OCD-3

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
AN APPEAL FROM JUDGMENT AND ORDER PASSED IN ITS
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

APOT/185/ 2026
With EC-COM/155/2025
IA No.GA-COM/1/2026

EASTERN MINERALS AND TRADING AGENCY
Versus
STEEL AUTHORITY OF INDIA LIMITED.

Present :
The Hon'ble Justice DebangsuBasak
-And-
The Hon'ble Justice Ajay Kumar Gupta

For the Appellant : *Mr. Jishnu Saha, Sr. Adv.*
Mr. Chayan Gupta, Adv.
Mr. Chitresh Saraogi, Adv.

For the Respondent : *Mr. Rudraman Bhattacharyya,Sr. Adv.*
Ms. Supriya Dubey, Adv.
Mr. Akash Munshi, Adv.

HEARD ON : 20.11.2026

DELIVERED ON : 20.11.2026

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of a judgment-debtor and directed against order dated September 7, 2026 passed in EC-COM/155/2025.

2. By the impugned order, learned executing Court held that the award was enforceable and that the enforceability of the award was not barred by the laws of limitation.

3. Learned Senior Advocate appearing for the appellant submits that, the respondent sought to enforce an award dated February 29, 2008. He submits that, when the execution petition being EC-COM/155/2025 was filed in the year 2025. At the time when the execution proceeding was initiated, the execution of the award February 29, 2008 was barred by the laws of limitation. A period in excess of 12 years elapsed since the date of the award till the filing of the execution petition.

4. In support of the contention that the execution of the award was barred by the laws of limitation, learned Senior Advocate appearing for the appellant relies upon *2026 SCC OnLine Cal 5268 (Goutam Paul vs. Union of India).*

5. Relying upon *2015 SCC OnLine Cal 302 (Prabhat Pan & Ors. vs. The State of West Bengal & Ors.)* learned Senior Advocate appearing for the appellant submits that, the Special Bench of this Hon'ble Court held that the learned Single Judge is bound by a decision rendered by the Division Bench. He submits that, the Division Bench also is bound by a decision of the co-ordinate Bench. He points out that, if a Division Bench considers a

judgment of the Supreme Court and reads the same in a particular manner, the co-ordinate Bench is also bound by such reading of the Hon'ble Supreme Court judgment.

6. Learned Senior Advocate appearing for the appellant submits that, the appellant raised the issue of maintainability of the execution proceeding. According to the appellant, the execution proceeding was barred by the laws of limitation. He submits that, by the impugned order the learned executing Court decided such issue finally. Since the impugned order decided the issue of limitation finally between the parties, the present appeal is maintainable. In support of such contention, he draws the attention of the Court to Section 2(2) of the Code of Civil Procedure, 1908 which defines a decree.

7. Learned Senior Advocate appearing for the appellant draws the attention of the Court to Section 47 of the Code of Civil Procedure, 1908 as well as Section 104 thereof. He also draws the attention of the Court to Section 36 of the Arbitration and Conciliation Act, 1996 as well as Section 13 of the Commercial Courts Act, 2015. He submits that, after reading such provisions harmoniously, the right of appeal in respect of an order, which decided an issue finally, is not taken away. He relies upon *2016 SCC OnLine Bom 9019 (Hubtown Limited vs. IDBI Trusteeship*

Service Limited) in this regard. He submits that, the appeal carried against *Hubtown Limited (supra)* was decided by the Hon'ble Supreme Court on a different issue. In this regard he relies upon *2017 (1) SCC 568 (IDBI Trusteeship Services Limited vs. Hubtown Limited).* He submits that, the finding of the Bombay High Court relating to the maintainability of an appeal directed against an order which decided an issue finally, remained untouched by the Hon'ble Supreme Court. According to him, the present appeal is maintainable.

8. Relying upon *2025 SCC OnLine SC 2375 (MITC Rolling Mills Private Limited & Anr. vs. Renuka Realtors & Ors.)* learned Senior Advocate appearing for appellant submits that, Legislature by the Act of 2015 did not stifle the right of judicial review.

9. Learned Senior Advocate relies upon *1960 SCC OnLine SC 48 (State of Bombay vs. Supreme General Films Exchange Ltd. & Anr.)* in support of the proposition that right of appeal is a substantive right unless the same is circumscribed by statute. Relying upon the relevant provision of the Law Commission Report of January, 2025, learned Senior Advocate appearing for the appellant submits that Section 13 of the Act of 2015 should be construed not to stifle the right of appeal which is available to a litigant.

10. Relying upon *1963 SCC OnLine SC 43 (Arjun Singh vs. Mahindra Kumar & Ors.)* learned senior Advocate appearing for the appellant submits that, the Supreme Court explained which orders are to be considered as interlocutory orders. He submits that, in the facts and circumstances of the present case, since the issue of limitation was decided finally, the impugned order cannot be classified as an interlocutory order.

11. Relying upon *2018 (2) SCC 534 (Indian Farmers Fertilizer co-operative Ltd. vs. Bhadra Products)*, learned Senior Advocate appearing for the appellant submits that, when the issue of limitation was decided finally in an arbitration proceeding, the same was held to be an award within the meaning of the Act of 1996 and, therefore, appealable.

12. Learned Senior Advocate appearing for the respondent draws the attention of the Court to the provisions of Section 13 of the Act of 2015 as well as to Sections 37 and 50 of the Act of 1996. He submits that, an appeal is available from a decree passed by the Commercial Court and such orders as are specified under Order XLIII of the Code of Civil Procedure, 1908 or under Section 37 of the Act of 1996, as the case may be.In respect of foreign award, the governing provision would be Section 50 of the Act of 1996.

13. Learned Senior Advocate appearing for the respondent relies upon *2018 (14) SCC 715 (Kandla Export Corporation & Anr. vs. OCI Corporation & Anr.)* in support of the proposition that, appeals under the Act of 1996 directed against orders which are classified under Sections 37 and 50 of the Act of 1996 are maintainable.

14. Relying upon *2025 SCC OnLine Cal 7835 (Alok Saraf and Others Vs. Shaym Sundar Nangalia and Others)*, learned Senior Advocate appearing for the respondent submits that, the co-ordinate Bench construed the contours of Section 13 of the Act of 1996. He submits that, in the facts and circumstances of the present case, the appeal is not maintainable in view of the ratio laid down in *Alok Saraf and Others (supra)* and *Kandla Export Corporation and Another (supra)*.

15. Issue of maintainability of the appeal requires a decision. Respondent sought to execute an award dated February 29, 2008 in 2025 by way of the execution petition being EC-COM/155/2025. Issue raised before the learned executing Court by the appellant was that, the execution proceeding was barred by limitation. Such issue was decided by the impugned order holding that, the execution petition was not barred by the laws of limitation and that, the respondent was within time in executing the award.

16. We are required to decide as to whether, such an order of the learned executing Court is appealable under Section 13 of the Act of 2015 or not.

17. Section 13 of the Act of 2015 lays down the contours of appealability of judgments and orders. Section 13 of the Act of 2015 is as follows:-

> *"**13**. Appeals from decrees of Commercial Courts and Commercial Divisions.*
> ***(1)**Any person aggrieved by the decision of the Commercial Court or Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of judgment or order, as the case may be:*
> *Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996.*
> ***(2)**Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act."*

18. Provisions of Section 13 of the Act of 2015 were considered by the co-ordinate Bench in *Alok Saraf and Others (supra)*. It would be apposite to set out paragraph nos. 24 to 28 thereof herein:-

> *"24. Section 13(1) and Section 13(1-A) of the Act of 2015 has specified time limits for preferring an appeal. It has also identified the appeal forum for appeals against judgment and order of the designated Court.*

25. Proviso to Section 13(1-A) of the Act of 2014 has stipulated that, an appeal shall lie from orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order 43 of the Civil Procedure Code, 1908 as amended by the Act of 2015 and Section 37 of the Act of 1996.

26. Section 13(2) of the Act of 2015 has specified that, notwithstanding anything contained in any other law for the time being in force, or Letters Patent of a High Court, no appeal shall lie from an order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provision of the Act of 2015.

27. Therefore, reading Section 13(1-A) proviso and Section 13(2) of the Act of 2015 together, an appeal shall lie only when, the order assailed in the appeal is enumerated under Order XLIII of the Civil Procedure Code, 1908 as amended by the Act of 2015 or under Section 37 of the Act of 1996. In other words, the order appealed against must fall within the four corners of Order XLIII of the Civil Procedure Code, 1908 as amended by the Act of 2015 or under Section 37 of the Act of 1996, as the case may be.

28. Maintainability of the appeal governed by the Act of 2015 is therefore, to be tested on the anvil of Section 13 of the Act of 2015. In other words, the appellant has to establish that, in order to maintain the appeal, that, the judgment and order impugned, falls within the four corners of proviso to Section 13(1-A) of the Act of 2015."

19. The decision in *Alok Saraf and Others (supra)* of the Hon'ble Supreme Court is rendered prior to *MITC Rolling Mills Private Limited and Another (supra)*. There, the Hon'ble Supreme Court construing Section 13 of the Act of 2015 held as follows:-

> *"17. Section 13(1A) of the CCA, 2015, is in two distinct parts. The main provision contemplates appeals against 'judgments' and 'orders' of the Commercial Court to the Commercial Appellate Division of the High Court. The proviso, operating as an exception, must be construed harmoniously with the main provision and not in derogation thereof. Where the language of the main provision is plain and unambiguous, the proviso cannot be invoked to curtail or whittle down the scope of the principal enactment, save and except where such exclusion is clearly and expressly contemplated. The proviso merely restricts appeals against interlocutory orders to those specifically enumerated under Order XLIII CPC and Section 37 of the Arbitration and Conciliation Act, 1996. Consequently, only such interlocutory orders as are expressly specified therein would be amenable to an appeal under the proviso; orders not so enumerated would not fall within the restricted fold of the proviso."*

20. In a challenge thrown to the execution of a foreign award and while construing Section 50 of the Act of 1996, Hon'ble Supreme Court in *Kandla Export Corporation and Another (supra)* held as follows:-

> *"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."*

21. Hubtown *Limited (supra)* of the Bombay High Court was carried in appeal which resulted in *IDBI Trusteeship Services Limited (supra)*. Both were on the basis of the unamended Section 13 of the Act of 2015. Both, in our respectful view, are not authorities for the proposition that, an appeal lies from any order which is not specified under the amended Section 13 of the Act of 2015 or under Sections 37 or 50 of the Act of 1996.

22. Section 13 of the Act of 2015 allows appeals from judgments and orders. A judgment of a Civil Court forms the basis of a decree that is passed by the Civil Court. Sections 2(2), 2(9) and 2(14) of the Code of Civil Procedure, 1908 defines a decree, judgment and an order respectively. Section 96 of the Code of Civil Procedure, 1908 permits an appeal against the decree. Civil Court passes a judgment which forms the basis of the decree. Order XX Rule 6 of the Code of Civil Procedure, 1908 specifies the format and the contents of the decree that is required to be drawn up on the basis of the judgment of the Court. In this regard, reference may be made to Order XX Rule 6, 6-A and 6-B of the Code of the Civil Procedure, 1908.

23. So far as Section 13(1) of the Act of 2015 which speaks of an appeal directed against the judgment is concerned in view of the provisions of

Section 2(2), 2(9) and 2(14) of the Code of Civil Procedure, 1908, there cannot be any cavil that, an appeal is maintainable against a judgment of the Commercial Court or the Commercial Division, as the case may be, in respect of which ultimately a decree would be drawn up in terms of the Order XX Rule 6 of the Code of Civil Procedure, 1908. So far as orders which are noted in Section 13(1) of the Act of 2015 is concerned, appealability thereof is circumscribed by the proviso to Section 13(1-A) thereof. In respect of a High Court which is governed under Clause 15 of the Letters Patent, 1865, the additional fetter on appealability of an order isSection 13(2) of the Act of 2015.

24. In the context of an arbitration proceeding governed by the Act of 1996 appealablity of the order is governed by either Section 37 or Section 50 of the Act of 1996 as the case may be.In the contest of an arbitration proceeding involving a commercial dispute within the meaning of the Act of 2015, appeals are governed by Section 13 of the Act of 2015 which in turn refers to Section 37 of the Act of 1996.

25. Sum and substance of the provisions of the Act of 2015 and the Act of 1996 on the issue of appealability from an order is concerned, the appeals against such orders which are specified under Order XLIII of the Code of the Civil Procedure, 1908 or Section 37 or Section 50 of the Act of 1996 as the case may be are maintainable. No appeal is maintainable against any order which does not fall within the scope and ambit of the three provisions as noted in the previous sentence in this paragraph.

26. The order impugned before us, does not fall within any of the provisions enumerated under Order XLIII of the Code of Civil Procedure, 1908 or under Sections 37 or 50 of the Act of 1996.

27. The appeal before us, therefore, is not maintainable.

28. *Goutam Paul (supra)* decided on the issue of limitation. The same is not relevant in the present appeal as we are of the view that, the appeal is not maintainable.

29. The Special Bench in *Prabhat Pan and Others (supra)* held as follows:-

> *"If a judgment of a Division Bench is placed before a single Judge of the same High Court, then the law recognised in such judgment is binding for all practical purposes unless the judgment is patently contrary to the applicable statute or it is contrary to a Supreme Court judgment. If, however, the Division Bench judgment notices a Supreme Court judgment and reads a legal issue discussed in the Supreme Court judgment to imply something that the Supreme Court decision clearly does not say, it is such interpretation which is binding on the single Judge of the same High Court and the single Judge has no room to interpret the Supreme Court judgment in any natural or ordinary way other than as read by the Division Bench. If a single Bench judgment of a High Court on a point of law is cited before a subsequent single Bench of the same court, it is binding on the later single Bench. The only recourse that the subsequent Judge may have, if he does not agree with the previous opinion, is to refer the matter to a larger Bench. The case is similar if a Division Bench judgment is cited before a subsequent Division Bench of the same court and the subsequent Division Benchdoes not agree with the view expressed in the previous one"*

30. *Prabhat Pan and Others (supra)* was cited in the context of the issue of limitation and the decision of the co-ordinate Bench rendered in *Goutam Paul (supra)*. Since, we are not entitled to enter into the issue as to whether or not the execution proceeding was barred by limitation in view of the non-maintainability of the appeal, the ratio is not attracted in the facts and circumstances of the present case.

31. In *State of Bombay (supra)*, Hon'ble Supreme Court observed that, the right of appeal is a substantive right and cannot be taken away unless circumscribed by Statue. In the facts and circumstances of the present case, the right of appeal under the Act of 2015 is circumscribed by Section 13 thereof. We already held that, the present appeal is not maintainable as it does not fall within the right of appeal enumerated under Section 13 of the Act of 2015.

32. *Arjun Singh (supra)* specifies which orders are to be construed as interlocutory orders. Again in the facts and circumstances of the present case, the ratio therein is not attracted, since, we are of the view that, the appeal sought to be carried, does not fall within the parameters of Section 13 of the Act of 2015.

33. In *Indian Farmers Fertilizer Cooperative (supra)*, the Hon'ble Supreme Court held that, a decision of an arbitrator, on the issue of limitation, attained finality and therefore, was appealable under the provisions of the Act of 1996. In the facts and circumstances of the present case, the impugned order is not in relation to a decision of an arbitrator deciding any issue raised in an arbitration proceeding finally. It is the

Executing Court which decided on the issue of limitation with regard to the enforcement of the award, in question.

34. In view of the discussions above, APOT No. 185 of 2026 along with all pending applications are dismissed, without any order as to costs.

(DEBANGSU BASAK, J.)

35. I agree.

(AJAY KUMAR GUPTA, J.)

As./KB
AR(CR)