



2026:DHC:1768-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 20th February, 2026
Pronounced on : 27th February, 2026

+ FAO(OS) (COMM) 31/2026, CM APPL. 11415/2026, CM APPL.
11416/2026 & CM APPL. 11417/2026

ASIAN HOTELS NORTH LIMITEDAppellant

Through: Mr. Rajiv Nayyar, Sr. Advocate along
with Mr. Sidhant Kumar, Ms. Shagun
Chopra, Mr. Pratham Mehrotra &
Mr.Madhav Bhatia, Advocates.

versus

EXCLUSIVE CAPITAL LIMITED & ORS. Respondents

Through: Mr. Siddharth Yadav, Sr. Advocate
with Mr. Manav Goyal, Ms. Ritika
Gusain, Ms. Amrita Sony &
Mr.Aditya Kumar, Advocates for R-1.
Ms. Devika Mohan & Mr. Dhruv
Negi, Advocates for R-3.
Mr. Kunal Tandon, Sr. Advocate with
Mr. Chetan Roy, Ms. Natasha &
Mr.Prakhar Sah, Advocates for R-5.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VINOD KUMAR

ORDER

Per DINESH MEHTA, J.

1. Instant appeal has been preferred under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) read with Section 13 of the Commercial Courts Act, 2015 (*hereinafter referred to as 'the Act of 2015'*) calling in question, the propriety and correctness of the order dated 07.01.2026.



2. No sooner had Mr. Rajiv Nayyar, learned senior counsel for the appellant (defendant no.4) opened his arguments, than Mr. Siddharth Yadav, learned senior counsel for respondent no.1 (plaintiff) interjected and raised a preliminary objection that the instant appeal is not maintainable as the order dated 07.01.2026 does not finally decide the interim application much less the suit. His argument, in substance was that unless an application or *lis* is finally decided, appellate jurisdiction conferred under Section 13 of the Act of 2015 cannot be invoked.

3. While highlighting that the impugned order was passed on 07.01.2026 and a period of about 45 days has since passed, learned senior counsel argued that almost an equal period of time (45 days) is remaining when the matter would come before learned Single Judge, as the next date is 06.04.2026.

4. In support of his contention that the instant appeal is not maintainable, learned senior counsel for respondent no.1 relied upon the judgment of Hon'ble the Supreme Court in the case of *Shah Babulal Khimji v. Jayaben D. Kania* reported in (1981) 4 SCC 8, and argued with vehemence that Hon'ble the Supreme Court has clearly delineated the parameters under which an appeal can lie.

5. He argued that the instant case does not fall within the scope of the appellate jurisdiction and prayed that the appeal be rejected on the ground of maintainability.

6. Apart from the judgment in the case of *Shah Babulal Khimji (supra)*, learned senior counsel relied upon the following judgments:

- i. *Jaswinder Singh v. Mrigendra Pritam Vikram Singh Steiner & Ors.* reported in 2012:DHC:6522-DB.



- ii. Exports Unlimited v. Delhi State Industrial Development Corpn. reported in 1996 SCC OnLine Del 259.
 - iii. Sahil Singh Maniktala & Ors. v. Harpreet Singh & Ors. reported in 2005 (81) DRJ 183 (DB).
 - iv. Perpetual Vision LLP & Anr. v. Vaibhav S Pingale & Ors. in 2025:DHC:10019-DB.
7. He relied upon all the judgments mentioned hereinabove with equal force but special emphasis was laid upon the judgment rendered in the case of *Perpetual Vision LLP (supra)*, while pointing out that the appeal in such case too was an appeal under Section 13 of the Act of 2015 and yet the Delhi High Court has held that the appeal is not maintainable.
8. Mr. Rajiv Nayyar, learned senior counsel for the appellant (defendant no. 4), on the other hand, argued that the provisions relating to appeal as provided under Section 10 of the Delhi High Court Act, 1966 (*hereinafter referred to as 'the Act of 1966'*) or for that matter, of any Letters Patent have no application to an appeal under Section 13 of the Act of 2015.
9. He submitted that Section 13 of the Act of 2015 simply provides that an appeal shall lie from orders specifically enumerated under Order XLIII of the CPC. He drew Court's attention towards the cause title and pointed out that the appeal in hands is, in essence, an appeal under Order XLIII Rule 1 of the CPC read with Section 13 of the Act of 2015, though a passing reference of Section 10 of the Act of 1966 has been made. He argued that the respondent's arguments are totally devoid of merit.
10. He read the provisions contained in sub-rule (r) of Rule 1 of Order XLIII of the CPC and submitted that the same provides that an appeal shall lie from an Order passed under Rule 1, Rule 2, Rule 2A, Rule 4 or Rule 10



of Order XXXIX of CPC, which by no stretch of imagination can be taken to mean that it should only be a final order so as to maintain an appeal.

11. He argued that since appeal against an ad-interim order has been provided under Order XLIII Rule 1 (r) of the CPC, hence the appeal under Section 13 of the Act of 2015 is maintainable.

12. Learned senior counsel read various paragraphs of *Shah Babulal Khimji (supra)* to contend that this judgment, as a matter of fact, provides that an appeal shall lie in the cases like the one in hands.

13. He further highlighted that the provisions relating to intra-court appeal as provided under Section 10 of the act of 1966 and the provisions of Bombay High Court (Letters Patent) Act, 1866 are having significant difference in its text and context.

14. Learned senior counsel for the appellant relied upon the judgment of Hon'ble the Supreme Court rendered in the case of *A. Venkatasubbiah Naidu v. S. Chellappan*. reported in (2000) 7 SCC 695 and submitted that Hon'ble the Supreme Court has categorically held that an appeal shall lie against an order granting or refusing an ad-interim injunction, hence, it cannot be said that the appeal is not maintainable.

15. He argued that for the purpose of deciding as to whether an appeal under Section 13 of the Act of 2015 is maintainable or not, the decisive factor is not the provisions of the Act of 1966 dealing with the appeal, but the provisions under Order XLIII Rule 1 of the CPC. And, in case the appeal is maintainable under the provisions of CPC, the appeal shall indisputably lie under Section 13 of the Act of 2015.

16. Mr. Kunal Tandon, learned senior counsel appearing for respondent no.5 (defendant no.5), on the other hand practically conceded that the instant



appeal is maintainable. He submitted that it is a different matter altogether that he may or may not agree with the order that has been passed by learned Single Judge, but so far as maintainability of an appeal is concerned, there cannot be any legal quarrel.

17. Heard learned counsel for the parties.

18. Before advertng to the rival submissions and rendering our answer to the conundrum concerning the interpretation of provision under Order XLIII of Rule 1 (r) of the CPC along with Section 13 of the Act of 2015 and Section 10 of the Act of 1966, it will be apt to keep all the relevant provisions handy so that the adjudication being made by us can be better understood, and for that purpose, the said provisions are reproduced hereunder:

Code of Civil Procedure, 1908:

*1. Appeal from orders.—An appeal shall lie from the following orders under the provisions of section 104, namely: —.....
(r) an order under rule 1, rule 2 1[rule 2A], rule 4 or rule 10 of Order XXXIX;.....*

Commercial Courts Act, 2015:

APPEALS

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.

Delhi High Court Act, 1966:

10. Powers of Judges.-(1) Where a single Judge of the High Court of Delhi exercises ordinary original civil jurisdiction conferred by sub-section (2) of section 5 on that Court, an appeal shall lie from the judgment of the single Judge to a Division Court of that High Court.

(2) Subject to the provisions of sub-section (1), the law in force immediately before the appointed day relating to the powers of the Chief Justice, single Judges and Division Courts of the High Court of Punjab and with respect to all matters ancillary to the exercise of those powers shall, with the necessary modifications, apply in relation to the High Court of Delhi.

19. So far as the argument of learned senior counsel for the respondent no. 1 that the order dated 07.01.2026 does not finally decide the interim application, much less the suit is concerned, we are cognizant/aware of the fact that by way of the order dated 07.01.2026, the learned Single Judge has directed that the title deeds of the property in question (which in any case were being held by defendant no. 5) shall remain with defendant no. 5 and the stay/interim application is still pending.

20. The edifice of the entire argument of Mr. Siddharth Yadav, learned senior counsel for the respondent no. 1, rests upon the judgment of Hon'ble the Supreme Court delivered in the case of ***Shah Babul Khimji (supra)*** wherein Hon'ble the Supreme Court has laid down that an appeal shall not lie against an interlocutory order passed by learned Single Judge. We are not required to be reminded that a judgment cannot be read as a statute; it has to be read taking into account the contextual facts and relevant statutory provisions involved in said case.

21. A careful reading of the judgment in the case of ***Shah Babul Khimji (supra)*** leaves no manner of doubt that Hon'ble the Supreme Court was considering an appeal arising out of clause 15 of the Bombay High Court



(Letters Patent) Act, 1866, wherein an interim order passed by learned Single Judge in a petition in original jurisdiction was assailed and in such circumstance Hon'ble the Supreme Court ruled that neither a revision under Section 115 of the CPC nor a writ petition under Article 226/227 of the Constitution of India would lie.

22. In the instant case, though the facts may at a first blush seem identical but are materially distinguishable; because in the case of *Shah Babulal Khimji (supra)* the order passed by learned Single Judge was in exercise of original jurisdiction and a Letters Patent appeal was filed thereagainst under the provisions of Letters Patent of Bombay High Court whereas in the instant case, neither the order passed by learned Single Judge is in exercise of original jurisdiction nor is the appeal under Section 10 of the Act of 1966.

23. It is noteworthy that instant appeal has been preferred under Section 13 of the Act of 2015, which provision in simple expression provides that an appeal shall lie under Section 13 of the Act in a case, where an appeal against such order has been provided under Order XLIII of the CPC. Had the dispute not been a commercial dispute or the suit was not being tried by any Commercial Court, the situation would have remained the same, when it comes to maintainability of appeal.

24. The moot question which is required to be decided in the instant case therefore is, whether an appeal could have been filed under the CPC, had the order impugned been passed by a Civil Court of original jurisdiction and had the Act of 2015 not come into force? The Act of 2015, in the present context, is relevant only for the purpose of forum of adjudication of the suit, which was essentially a suit for declaration seeking that the document dated 14.12.2022 be declared void in order to secure the right, interest and the title



of the property coupled with consequent relief of injunction. The instant appeal has come before the Division Bench, rather Commercial Appellate Division, not because of Section 10 of the Act of 1966, but because of provision contained in Section 13 & other provision of the Act of 2015.

25. For such relief, a plaintiff was otherwise required to file a suit which would naturally lie before a competent Civil Court, had the Act of 2015 not been there; prior to promulgation of the Act of 2015. If a party were to challenge any ad-interim injunction which has been passed or refused by the Court, an appeal would definitely lie perforce Order XLIII Rule 1(r) of the Code.

26. The reason for taking this view is, that the language of Order XLIII Rule 1 (r) of the CPC clearly provides that an appeal shall lie against **an Order under Rule 1, Rule 2, Rule 2A, Rule 4 or Rule 10 of Order XXXIX**. An Order would mean and embrace within its fold a final order so also an ad-interim order and therefore regardless of the fact that the order dated 07.01.2026 is an ad-interim order operative up to 06.04.2026, we are of the view that an appeal would lie before an Appellate Court. Since this suit and all suits of similar nature are required to be tried by the Commercial Court constituted under Section 3 of the Act of 2015, an appeal against such order in whichever forum prescribed, shall also be maintainable under the Act of 2015.

27. Moving on to the judgments which have been cited by Mr. Siddharth Yadav, learned senior counsel for the respondent no.1, we are of the view that the same are of little help to him. The judgment in the case of ***Shah Babulal Khimji (supra)*** is not applicable in the instant case, for which we have given our reasons in earlier part of the judgment. Other judgments



including the judgments of this Court rendered in the cases of *Perpetual Vision LLP (supra)* and *Sahil Singh Maniktala (supra)* too are clearly distinguishable inasmuch as the orders impugned therein had the effect of issuing notice only, and considering such situation, this Court held that an order of issuance of notice under Order XXXIX Rule 3 of CPC is not an order within the meaning of Order XXXIX Rule 1 and 2 of the CPC so as to maintain an appeal thereagainst since no such appeal has been provided under sub-rule (r) or any other contingencies enumerated under Rule 1 of Order XLIII. Since no appeal has been provided against issuance of notice under the provisions of CPC, no appeal can naturally be maintained under Section 13 of the Act of 2015.

28. As against the judgment which Mr. Siddharth Yadav has cited, we find that the judgment in the case of *A. Venkatasubbiah Naidu (supra)* particularly para 13 thereof clearly suggest that an order of injunction may be an ad-interim order or for that matter any order under Order XXXIX Rule 1 of CPC can be challenged by way of an appeal under Order XLIII Rule 1(r) of CPC, subject of course to the fetters prescribed by the Courts of law on the basis of various judicial pronouncement. It would not be out of place to reproduce para no. 13 of the judgment in the case of *A. Venkatasubbiah Naidu (supra)*:

“13. It cannot be contended that the power to pass interim ex parte orders of injunction does not emanate from the said Rule. In fact, the said Rule is the repository of the power to grant orders of temporary injunction with or without notice, interim or temporary, or till further orders or till the disposal of the suit. Hence, any order passed in exercise of the aforesaid powers in Rule 1 would be appealable as indicated in Order 43 Rule 1 of the Code. The choice is for the party affected by the order either to move the



appellate court or to approach the same court which passed the ex parte order for any relief.”

29. In view of the discussion foregoing, we are unhesitatingly of the opinion that as per Order XLIII Rule 1(r), an appeal shall lie against an ad-interim order refusing or granting an ad-interim injunction if the suit is governed by the CPC, irrespective of the nature of suit and regardless of the forum. Hence, instant appeal under Order XLIII Rule 1(r) of CPC read with Section 13 of the Act of 2015 is maintainable. However upon ultimate analysis, the threshold for interference may be kept very high so as to restrict the exercise of jurisdiction under appellate powers given under Order XLIII Rule 1 of the CPC. We also hold and clarify that since language of Section 10 of the Act of 1966 speaks of “judgment” passed in exercise of ordinary original civil jurisdiction, the fetters on the powers of Division Bench shall not apply as the suit was being tried under the provisions of the Act of 2015, which itself provides right to appeal as provided under Order XLIII of the CPC.

30. List this case for hearing on 09.03.2026.

**DINESH MEHTA
(JUDGE)**

**VINOD KUMAR
(JUDGE)**

FEBRUARY 27, 2026/nk