NC: 2026:KHC-K:2249
WP No. 201056 of 2026

HC-KAR

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 10TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

WRIT PETITION NO. 201056 OF 2026 (GM-CPC)

BETWEEN:

M/S S R CONSTRUCTIONS
HAVING REGISTERED OFFICE AT
C-1 AND C-2 S K TOWERS, STATION ROAD,
KALABURAGI-585102,
REPRESENTED BY ITS MANAGING PARTNER
MOHD SHAFEEQ-UR-REHMAN
S/O MOHD. ABDUL REHMAN,
AGED ABOUT 45 YEARS,
R/O OPP. DR. J. S. RATHI HOSPITAL,
OLD JEWARGI ROAD, KALABURAGI-585102.

...PETITIONER

(BY SRI. ABDUL MUQHTADIR, ADVOCATE)

AND:

1. MOHD GALIB PASHA
   S/O ABDUL KAREEM,
   AGED ABOUT MAJOR,
   R/O PLOT NO.98, OLD JEWARGI ROAD,
   OPP. GANESH NURSING HOME,
   KALABURAGI-585102.

2. DATA COLLECTION,
   PROPRIETOR UNKNOWN,
   #G8, PLOT NO.98,, SITUATED IN LAND
   SY NO.73, BRAHMPUR VILLAGE,

LAYOUT OF E.I.E. CO-OPERATIVE
HOUSING SOCIETY LTD.,
KALABURAGI-585102.

3. VITA COLLECTION,
PROPRIETOR UNKNOWN,
#G9, PLOT NO.98, SITUATED IN LAND
SY NO.73, BRAHAMPUR VILLAGE,
LAYOUT OF E.I.E. CO-OPERATIVE HOUSING SOCIETY
LTD., KALABURAGI-585102.

...RESPONDENTS

(BY SRI RAMACHANDRA AND
SRI GURUBASAVA C. NAYAK, ADVOCATES FOR C/R1)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO A) ISSUE AN APPROPRIATE ORDER/DIRECTION/WRIT IN NATURE OF CERTIORARI TO QUASH THE ORDER ON IA NO.IV DATED 03-02-2026 PASSED IN COMMERCIAL O.S. NO.32/2025 BY THE HON'BLE PRINCIPAL DISTRICT AND SESSIONS JUDGE, AT KALABURAGI VIDE ANNEXURE-L BY CALLING FOR THE RECORDS AND CONSEQUENTLY, RESTORE THE COMMERCIAL O.S.NO.32/2025 ON THE FILE OF HON'BLE PRINCIPAL DISTRICT AND SESSIONS JUDGE, AT KALABURAGI WITH A DIRECTION TO PROCEED WITH THE SUIT. B) GRANT COSTS. C) SUCH OTHER RELIEF/S AS THIS HON'BLE COURT MAY DEEM FIT TO GRANT IN THE CIRCUMSTANCES OF THE CASE.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

ORAL ORDER

Plaintiff is before this Court in this writ petition filed under Article 227 of the Constitution of India with a prayer to quash the order at Annexure-L dated 03.02.2026 passed on IA No.IV in Commercial O.S.No.32/2025 by the Court of Principal District Judge and Commercial Court at Kalaburagi.

2. Registry has raised an office objection with regard to maintainability of this writ petition on the ground that petitioner has an alternate efficacious remedy against the impugned order under Section 13(1A) of the Commercial Courts Act, 2015 (hereinafter referred to as 'Act of 2015').

3. Learned Senior counsel Sri Ameetkumar Deshpande appearing for the petitioner submits that in view of the proviso to Section 13(1A) of the Act of 2015, only appeals as provided under Order XLIII of the Code of

Civil Procedure, 1908 (CPC) and Section 37 of the Arbitration and Conciliation Act, 1996 would lie to the Commercial Appellate Division of this Court. The order impugned is not appealable under Order XLIII of CPC and therefore this writ petition is maintainable.

4. In support of his arguments, he has placed reliance on the judgment of this Court in the case of ***Trinetramilan Product Protection Solutions Private Limited*** vs. ***A.S.Narayanan*** in **Commercial Appeal No.195/2024** disposed of on 29.01.2026 and also in the judgment of Hon'ble Supreme Court in the case of ***Kandla Export Corporation and another*** vs. ***M/s OCI Corporation and another*** reported in **[2018] 1 SCR 915**.

5. *Per contra*, learned counsel for the respondents submits that appeal against the impugned order is provided under Section 13(1A) of the Act of 2015 and the proviso to said section only provides for filing of appeals, in addition to the appeal which lies to the High Court under

Section 13(1A) of Act of 2015. He submits that the order impugned is passed by the Commercial Court in exercise of its powers under Order VII Rule 11(d) CPC, 1908 rejecting the plaint and the said order amounts to a decree within the meaning of Section 2(2) of CPC, 1908. Accordingly, he prays to dismiss the writ petition as not maintainable.

6. Petitioner has filed Commercial O.S.No.32/2025 before the jurisdictional commercial Court at Kalaburagi seeking the relief of perpetual injunction against the defendants in respect of the suit schedule properties. In the said suit, the contesting defendants have appeared and filed a detailed written statement. I.A.No.IV was filed under Section 151 of CPC with a prayer to decide the maintainability of the suit on the ground that plaintiff had already filed similar suit before the jurisdictional civil Court in O.S.No.65/2025 and O.S.No.263/2025 in respect of the very same properties. The said application was opposed by the plaintiff by filing objection. The trial court, vide the

order impugned has allowed I.A.No.IV and has consequently rejected the plaint in O.S.No.32/2025.

7. Section 2(2) of CPC, 1908 defines decree. The same reads as follows :

> *"(2) "**Decree**" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within (***) Section 144, but shall not include—*
>
> *(a) any adjudication from which an appeal lies as an appeal from an order, or*
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> *(b) any order of dismissal for default.*
>
> ***Explanation**.— A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;"*

8. From a reading of the aforesaid, it is apparent that an order passed rejecting a plaint would amount to a decree within the meaning of Section 2(2) of CPC, 1908 and Section 96 of CPC, 1908 provides for filing appeal

against every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decision of such Court.

9. Section 13 of the Act of 2015 provides for filing appeals from decrees of the commercial Courts and commercial Divisions. Section 13 of the Commercial Courts Act, 2015 reads as follows:-

> "***13. Appeals from decrees of Commercial Courts and Commercial Divisions***.—*[(1) 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."

10. A reading of Section 13(1A) of the Act of 2015, makes it very clear that any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction has a remedy of filing an appeal against such judgment or order to the Commercial Appellate Division of the High Court within a period of 60 days from the date of judgment and order passed by the Commercial Court at the level of District Judge.

11. In the present case the impugned order has been passed by the Court of Principal District and Sessions Judge and Commercial Court at Kalaburagi and therefore as against the impugned order which amounts to a decree within the meaning of Section 2(2) of CPC, 1908, an

appeal lies to the Commercial Appellate Division of this Court under Section 13(1A) of the Act of 2015. The proviso to Section 13(1A) of the Act of 2015 provides for filing appeal to the Commercial Appellate Division of this Court against order passed by a Commercial Division or a Commercial Court, which is enumerated under Order XLIII of CPC, 1908 and Section 37 of the Arbitration and Conciliation Act, 1996.

12. The Hon'ble Supreme Court in the case of ***MITC Rolling Mills Private Limited and another*** vs. ***Renuka Realtors and others*** reported **2025 SCC OnLine SC 2375** wherein the plaint was rejected, has considered Section 13(1A) of the Act of 2015 and in paragraph Nos.17 to 19 the Hon'ble Supreme Court has observed 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.

18. *Coming to the judgment relied upon by the respondents, i.e., Bank of India (supra), we are of the view that the same is clearly distinguishable, and the ratio thereof has no applicability to the present situation because, in the said case, the order under challenge was one* ***rejecting*** *the application moved under Order VII Rule 10 or under Order VII Rule 11(d) of the CPC. Paragraph No. 17, relied upon by the respondents for canvassing their submission, reads as under:*

> *"17. Sub Section 1A of Section 13 provides that a person aggrieved by a judgment or order can file an appeal, however, the said provision is to be read in conjunction with the proviso which specifically states that an appeal shall lie only from orders which are specifically enumerated under Order XLIII of the CPC. The occurrences of the expression "shall" and "specifically" in the proviso has to be noted for correctly understanding the legislative intent in framing the scheme of Section 13 of the Act of 2015.* ***It is also noteworthy that the order under challenge in this appeal has been passed by the learned trial court rejecting the Application moved by the Defendants under Order VII Rule 10 and Rule 11(d) of the CPC. Such an order is not enumerated in Order XLIII of the CPC, though Rule 1(a) of Order XLIII enlists an order passed under Order VII Rule 10 for returning the***

> ***plaint. Thus, Order XLIII enlists the order passed on an Application under Order VII Rule 10 if it is allowed; however, it does not enlist the order in case such an Application is rejected.*** *Order XLIII also does not enlist any order passed on an Application under Order VII Rule 11(d) of the CPC."*
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> *[Emphasis supplied]*
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> ***19.*** *A bare reading of the above paragraph makes it manifest that the said case involved a challenge to an order rejecting application(s) under Order VII Rule 10 and Order VII Rule 11(d) of the CPC, which order(s) are not enumerated under Order XLIII of the CPC. Thus, there cannot be any quarrel with the proposition that such an order would not be amenable to an appeal under Section 13(1A) of the CCA, 2015, and rather, can be challenged by filing a revision or a petition/application under Article 227 of the Constitution of India, as the case may be."*

13. In the case of ***Kandla Export Corporation*** (supra), the Hon'ble Supreme Court had considered the question of maintainability of appeal under Section 13(1) of the Act of 2015, which was not otherwise maintainable under Section 50 of the Arbitration and Conciliation Act, 1996. In paragraph Nos.14 and 15 of the order passed in ***Kandla Export Corporation*** (supra) case, it is observed as follows:

"14. Section 13(1) of the Commercial Courts Act, with which we are immediately concerned in these appeals, is in two parts. The main provision is, as has been correctly submitted by Shri Giri, a provision which provides for appeals from judgments, orders and decrees of the Commercial Division of the High Court. To this main provision, an exception is carved out by the proviso. The primary purpose of a proviso is to qualify the generality of the main part by providing an exception, which has been set out with great felicity in CIT v. Indo-Mercantile Bank Ltd., 1959 Supp (2) SCR 256 at 266-267, thus:

> *"The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment. "It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso". Therefore it is to be construed harmoniously with the main enactment. (Per Das, C.J. in Abdul Jabar Butt v. State of Jammu & Kashmir [(1957) SCR 51, 59]). Bhagwati, J., in Ram Narain Sons Ltd. v. Assistant Commissioner of Sales Tax [(1955) 2 SCR 483, 493] said:*
>
> > *"It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other."*

Lord Macmillan in Madras & Southern Maharatta Railway Co. v. Bezwada Municipality [(1944) LR 71 IA 113, 122] laid down the sphere of a proviso as follows:

> *"The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms."*

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect. (Vide also Corporation of City of Toronto v. Attorney-General for Canada [(1946) AC 32, 37].)"

15. 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 XLIII of the Code of Civil Procedure, 1908, and Section 37 of the Arbitration Act. It will at once be noticed that orders that are not specifically enumerated under Order XLIII of the 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."

14. The question that fell into consideration in the case of ***Trinetramilan Product Protection Solutions Private Limited*** (supra), is whether against an order passed under Order VII Rule 10 of CPC, 1908 an appeal was maintainable under the provisio to Section 13(1A) of Act of 2015 or not.

15. This Court placing reliance on the judgment of the Hon'ble Supreme Court in ***Kandla Export Corporation*** (supra) has held that as against the order passed under Order VII Rule 10 of CPC, 1908 no appeal is provided under Order XLIII of CPC, 1908 and therefore appeal was dismissed as not maintainable. Therefore, the judgment in the case of ***Kandla Export Corporation*** (supra) as well as ***Trinetramilan Product Protection Solutions Private Limited*** (supra) cannot be made applicable to the facts of the present case

16. The language of Section 13(1A) of the Act of 2015 is unambiguous and the proviso to said section cannot be interpreted so as to exclude what is provided

under Section 13(1A) of the Act of 2015. The proviso should always be construed harmoniously with the main enactment. The proviso goes on to state that an appeal shall lie as enumerated therein in addition to the appeal that lies under Section 13(1A) of the Act of 2015.

17. In the case on hand as stated earlier as against the impugned order which is a decree within the meaning of Section 2(2) of CPC, 1908, an appeal is maintainable under Section 13(1A) of Act of 2015 and not under the proviso to said section. Therefore the Registry was completely justified in raising an objection with regard to the maintainability of this writ petition. Accordingly the following :

ORDER

The writ petition is ***dismissed*** as not maintainable.

Sd/-
(S.VISHWAJITH SHETTY)
JUDGE

SN/List No.: 1 Sl No.: 10
CT:PK