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**IN THE COURT OF PRINCIPAL DISTRICT &
SESSIONS JUDGE, AHMEDABAD (RURAL)**

MISCELLANEOUS CIVIL APPEAL NO.6 OF 2026

APPELLANTS:-

(Original Defendant no.1 & 2)

Aanchal International

A proprietary concern having address at :

Industrial Plot, Khasra No.82, Ground and First Floor,

Kherki Daula, Nr. Toll plaza,

National Highway 8, Sector 8

Gurugram,

Haryana 122001. (Orig. Def. No.1)

And also at

Apartment NO.A-172, Chhattarpur Enclave, Phase 2

Street No.24, Top Floor, Chattarpur,

New Delhi 110074.

through its proprietor

Mrs. Madhu Gupta (Orig. Def. No.2)

V/s.

RESPONDENT :-

(Original plaintiff)

Bonus Plastic Private Limited

through its authorized signatory Mr. Sufal Shah

Having address: 42, Ashwamegh Industrial Estate

Sarkhej - Bavla Highway,

Changodar,

Ahmedabad Gujarat 382213.

Subject : Appeal u/s 13 of Commercial Courts Act, r/w Section 104 and Order 43 of the Code of Civil Procedure, 1908.

Appearance:

Mr.Aditya Upadhyay Learned Advocate for Appellants.

Mr.N.P. Udernani, Learned Advocate for Respondent

-: J U D G M E N T :-

1. Challenge by way of this appeal u/s 13 of Commercial Courts Act, r/w section 104 and Order 43 of the CPC is made against the order dated 19/1/2026 recorded below Exh.11 application passed by learned Principal Sr. Civil Judge, Sanand in Commercial Suit No.10 of 2024 (hereinafter referred as '*the impugned order*'). By the said order, Exh.11 application filed by the defendants no.1 and 2 under Order VIII Rule 1 r/w Section 151 of CPC and Section 5 of Limitation Act seeking condonation of delay in filing written statement in the suit, came to be rejected. Being aggrieved and dissatisfied with the said order passed by the learned trial court, the appellants - defendants no.1 and 2 have filed this appeal. Before entering into merits of this appeal it would be necessary to consider the point with regard to maintainability of appeal under Sec.13 of the Commercial Courts Act, Sec. 104 and Order 43 of CPC before this Court challenging the order passed by the learned trial court on an application under Order VIII Rule 1 r/w Section 151 of CPC to condone delay occurred in filing written statement in the suit.

2. Respondent has appeared through its learned Advocate Mr.N.P.Udernani, who has raised point with regard to maintainability of the appeal. It is submitted that appellants have filed the present appeal against the order dated 19/1/2026 of the learned trial Court whereby learned trial Court has rejected application Exh.11 filed by the orig. defendants no.1 & 2 under

Order VIII Rule 1 r/w Section 151 of CPC and Section 5 of Limitation Act to condone delay occurred in filing written statement. Ld. Advocate of the respondent has drawn attention of this Court to the provision of Sec.13 of The Commercial Courts Act, Order 43 and Section 104 of CPC to contend that the impugned order do not fall under Order 43 of CPC and in support of his contention reliance is placed on the following decisions and urged to reject to dismiss the appeal on the ground of non maintainability.

- [i] **Prakash Corporates vs Dee Vee Projects Ltd., (2022) 5 SCC 112.**
- [ii] **Prakash Corporates vs Dee Vee Projects Ltd., (2021) SCC Online Chh 2158.**
- [iii] **Smt Ganga Bai vs Vijay Kumar & Ors., (1974 2 SCC 393.**

3. Learned Advocate for appellants has submitted that as per the provision of Sec.13 of The Commercial Courts Act appeal against the impugned order by commercial Court lies before this Court. It is further submitted that if any order of the Civil Court to be challenged is not listed or specified in the list of Order 43 of CPC or Section 104 of CPC and no remedy is available, for substantial justice the Court may exercise its inherent power u/s 151 of CPC. Reliance is placed on the decision of Hon'ble Kerala High Court in case of **Kitco Ltd. vs P.H. Shebuna and Anrs, 2025 KER 64797** and urged that a suitable order be passed to hear the appeal on its merits.

4. Heard learned Advocates appearing on behalf of the respective parties. This Court has gone through the appeal-memo, the order passed by the learned trial Court below Exh.11

applicaiton, judgments relied on and the documents produced by the parties in the present appeal. It is clarified that the observations made by this Court are prima facie and tentative in nature and is confined for deciding this miscellaneous civil appeal and it will have no relevance during the trial. Following factors are taken into consideration while deciding this miscellaneous civil appeal:-

4.1 It is required to note that the challenge before this Court by way of an appeal u/s 13 of Commercial Courts Act, r/w section 104 and Order 43 of the CPC is made against the order dated 19/1/2026 recorded below Exh.11 application passed by learned Principal Sr. Civil Judge, Sanand in Commercial Suit No.10 of 2024. Exh.11 application was filed by the defendant under Order 8 Rule 1 r/w Section 151 of CPC and Sec.5 of Limitation Act seeking condonation of delay in filing written statement in the suit. Vide order dated 19/01/2026 the said application to condone delay in filing written statement in the suit came to be rejected by learned trial Court. It is this order which is challenged by the appellants herein under u/s 13 of Commercial Courts Act, r/w Order 43 of and section 104 of CPC. To decide the maintainability of appeal it would be relevant to refer the provisions of Section 13 of Commercial Court Act and Order 43 which provides appeal from orders with classification against which order, appeal would lie in consonance with provisions of Section 104. Section 13 of Commercial Court Act and Order 43 of CPC reads as under:

Section 13. Appeals from decrees of Commercial Courts and Commercial Divisions.

(1) I[Any person aggrieved by the judgment or order of a

Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, 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 the judgment or order:

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 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 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.

Order 43 of The Code of Civil Procedure:

“ORDER XLIII

APPEALS FROM ORDERS

1. Appeal from orders.—*An appeal shall lie from the following orders under the provisions of section 104, namely :—*

(a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court [except where the procedure specified in rule 10A of Order VII has been followed];

*[***]*

(c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte;

*[****]*

(f) an order under rule 21 of Order XI;

*[***]*

(i) an order under rule 34 of Order XXI on an

- objection to the draft of a document or of an endorsement;*
- (j) *an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;*
- [(ja) *an order rejecting an application made under sub-rule (1) of rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of rule 105 of that Order is appealable;]*
- (k) *an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;*
- (l) *an order under rule 10 of Order XXII giving or refusing to give leave;*
- [***]
- (n) *an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;*
- [(na) *an order under rule 5 or rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent person;]*
- [***]
- (p) *orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV;*
- (q) *an order under rule 2, rule 3 or rule 6 of Order XXVIII;*
- (r) *an order under rule 1, rule 2, [rule 2A], rule 4 or rule 10 of Order XXXIX;*
- (s) *an order under rule 1 or rule 4 of Order XL;*
- (t) *an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;*
- (u) *an order under rule 23 [or rule 23A] of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate court;*
- [***]
- (w) *an order under rule 4 of Order XLVII granting an application for review.*

[1A. Right to challenge non-appealable orders in appeal against decrees.—(1) *Where any order is made under this Code against a party and there upon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.*

(2) *In an appeal against a decree passed in a suit after*

recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.]

2. Procedure.—*The rules of Order XLI shall apply, so far as may be, to appeals from orders.”*

4.2 Admittedly, the order which is under challenged is the order passed by learned Trial Court in Commercial Suit No.10 of 2024, wherein the application Exh.11 filed by defendants seeking condonation of delay occurred in filing written statement is rejected. The order under challenge, do not fall under the orders as enumerated under Order 43 Rule 1 of CPC.

4.3 The appellant has raised contention to the effect that as per section 13 under Commercial Courts Act, 2015, it provides appeal to any person aggrieved by judgment or order of Commercial Court. Meaning thereby, any order passed by learned trial Court or judgment, appeal is provided under section 13 of the Commercial Courts Act, 2015 before the Commercial Appellate Court and the impugned order passed by learned Commercial Court would be certainly appealable under section 13 of The Commercial Courts Act.

It is further submitted that, the proviso, though clarifies that appeal shall lie from such orders that are specifically enumerated under Order 43 of CPC, however, the proviso which would be clarificatory in nature should not be a bar to a litigant who will become remediless.

In the context of the above contention, if Section 13 of the Commercial Court Act is read, it provides appeals from decree of

Commercial Courts and Commercial Divisions. It specifies that any person aggrieved by the judgment or order of Commercial Court below the level of District Judge may appeal to the Commercial Appellate Court. Section 13 has proviso attached to it, which specifies that appeal shall lie against order that are specifically enumerated under Order 43 of CPC, 1908. The section is clear, which provides for an appeal against the judgment or order passed by Commercial Court, before the jurisdictional Appellate Court. When the proviso has specifically provided appeal against only those orders which are specifically enumerated under Order 43 of CPC, other orders cannot be subject to appeal under Order 43 of CPC. Hon'ble Apex Court in the case of **Mitc Rolling Mills Pvt. Ltd. vs M/s Renuka Realtors, 2025-SCR-11-531** has interpreted maintainability of appeal in context with Section 13 of Commercial Courts Act and Order 43 of CPC. In the said case an application was filed under Order 7 Rule 11 of CPC 1908 seeking rejection of plaint before the Commercial Court. The said application was allowed and plaint came to be rejected. Against the said order appeal was preferred u/s 13(1A) of the Commercial Courts Act before the Hon'ble High Court, who dismissed the appeal holding that it is not maintainable, as order rejecting plaint would not fall within the ambit of Order 43 of CPC. The Hon'ble Apex Court has treated the said order as decree and hold that the order was in nature of decree whereby the plaint came to be rejected and therefore, the appeal cannot restricted by considering the proviso attached to Section 13(1A) of the Commercial Courts Act r/w Order 43 of CPC and the appeal came to be allowed holding that appeal would be maintainable.

4.4 So far as the instant case is concerned, it is very much clear that the order which is passed by learned Commercial Court is rejection of delay condonation application, preferred under Order VIII Rule 1 r/w Section 151 of CPC and Section 5 of Limitation Act, for delay occurred in filing written statement. The order passed do not fall under the category of decree. At this stage the observation of the Hon'ble Apex Court in the case **Mitc Rolling Mills Pvt. Ltd (Supra)** in para 17 would be relevant.

"17 : Section 13(1A) of the CCA, 2015, is in two distinct parts. The main provision contemplates appeals against 'judgments' and 'orders' of the C.A.@ SLP (Civil) No(s). 10428 of 2025 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."

As the order which is passed by learned Commercial Court do not fall under the order enumerated under Order 43 of CPC and considering the decision of Hon'ble Apex Court in the case of

Mitc Rolling Mills Pvt. Ltd. (Supra) the present appeal is not maintainable. Accordingly, following order is passed.

-: ORDER :-

1. The miscellaneous civil appeal is **dismissed** as not maintainable.
 2. Parties to bear their own costs.
 3. Copy of this order be sent to the concerned Court.
- Pronounced and signed in the open court today.

Date : 17/4/2026
Place:Ahmedabad

(Kamal M. Sojitra)
Principal District & Sessions Judge
Ahmedabad (Rural)
U.I.Code No.GJ01494