

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLANT JURISDICTION
ORIGINAL SIDE**

**APOT/132/2026
IA NO: GA/1/2026, GA/2/2026**

**J.D.STEEL CORPORATION AND ANR
VS
LAKHOTIA INFRA PROJECTS PRIVATE LIMITED**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellants : Mr. Aniruddha Mitra, Sr. Adv.
Mr. Deepnath Roy Chowdhury, Adv.
Mr. Debraj Sahu, Adv.
Mr. Tamoghna Saha, Adv.

For Respondent : Mr. Suddhaswatva Banerjee, Adv.
Mr. Aurin Chakraborty, Adv.
Mr. Pradeep Sancheti, Adv.

HEARD ON : 03.08.2026
DELIVERED ON : 03.08.2026

DEBANGSU BASAK, J.:-

1. Appeal is directed against the order dated April 16, 2026 passed in ALP/2/2026.
2. By the impugned order, learned Single Judge invoked the provisions of Section 24 of the Code of Civil Procedure, 1908 read with Clause 13 of the Letters Patent, 1865 to transfer a suit for recovery of price of goods sold and delivered pending before the 7th

Bench, City Civil Court, Calcutta to the High Court in the Commercial Division to be heard along with CS-COM/713/2024.

3. Learned Advocate appearing for the respondent takes the issue of maintainability of the appeal. He relies upon **(1953) 1 SCC 333 (Asrumati Debi Vs. Rupendra Deb Raikot And Others)** in support of the proposition that, the appeal is not maintainable.
4. In response, learned Senior Advocate appearing for the appellant submits that, an appeal is not maintainable from an order passed invoking Clause 13 of the Letters Patent, 1865. However, since, the suit was for recovery of price of goods sold and delivered filed before a Non-commercial Court and transferred to the Commercial Division of the High Court, the issue of Order VII Rule 11 of the Code of Civil Procedure, 1908 stands affected by the impugned order. He submits that, such issue stands foreclosed by the impugned order, and therefore the appeal is maintainable.
5. On the issue of maintainability of the appeal, we find that **Asrumati Debi (supra)** is of the following view:-

“13. The question that requires determination in an application under Clause 13 of the Letters Patent is, whether a particular suit should be removed from any court which is subject to the superintendence of the High Court and tried and determined by the latter as a court of extraordinary original jurisdiction. It is true that unless the parties to the suit are agreed on this point, there must arise a controversy between them which has to be determined by the court. In the present case, a Single Judge of the High Court has decided this

question in favour of the plaintiff in the suit; but a decision on any and every point in dispute between the parties to a suit is not necessarily a “judgment”. The order in the present case neither affects the merits of the controversy between the parties in the suit itself, nor does it terminate or dispose of the suit on any ground. An order for transfer cannot be placed in the same category as an order rejecting a plaint or one dismissing a suit on a preliminary ground as has been referred to by Couch, C.J. in his observations quoted above. An order directing a plaint to be rejected or taken off the file amounts to a final disposal of the suit so far as the court making the order is concerned. That suit is completely at an end and it is immaterial that another suit could be filed in the same or another court after removing the defects which led to the order of rejection. On the other hand, an order of transfer under Clause 13 of the Letters Patent is, in the first place, not at all an order made by the court in which the suit is pending. In the second place, the order does not put an end to the suit which remains perfectly alive and that very suit is to be tried by another court, the proceedings in the latter to be taken only from the stage at which they were left in the court in which the suit was originally filed.”

6. In view of the authoritative pronouncement of **Asrumati Debi (supra)**, we do not find the present appeal to be maintainable. As noted above, learned Judge invoked Clause 13 of the Letters Patent, 1865 to transfer a pending suit from the City Civil Court, Calcutta to the Hon’ble High Court, *inter alia*, on the ground that,

another suit between the same parties was pending before the High Court being CS-COM/713/2024.

7. We do not find that, in passing the impugned order, learned Single Judge decided any rights, *inter se*, the parties. The issue as to whether or not the suit was correctly instituted in the first Court, that is, City Civil Court at Calcutta given the nature of suit, continues to remain. Such issue can be decided if so raised by the transferee notwithstanding the order of transfer. The order of transfer impugned herein does not cure the defect, if any, of the institution of the suit before the first Court.
8. In such circumstances, APOT/132/2026 along with pending applications are dismissed, without any order as to costs.

(DEBANGSU BASAK, J.)

9. I agree.

(MD. SHABBAR RASHIDI, J.)