

IN THE COURT OF THE COMMERCIAL APPELLATE AUTHORITY,
THIRUVANANTHAPURAM

PRESENT : Smt. NAZEERA.S, COMMERCIAL APPELLATE AUTHORITY
(DISTRICT JUDGE).

Monday, the 8th day of June 2026/ 18th day of Jyeshtha, 1948

IA.02/2026

in COMMERCIAL APPEAL No.10/2025

(Appeal against the Order in IA No.36/2025 in CS. No.73/2021 dated 05/11/2025
on the file of Principal Commercial Court, Thiruvananthapuram)

Petitioner/Respondent:-

M/s Capital Retreat Pvt Ltd, a company registered
under Companies Act 1956 represented by its Director,
Rajamohan, aged 82 years, residing at Dhwarakamai,
Kumarapuram, Near KIMS Hospital,
Medical College P.O, Thiruvananthapuram

**By Advocates:- Nair Ajay Krishnan, Thejan Raj
and Sankar Govind**

Respondent/Appellant:-

Gopakumar.B Nair, aged 59 years,
S/o Balakrishnan Nair, residing at 5A, Skyline Plaza
Vellayambalam, Thiruvananthapuram

By Advocates:-C.S Manu and V.G. Harikumar

This petition came up for hearing on 06/06/2026 and the court on 08/06/2026
passed the following :

ORDER

This is a petition filed u/s 151 of Code of Civil Procedure to decide the
maintainability of the appeal as preliminary issue.

2. The petitioner is the respondent in the appeal. The appeal is filed by the appellant u/s 13 (1) of the Commercial Courts Act, 2015 challenging the order in I.A. No.36/2025 in C.S. No.73/2021. I.A. No.36/2025 is a petition filed by the plaintiff in the suit for subjecting Exts.A1 and A2 documents to stamp duty and penalty and forward to District Collector u/s 37(1) of the Kerala Stamp Act, 1959. The Commercial Court found that the petition is liable to be dismissed and assailing the said order the Commercial Appeal is filed u/s 13(1) of the Commercial Courts Act r/w Order 43 Rule 1 of Code of Civil Procedure.

3. The respondent in the appeal contended that in view of Proviso to Section 13(1) of Commercial Courts Act, 2015, this appeal is not maintainable as the order under challenge do not fall under Order 43 of the Code of Civil Procedure. The appellant contended that the appeal is maintainable as the Proviso to Section 13 is applicable only to Clause 1A of Section 13 and is not made available to Section 13(1). So, challenging the maintainability of the appeal, the respondent in the appeal has filed this petition to consider the maintainability of the appeal.

4. Notice in this application is given to the respondent. The respondent filed objection opposing the application.

5. Heard. Perused the records.

6. The only point to be answered is :

Whether the appeal is maintainable?

7. **The point:-**

The contention of the petitioner/respondent in the appeal is that the order under challenge is not one which falls under Order 43 of the Code of Civil Procedure and so such orders are not appealable before the Commercial Appellate Court in view of Proviso to Section 13(1) of Commercial Courts Act, 2015. On the other hand, the contention of the respondent/appellant is that the Proviso is applicable only to Section 13(1A) and not to Section 13(1). The learned counsel for the respondent placed reliance on the judgment passed by the Hon'ble High Court of Kerala in **KITCO Ltd v. P.H Shebuna (2025 KER:64797)** wherein it is observed that *the restrictive clause of appeals is not applicable to Section 13(1) and is applicable only to Section 13(1A) based on the punctuation of Fullstop in former and Colon in latter after the substituted amendment of Section 13(1) and 13(1A) of the Act.*

8. It is further submitted by the respondent that the appeal has been instituted strictly in accordance with the law declared by the Hon'ble High Court of Kerala in **Pranathmaka Ayurvedics Pvt. Ltd. v. Cocosath Health Products (2020(6)KHC 431)** and **Jacob Mathew v. M/s PTC Builders (2025 KHC Online 962)**

9. In **KITCO Ltd v. P.H Shebuna and Another** (cited supra), the question whether a Writ Petition under Article 227 of the Constitution of India is

maintainable in view of Sec. 13(1) of the Commercial Courts Act is considered. It is held that the Proviso is applicable only to Section 13(1A) of the Commercial Courts Act and not to the Section 13(1) of the Commercial Courts Act and the order of dismissal of an application by the Commercial Court can only be challenged before the Commercial Appellate Court u/s 13(1) of the Commercial Courts Act and not before the Hon'ble High Court of Kerala under Article 227 of the Constitution of India.

10. In **Pranathmaka Ayurvedics Pvt. Ltd., Pathanamthitta v. Cocosath Health Products (2020(6)KHC 431)** the Hon'ble High Court of Kerala observed that *there is no independent right of appeal provided u/s 13(1) of the Commercial Courts Act and it merely provides the forum of filing appeals.*

11. In **Jacob Mathew v. M/s. P.T.C. Builders (2025 KHC Online 962)** the Hon'ble High Court of Kerala held that *any order passed by the Commercial Courts is an appealable order before the District Judge u/s 13(1) of the Commercial Courts Act.*

12. The learned counsel for the petitioner herein at this juncture invited this Court's attention to Section 13 of the Commercial Courts Act as it stood before Amendment of Act 28 of 2018 dated 21.08.2018. Section 13 as it stood before Amendment is reproduced as follows:-

“13.(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 of 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.”

13. The learned counsel for the petitioner submitted that in view of the unamended Section 13, the Hon’ble Apex Court in **Kandla Export Corporation and another v. M/s OCI Corporation and another (Civil Appeal No. 1661-1663 of 2018 @ SLP(Civil)No.28582-28584 of 2017)** has held that Section 13 of the Act does not provide a general right of appeal and that appeal lies only against orders specifically enumerated under Order 43 Rule 1 of Code of Civil Procedure or Section 37 of the Arbitration and Conciliation Act and the object of the Act is to curtail interlocutory appeals. It is observed in this decision that *Section 13(1) of the Commercial Courts Act must be construed in accordance with the object sought to be achieved by the Act. Any construction of Section 13 of the Commercial Courts Act, which would lead to further delay, instead of an expeditious enforcement of a*

foreign award must, therefore, be eschewed.

14. The judgment in **Kandla Export Corporation and another v. M/s OCI Corporation and another** was pronounced on 07.02.2018, that is before coming into force of the Amendment Act dated 21.08.2018 with effect from 03.05.2018. The contention raised by the counsel for the petitioner is that by the Amendment Act Section 13(1A) was substituted between 13(1) and the Proviso, shifting the colon already in existence from Section 13(1) to 13(1A) of the Act with effect from 03.05.2018. But it is relevant to note that Section 13(1) irrespective of Section 13(1A) as it stood before Amendment and after Amendment is different. In Section 13(1) as it stood before Amendment ‘the decision of the Commercial Court or Commercial Division of a High Court’ can be challenged by way of appeal to the Commercial Appellate Division of that High Court’. However, after Amendment Section 13(1) says that the “judgment or order of a Commercial Court below the level of a District Judge” can be challenged by way of appeal of Commercial Appellate Court. So there is apparent change in the jurisdiction of the court the order of which is challenged.

15. The learned counsel for the respondent submitted in this regard that prior to the Commercial Courts (Amendment) Act, 2018, the statute contemplated only the Commercial Division and the Commercial Appellate Division of the High Court, which were applicable only to High Courts having original civil jurisdiction

and there was no concept of a “Commercial Appellate Court” at the district level and by virtue of the 2018 Amendment, Section 13(1) was substituted, and a distinct appellate framework was introduced. So it is the contention of the respondent that Section 13(1A) was introduced to deal with appeals to the Commercial Appellate Division of the Hon’ble High Court from judgment and orders of Commercial Courts at the District Judge level. Apparently, it is only after the amendment that the statute incorporated the provision for appeals from Commercial Court below the level of as District Judge and at the level of a District Judge. Further it is seen that after Section 13(1) there is a fullstop and proviso has been incorporated after Section 13(1A) with a colon at the end of Section 13(1A). In view of the same, the respondent contended that, the proviso is confined in its operation to Section 13(1A) itself and do not control or restrict the independent right of appeal conferred u/s 13(1).

16. At this juncture, this court adverted to the statement of objects and reasons of the Amendment bill 2018. It is submitted that the main objective of the Amendment is to constitute Commercial Courts at the District Judge level, particularly in jurisdictions where High Courts exercise ordinary original civil jurisdiction, to prescribe pecuniary limits for commercial disputes and to enable the designation of Commercial Appellate Courts at the District Judge level to exercise appellate jurisdiction over Commercial Courts below the level of a District Judge.

So it is seen that in bringing into force of the Amendment Act the statute contemplates two categories of Commercial Courts, namely (i) Commercial Courts below the level of a District Judge and (ii) Commercial Courts at the level of a District Judge and correspondingly provides for a dual appellate structure, namely (i) appeals under section 13(1) to the Commercial Appellate Court at the District level, and (ii) appeals under Section 13(1A) to the Commercial Appellate Division of the High Court. When the very purpose of bringing into the Amendment Act is considered and also taking into account of the change in jurisdictional aspects of Commercial Court and Commercial Appellate Court it is clear that by virtue of the Amendment, Sub Section 1A is not simply introduced to Section 13, instead there is peripheral changes in its content and impact.

17. The learned counsel for the petitioner also raised a contention that the judgment of the Hon'ble High Court in **KITCO Ltd v. P.H Shebuna and Another** (cited supra) is per incuriam as many judicial precedents of Hon'ble Apex Court and intention of legislature is overlooked. This court is bound by the precedent established as of now and it would be most inappropriate and against the settled principles of judicial discipline to go into that aspects. It is clear from the decision rendered in **KITCO Ltd v. P.H Shebuna and Another and Pranathmaka Ayurvedics Pvt. Ltd., Pathanamthitta v. Cocosath Health Products and Jacob Mathew v. M/s. P.T.C. Builders** (cited supra and discussed

above) that Proviso to Section 13 is applicable only to Section 13(1A) and that Section 13(1) is an independent provision for appeal. In view of the law that holds the field, this court is bound to follow the law declared in **KITCO Ltd v. P.H Shebuna and Another**. In view of the same it is seen that the proviso is applicable only to Section 13(1A) of the Commercial Courts Act and not to Section 13(1) of the Commercial Courts Act. So much so, the present Commercial Appeal filed by the respondent is found maintainable.

In the result, this petition challenging the maintainability of the Commercial Courts Act stands dismissed.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in Open Court, on this the 8th day of June, 2026.

**Sd/-
NAZEERA.S
COMMERCIAL APPELLATE
AUTHORITY
(DISTRICT JUDGE)**

APPENDIX:-NIL

**Id/-
COMMERCIAL APPELLATE
AUTHORITY
(DISTRICT JUDGE)**

//True Copy//

(By Order)

(Copies : 3)
Typed by : Soumya
Compared by :Rifa

FCS :

SHERISTADAR

Copy of Order in
IA.2/2026 in CA.10/2025
Dated:08/06/2026
