

OCD-2

ORDER SHEET

APOT/209/2025
WITH
CS-COM/412/2024

IN THE HIGH COURT AT CALCUTTA
Commercial Appellate Division
ORIGINAL SIDE

MAADHAWA REALPRO PVT. LTD.
VS
SUSHILA JAIN AND ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE OM NARAYAN RAI
Date : September 15, 2025.

Appearance:

Mr. Kuldip Mallick, Adv.
Mr. Arun Kr. Upadhyay, Adv.
Mr. Shantanu Mishra, Adv.
..for the appellant

Mr. Sarosij Dasgupta, Adv.
Mr. Javed K. Sanwarwala, Adv.
Ms. Madhurima Halder, Adv.
Ms. S. A. Sanwarwala, Adv.
...for the respondents

Dictated by Om Narayan Rai, J.

The Court: This appeal is directed against a judgment and order dated June 25, 2025 whereby the plaintiff's application (being GA No. 3 of 2023) under Order XII Rule 6 of the Code of Civil Procedure, 1908, praying for judgment on admission has been rejected.

By the same order, the defendant's application being GA-COM/4/2023, filed under Order VII Rule 11 of the Code of Civil Procedure,

1908, seeking rejection of plaint and dismissal of the suit has also been rejected.

The plaintiff has come up in appeal feeling aggrieved by the rejection of its application under Order XII Rule 6 of the Code (being GA No. 3 of 2023).

At the very inception, a question was put by us to the learned Advocate appearing for the appellant as to how could the appeal be maintained under the provision of Section 13 of the Commercial Courts Act, 2015 read with Order XLIII Rule 1 of the Code.

Learned Advocate appearing for the plaintiff in answer thereto seeks to rely on a Division Bench judgment of this Court in the case of *Kolkata Metropolitan Development Authority v. Dagcon (India) Private Limited*, reported at 2024 SCC Online Cal 8835.

He places paragraph-5 thereof to buttress his contention. The same reads thus:-

“5. One should decide the appealability of an order from the substance of the order. The section under which the order is passed is not material. In the Arbitration and Conciliation Act, 1996 the right to appeal is identified in relation to the section under which an order is passed. The appealability of an order is also to be appreciated in the context of the subject matter. In my opinion, if the appellant had succeeded in its application before the learned single judge the effect would have been adjustment of a part of the award resulting in its reduction by setting off of the counter-claim against the award. In that event part of the award would have stood set aside. That in my opinion is very much appealable under Section 37 of the Arbitration and Conciliation Act, 1996 read with section 13 of the Commercial Courts Act,

2015. Therefore, the preliminary objection of learned counsel for the respondent fails.”

A reading of the aforesaid paragraph would reveal that the Hon’ble Division Bench was satisfied that the order impugned was such that it could be appealed against under Section 37 of the Arbitration and Conciliation Act, 1996 read with Section 13 of the Commercial Courts Act, 2015 and as such, the appeal was entertained.

In the facts of the case which is now before us, the order impugned is one whereby the plaintiff’s application seeking judgment on admission has been rejected. Appeal against such rejection has not been provided for either under Section 13 of the Commercial Courts Act, 2015 or under Order XLIII Rule 1 of the Code.

In that view of the matter, we hold that the present appeal is not maintainable. The same is, accordingly, dismissed along with the connected application.

This, however, shall not prevent the appellant from pursuing any other remedy, which the appellant may have recourse to in accordance with law.

(ARIJIT BANERJEE, J.)

(OM NARAYAN RAI, J.)