunals, in our view, on principle a writ of certiorari cannot be issued to coordinate courts and a fortiori to superior courts. Thus, it follows that a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the same High Court; much less can writ jurisdiction of a High Court be invoked to seek issuance of a writ of certiorari to the Supreme Court.</u>** Though, the judgments/orders of High Courts are liable to be corrected by the Supreme Court in its appellate jurisdiction under Articles 132, 133 and 134 as well as under Article 136 of the Constitution, the High Courts are not constituted as inferior courts in our constitutional scheme. Therefore, the Supreme Court would not issue a writ under Article 32 to a High Court. Further, neither a smaller Bench nor a larger Bench of the Supreme Court can issue a writ under Article 32 of the Constitution to any other Bench of the Supreme

[19] (2002) 4 SCC 388

> Court. It is pointed out above that Article 32 can be invoked only for the purpose of enforcing the fundamental rights conferred in Part III and it is a settled position in law that no judicial order passed by any superior court in judicial proceedings can be said to violate any of the fundamental rights enshrined in Part III. It may further be noted that the superior courts of justice do not also fall within the ambit of State or other authorities under Article 12 of the Constitution.

45. Likewise, in **Neelam Manmohan Attavar v. Manmohan Attavar**[20], the Hon'ble Supreme Court held as follows:

> **11. Having heard the petitioner who appears in person and Mr Balaji Srinivasan, learned counsel appearing on behalf of the Legal Representatives of the original respondent, we are of the view that a writ petition under Article 226 of the Constitution would not be maintainable in order to challenge an order which has been passed by the High Court in the exercise of its judicial powers. In the present case, the High Court has exercised its revisional jurisdiction. Merely assailing the order as an order which is void would not enable a litigant to avoid the consequences which emanate from the order, by instituting a writ petition under Article 226.** A litigant

[20] (2021) 16 SCC 536

> is not without her remedies. An order which has been passed by the High Court can either be assailed in a letters patent appeal (in those cases where the remedy of a letters patent appeal is available in law) or by way of a review (where the remedy of a review is available in a certain class of matters). A remedy is available to a litigant against a judicial order of the High Court passed in revisional proceedings, under Article 136 of the Constitution before this Court.

46. Before concluding, we cannot help but notice the contradictory stands taken by the Appellant. Before the learned Single Judge, the Appellant contended that no Commercial Division could have been constituted by this Court under Section 4 of the Act, 2015. According to the Appellant, under Section 4(1) of the Act, 2015, only High Courts exercising ordinary original civil jurisdiction can constitute a Commercial Division. Since this Court does not exercise such jurisdiction, no Commercial Division could have been constituted. Therefore, the execution petition (EXEP No. 1 of 2018) was not maintainable. However, in its Counter Affidavit filed in reply to I.A. No. 4 of 2025, the Appellant does not dispute the applicability the Act, 2015, insofar as the maintainability of the present appeals are concerned.

47. Notwithstanding the stands taken by the Appellant, we intend to clarify that a Commercial Division has been constituted by this Court under Section 4(1) of the Act, 2015. *Vide* notification bearing Notification No. 18/SO/2016 and proceeding bearing R.O.C. No. 850/SO/2015 dated 08.06.2016, a Commercial Division was constituted in the then High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh. The said notification is extracted below:

Telangana
High Court of Telangana
[ROC. No. 850/SO/2015]
Dated June 8, 2016

NOTIFICATIONS BY HEADS OF DEPARTMENTS, Etc.
JUDICIAL NOTIFICATIONS
HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS ACT, 2015.
NOTIFICATION No. 18/SO/2016

R.O.C. No. 850/SO/2015.—In exercise of the powers vested in Hon'ble the Acting Chief Justice under Section 4(1) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts, Act, 2015 (Act 4 of 2016) (hereinafter referred as the Act), Hon'ble the Acting Chief Justice is pleased to constitute Commercial Division in High Courts of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh to deal with Commercial Disputes as defined in the Act.

CH. MANAVENDRANATH ROY,
Registrar General.

Hyderabad, 08-06-2016.

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48. Likewise, *vide* notification bearing Notification No. 19/SO/2016 dated 08.06.2016, a Commercial Appellate Division was also constituted. The said notification is extracted below:

JUDICIAL NOTIFICATIONS

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS ACT, 2015.

NOTIFICATION No. 19/SO/2016

R.O.C.No. 850/SO/2015.-In exercise of the powers vested in Hon'ble the Acting Chief Justice under Section 5(1) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts, Act 2015 (Act No. 4 of 2016) (hereinafter referred as the 'Act'), Hon'ble the Acting Chief Justice is pleased to constitute Commercial Appellate Division in High Courts of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh to deal with appeal(s) from the order(s) / judgment(s) passed by Commercial Division.

Hyderabad,
08-06-2016.

CH. MANAVENDRANATH ROY,
Registrar General.

49. It is pertinent to note that Section 4(1) of the Act, 2015, was amended in 2018, w.e.f., 03.05.2018. Prior to the amendment, High Courts exercising “ordinary civil jurisdiction” could have constituted a Commercial Division. However, after the 2018 amendment, the phrase “ordinary civil jurisdiction” was amended to “ordinary original civil jurisdiction”. For the sake of convenience, Section 4(1) of the Commercial Courts Act, 2015, as it stood prior to the amendment and as it stands after the amendment, is extracted below:

Before the 2018 Amendment	After the 2018 Amendment
4. Constitution of Commercial Division of High Court.—(1) In	4. Constitution of Commercial Division of High Court.—(1) In

all High Courts, having ***ordinary civil jurisdiction***, the Chief Justice of the High Court may, by order, constitute Commercial Division having one or more Benches consisting of a single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Act. (2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Division.	all High Courts, having ***ordinary original civil jurisdiction***, the Chief Justice of the High Court may, by order, constitute Commercial Division having one or more Benches consisting of a single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Act. (2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Division.

50. The Commercial Division of this Court was constituted prior to the 2018 amendment to the Act, 2015. Further, the execution petition (EXEP No. 1 of 2018) was filed on 29.03.2018, i.e., prior to the 2018 amendment of the Act, 2015. Therefore, the Appellant is precluded from contending that no Commercial Division could have been constituted by this Court.

51. Notwithstanding the phraseology employed in the amended Section 4(1) of the Act, 2015, the constitution of a Commercial Division in High Courts not exercising “ordinary

original civil jurisdiction" is imperative to give effect to Section 2(1)(e) of the Act, 1996, and Sections 10(1) of the Act, 2015. For the sake of convenience, Section 2(1)(e) of the Act, 1996 and Section 10 of the Act, 2015, are extracted below:

> 2 (1) (e) "**Court" means**—
>
> (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;
>
> (ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and <u>**in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court**</u>
>
> **10. Jurisdiction in respect of arbitration matters**.—Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and—

(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.

52. As is evident from the above provisions, under Section 2(1)(e) of the Act, 1996, the expression "Court", in relation to matters pertaining to international commercial arbitrations, is the jurisdictional High Court. Correspondingly, Section 10(1) of the Act, 2015 mandates that all applications or appeals pertaining to an international commercial arbitration shall be heard and disposed of by the Commercial Division of the High Court. Thus, a conjoint reading of Section 2(1)(e) of the Act, 1996, and Section 10(1) of the Act, 2015, indicates that the applications and appeals arising out of an international commercial arbitration are required to be heard by the Commercial Division of the High Court.

53. In this regard, gainful reference can be made to the decision of the High Court of Karnataka in **ITI Ltd. v. Alphion Corpn.**[21] and the decision of the High Court of Andhra Pradesh in **Rashtriyalspat Nigam Ltd. v. Air Liquide India Holding (P) Ltd.**[22]. Both the decisions hold that a Commercial Division can be constituted even by those High Courts which do not exercise "ordinary original civil jurisdiction".

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[21] 2022 SCC OnLine Kar 1631

[22] 2024 SCC OnLine AP 4121

54. In **ITI Ltd.** (Supra), the High Court of Karnataka held as follows:

> **27.** **<u>In terms of sub-Clause (1) of Section 10, where a Commercial Division is constituted in the High Court, all applications or appeals arising out of International Commercial Arbitration would have to be filed in the Commercial Division where such Commercial Division has been constituted by such High Court as regards arbitration other than International Commercial Arbitration</u>**.
>
> **28.** In terms of sub-Clause (2) of Section 10, if arbitration is other than an International Commercial Arbitration, all applications or appeals would have to be filed on the original side of the High Court which shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in the High Court.
>
> **29.** In all other cases, where such arbitration is other than an International Commercial Arbitration, where there is no Commercial Division created, all applications or appeals would lie before any Principal Civil Court of original Jurisdiction in a district shall be heard and disposed by the Commercial Court exercising territorial Jurisdiction over such arbitration where such commercial Court has been constituted
>
> **30.** Thus, it is clear that

30.1 Any challenge to an arbitral award other than an International Commercial Arbitration, for convenience, referred to as a Domestic Arbitral Award would have to be made before the Commercial Court or a Commercial Division of the High Court if created.

30.2 **In respect of International Commercial Arbitration, the same would have to be filed before a Commercial Division where it has been constituted.**

31. **The problem arises on account of Section 10 not adverting to a situation where a Commercial Division has not been constituted. As referred to supra, a Commercial Division is required to be constituted in all High Courts exercising Ordinary Original Civil Jurisdiction in terms of Section 4 of C.C. Act. Neither Section 4 of CC Act nor any other provision provides for the constitution of a Commercial Division by High Court not having Ordinary Original Civil Jurisdiction.**

32. **It is due to this that confusion has been created in the State of Karnataka. Since the High Court of Karnataka does not exercise Ordinary Original Civil jurisdiction and as such, no Commercial Division has been established. However, a Commercial Appellate Jurisdiction has been established in terms of Section 5 of the C.C. Act.**

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41. Section 10 refers to applications or appeals arising out of International Commercial Arbitration to be filed before the Commercial Division, which in terms of Section 4 is a single judge. Unfortunately, in the year 2018, when an amendment was made to Section 4, the words *"Ordinary Civil Jurisdiction"* was replaced with *"Ordinary Original Civil Jurisdiction"*, which has resulted in this anomaly.

42. Insofar as the State of Karnataka, the High Court of Karnataka does not exercise Ordinary Original Civil Jurisdiction. Section 4 of CC Act, though provides for the establishment of a Commercial Division in the High Court exercising Ordinary Original Civil Jurisdiction, does not bar such establishment in a High Court not exercising Ordinary Original Civil Jurisdiction. More so when Section 4 of the CC Act deals with the Challenge to a Domestic Arbitral Award.

43. Section 10 of CC Act requires an application or an Appeal as regards an International Commercial Arbitration to be filed before the Commercial Division. Section 10 of the CC Act, does not distinguish between a High Court exercising Ordinary Original Civil Jurisdiction from a High Court, which does not so exercise.

44. **A meaningful reading when given to the said provisions would lead to the irresistible conclusion that even in so far as the High Court not exercising Ordinary Original Civil Jurisdiction, a Commercial**

Division is required to be established for purposes of consideration of applications and appeals arising out of International Commercial Arbitrations.

45. **Such Commercial Divisions would have to be constituted comprising of Single Judges which would give meaning and purport to Clause (1) of Section 10 of C.C. Act, thereby any application or appeal in respect of International Commercial Arbitration could be filed before the Commercial Division and in the event of Challenge required to be made to the orders passed by the Commercial Division, the same could be filed before the Commercial Appellate Division constituted under Section 5 of CC Act.**

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51. Hence, we answer the questions raised as under:

51.1 A challenge to an award passed in an International Commercial Arbitration can be made before the High Court of Karnataka in view of Section 2 (e)(ii) of the A & C Act, 1996.

51.2 In terms of Section 10 (1) if the CC Act, a challenge to an International Commercial Arbitral Award would have to be considered by a Commercial Division established in the High Court consisting of a Single Judge.

55. In **Rashtriyalspat Nigam Ltd.** (Supra), the High Court of Andhra Pradesh held as follows:

> **21**. Under this Section, the Commercial Division would consist of only single judges of that High Court. Further, a Commercial Division can be constituted only in a High Court having Ordinary Original Civil Jurisdiction. Section 10 (2) of the Commercial Courts Act also speaks of the Commercial Division hearing matters which have been filed on the original side of that High Court. Section 4 does not permit constitution of a commercial division in a High court which does not have Ordinary Original Civil Jurisdiction. This would lead to one difficulty. Section 10 (1) of the commercial Courts Act, requires applications and appeals from international arbitrations to be filed before the commercial Division of the High Court. If no such commercial divisions can be formed, under section 4 of the Commercial Courts Act, an aggrieved party would have no remedy against any award or other proceeding, in an international commercial arbitration. **The only way this conundrum can be resolved is by holding that a commercial division constituted in a High court, which does not have Ordinary Original Civil Jurisdiction, can take up matters relating only to international arbitrations and not in relation to domestic arbitration**.

22. The High Court of Andhra Pradesh does not have Ordinary Original Civil Jurisdiction. However, a Commercial Division has been constituted, in the High court of Andhra Pradesh, by a notification dated 08.06.2016, which was published on 10.06.2016. It must also be noted that, this notification had been issued prior to the amendment of the Commercial Courts Act in 2018, wherein the words “Ordinary Original civil Jurisdiction” were added to the Statute. Consequently, the commercial division created in the High Court of Andhra Pradesh cannot hear appeals arising out of Section 37 of the Arbitration Act, in domestic arbitrations, either on the original side or by the commercial division constituted in the High Court.

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26. The learned Senior Counsel appearing for the appellant relied upon a Division Bench of the Hon'ble High Court of Karnataka in *ITI Ltd.* v. *Alphion Corporation United States of America.* This judgment came to be rendered in a case where an objection was taken on the maintainability of a commercial appeal under Section 34 of the Arbitration Act, in an international commercial dispute, before the commercial appellate division of the Hon'ble High Court of Karnataka. The objection raised, in this regard, was that the application under Section 34 of the Arbitration Act should have been heard by the commercial division of the Hon'ble High Court of Karnataka and not the Commercial Appellate Division.

27. The Division Bench of the Hon'ble High Court of Karnataka, had gone into the question of whether the High Court of Karnataka which does not exercise ordinary original civil jurisdiction, can establish a commercial division and whether, the commercial appellate division established in terms of Section 5 of the commercial Courts Act could exercise powers over such international commercial arbitral awards. This Judgment is in accordance with the interpretation placed by this court on the provisions of the Arbitration Act and the Commercial Courts Act.

28. The question of the pecuniary jurisdiction of the District courts, under the Andhra Pradesh Civil Courts Act, would not be relevant. The Jurisdiction of the Commercial Courts is created under the Commercial Courts Act and not under the Civil Courts Act. The District Judge rank officer is not sitting as a District Court, in a commercial dispute falling within the ambit of the Commercial Courts Act. He would be sitting as a Commercial Court, whose pecuniary jurisdiction is fixed under the Commercial Courts Act. We are also of the opinion that the reply of the respondent, set out in paragraph 11 of this order, is an answer to the contentions of the Appellant, set out in paragraph 10 of this order.

> **29.** The principles that can be adduced, from the above consideration are:
>
> A. **A High Court which does not have ordinary Original Civil jurisdiction, cannot, ordinarily, constitute a Commercial Division, under Section 4 of the Commercial Courts Act.**
>
> B. **However, a High Court, which does not have Ordinary Original Civil jurisdiction, can constitute a commercial Division for the purposes of hearing matters only in relation to International arbitrations, as set out in Section 10 (1) of the Commercial Courts Act.**
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> **………..**

56. Therefore, in relation to international commercial arbitrations, we hold that a Commercial Division can be established even by those High Courts which do not exercise "ordinary original civil jurisdiction".

57. In the light of the aforesaid discussion, we hold as follows:

i. OSA No. 2 of 2025 is dismissed as not maintainable.

ii. OSA No. 1 of 2026 is also dismissed as not maintainable.

iii. There is no order as to costs.

Consequently, pending miscellaneous petitions, if any, in these appeals, shall stand closed.

K. LAKSHMAN, J

B.R. MADHUSUDHAN RAO, J

Date:03.08.2026.
Note: L.R.Copy to be marked.
b/o. vvr.