

*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**

*** THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**

+ COMMERCIAL COURT APPEAL (SR) NOS: 53095 & 53096 of 2025

%23.12.2025

COMCA.No.53095 of 2025

The Visakhapatnam Port Authority

.....Appellants

And:

\$ M/s.Vishwanadh Avenues India Private
Limited

....Respondent

COMCA.No.53096 of 2025

The Visakhapatnam Port Authority

.....Appellants

And:

\$ M/s.Vishwanadh Sports And Conventions
Private Limited

....Respondent

!Counsel for the Appellant : Sri Ravi Teja Padiri

^Counsel for the respondents : Sri Damalapati Srinivas
Sri Umar Abdullah

<Gist:

>Head Note:

? Cases referred:

1. 2021 SCC OnLine Megh 134
2. 2004 SCC OnLine AP 369
3. (2018) 14 SCC 715

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

* * * *

COMMERCIAL COURT APPEAL (SR) NOS: 53095 & 53096 of 2025

DATE OF JUDGMENT PRONOUNCED: **23.12.2025**

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

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|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI,J

MAHESWARA RAO KUNCHEAM,J

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM
COMMERCIAL COURT APPEAL (SR) NOS: 53095 & 53096 of 2025

ORAL ORDER: *(per Ravi Nath Tilhari, J)*

Heard Sri Ravi Teja Padiri, learned counsel for the appellants and Sri Umar Abdullah, learned counsel for the respondent.

2. Sri Damalapati Srinivas, learned Advocate General also appears during the course of dictation and submits that the question of maintainability of the appeal pursuant to the office objection is for the Court to consider but prays for time to enable to address on the other aspects.

3. The respondent-petitioner filed CAOP.Nos.37 & 38 of 2025 before the learned Court of Special Judge for Trial and Disposal of Commercial Disputes at Visakhapatnam seeking interim measure under Section 9 of the Arbitration and Conciliation Act, 1996 (in short Act, 1996).

4. The present Appellants (respondents in CAOPs) filed their counter and adoption memo.

5. Learned Special Judge passed the following order on 19.12.2025:

“Rule 32 petition along with authorization filed by the respondent and the same is allowed.

Counter of R1 and adoption memo of R2 filed.

Heard learned counsel for the petitioner.

Heard learned counsel for the respondents in part.

For further arguments on behalf of respondents call on 22.12.2025.

Parties shall maintain status quo ante as on the date of filing of this petition till 22.12.2025.”

6. The appeal has been filed against the order dated 19.12.2025, under Section 37(1)(b) of Act, 1996 r/w. Section 13(1) of the Commercial Courts Act, 2015 (in short Act, 2015).

7. Office has raised objection with respect to the maintainability of appeal under Section 37. The Objection is:

“please state how this COMCA is maintainable”.

8. To the aforesaid objection, an endorsement was made by learned counsel for the appellants that:

“The appeal is maintainable under Section 37 of the Act, 2015 against any measure under Section 9 of the Act, 1996, which is specifically provided under sub-section 1(b).”

9. Office has not mentioned clearly as to on what ground the objection has been raised.

10. However, it appears that since the matter under Section 9 of the Act, 1996 is still pending before the Special Court and only ad-interim order was passed, as is reflected from the order itself, office has raised such an objection.

11. From the aforesaid order dated 19.12.2025, it is evident that though the petition under Section 9 of the Act, 1996 is pending before the Special Court, as an ad-interim measure, the order has been passed directing the parties to maintain the status quo ante.

12. The question is the maintainability of the present appeal under Section 37(1)(b) of the Act, 1996 read with Section 13 of the Commercial Courts Act, 2015.

13. Section 37 of the Act, 1996 reads as under:

“37. Appealable orders.—(1) [Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders **(and from no others)** to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

(a) refusing to refer the parties to arbitration under section 8;

(b) **granting or refusing to grant any measure under section 9;**

(c) setting aside or refusing to set aside an arbitral award under section 34.

(2) Appeal shall also lie to a court from an order of the arbitral tribunal—

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16;
or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or takeaway any right to appeal to the Supreme Court.”

14. Section 9 of the Act, 1996 reads as under:

“9. Interim measures, etc., by Court.—(1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subjectmatter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.”

15. Section 13 of the Act, 2015 reads as under:

“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.”

16. Section 9 of the Act, 1996 provides that the party may before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court, under Sub Section (1) for an interim measure of protection in respect of any of the

matters, there under, viz., clause (d) 'interim injunction or the appointment of a receiver' and under clause (e) 'such other interim measure of protection as may appear to the Court to be just and convenient' under Section 9 of the Act, 1996. The Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

17. So, the Court has the power to grant 'interim injunction' as one of the interim measures under Section 9, till the disposal of the main petition.

18. Section 37 provides that an appeal shall lie from the orders as mentioned under sub Section (1) and from no others. Clause (b) specifically provides "granting or refusing to grant any measure under section 9". We are of the view that the order dated 19.12.2025 is an order granting one of the measures under Section 9 i.e., 'interim injunction'. So on the face of it, the order dated 19.12.2025 is covered under Section 37(1)(b), 'granting any measure under Section 9'. So, the order dated 19.12.2025 would be an appealable order under Section 37.

19. Section 104 of CPC relevant for the present purpose reads as under:

"104. Orders from which appeal lies.—(1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, **from no other orders.....**"

20. Order 43 Rule 1 of CPC relevant for the present purpose also reads as under:

"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;.....”

21. In ***Innovative Pharma Surgicals v. Pigeon Medical Devices Pvt.Ltd.***¹

the question was of the grant of temporary injunction under Order 39 Rule 1 CPC, in a suit. The learned Trial Court while issuing notice to the defendants granted ad interim injunction. Aggrieved by the same, the appeal was preferred under Order 43 Rule 1 (r) of Code of Civil Procedure. The question was if the appeal was not maintainable, as that was the stage only of the interim injunction and the aggrieved party could approach the same Court to get the order vacated. This Court held that the appeal against the ad-interim injunction was maintainable under Order 43 Rule 1(r)CPC. It was held that only in the extraordinary circumstance the aggrieved person can prefer an appeal against the ad-interim injunction and not as a matter of course.

22. Para Nos.13 to 18 in ***Innovative Pharma Surgicals*** (supra) read as under:

“In fact, a Division Bench of this Court had an occasion to deal with the subject in the judgment reported in E.Mangamma v. A.Muniswamy Naidu {AIR 1983 AP 128} and it has categorically held that an appeal against an ad interim a injunction order passed under Order 39 Rule 1 CPC., is very much maintainable. What was considered in the said judgment is as to the maintainability of the appeal and in view of the fact that a Division Bench of the Madras High Court has taken a different view in the judgment reported in Abdul Shukoor v. Umachander, {AIR 1976 Mad. 350}, this Court in its judgment E.Mangamma (supra) while dissenting with the judgment of the Madras High Court, has ruled that the appeal is maintainable. In fact, what was considered in that judgment is as to whether the judgment of the Madras High Court should be followed as a Precedent or not. The contention put forth before the learned Judges, was that as the Madras High Court had taken the view that an appeal is not maintainable against an ad interim injunction, such a judgment is binding on this Court.

¹ 2004 SCC OnLine AP 369

14. In fact, what was decided in that judgment *Abdul Shukoor v. Umachander* (supra), is as to whether the judgment of the Madras High Court should be followed as a Precedent or not. The contention put forth before the learned Judges was that as the Madras High Court has taken the view that an appeal is not maintainable against ad interim injunction, this Court also should rescind itself from entertaining an appeal. The Argument was that if for any reason, the Division Bench is not inclined to accept the view of the Madras High Court, it should be referred to a Full Bench. In that context, it necessitated for a Division Bench of this Court to hold that the said judgment is not binding and there was no necessity to refer the matter to a Full Bench. While dissenting, the learned Judges have held that an appeal against an order of an ad interim injunction is very much maintainable.

15. In fact, we have never expressed any doubt as to the maintainability of the appeal, and, are of the view that the appeal against an ad interim injunction is maintainable under Order 43, Rule 1(r) C.P.C.

16. Similarly, the Supreme Court had an occasion to deal with the subject and decide as to whether an appeal against an ad interim injunction is maintainable, in a judgment reported in *A.Venkatasubbaiah Naidu v.S.Chellappan* {AIR 2000 SC 3032}, in which the Supreme Court has held affirmatively. It is necessary to extract paragraph 19 of the said judgment:

"Under the normal circumstances the aggrieved party can prefer an appeal only against an order passed under Rules 1, 2, 2A, 4 or 10 of Order 39 of the Code in terms of Order 43, Rule 1 of the Code. He cannot approach the appellate or revisional Court during the pendency of the application for grant or vacation of temporary injunction. In such circumstances the party who does not get justice due to the inaction of the Court in following the mandate of law must have a remedy. So we are of the view that in a case where the mandate of Order 39, Rule 3A of the Code is flouted, the aggrieved party shall be entitled to the right of appeal notwithstanding the pendency of the application for grant or vacation of a temporary injunction, against the order remaining in force. In such appeal, if preferred, the appellate Court shall be obliged to entertain the appeal and further to take note of the omission of the subordinate Court in complying with the provisions of Rule 3A. In appropriate cases the appellate Court, apart from granting or vacating or modifying the order of such injunction, may suggest suitable action against the erring judicial officer, including recommendation to take steps for making adverse entry in his ACRs. Failure to decide the application or vacate the ex-parte temporary injunction shall, for the purposes of the appeal, be deemed to be the final order passed on the application for temporary injunction, on the date of expiry of thirty days mentioned in the Rule."

17. From a reading of the said judgment, it appears to our mind that it is only an extraordinary circumstance under which the aggrieved person can prefer an appeal against an ad interim injunction order. But, as a matter of course, the aggrieved person cannot approach the appellate or revisional Court during the pendency of the application for grant or vacation of temporary injunction. It was a case where an application to vacate an ad interim injunction was filed and as the said application to vacate the same, was not disposed of within the stipulated time under the provisions of Order 39 Rule 3A CPC., the parties therein approached the Appellate Court and in that context, the Supreme Court has held that an appeal is maintainable. But, however, it impliedly cautioned that in the normal course, the aggrieved party cannot approach the appellate or revisional Court during the pendency of the application for grant or vacation of temporary injunction. It is only

when there is an inaction on the part of the Courts in following the mandate provisions, then only the aggrieved party can approach the Appellate Court.

18. So, it is clear that though an appeal is maintainable, such an appeal should be filed only in an extraordinary circumstance under which the party is able to explain as to why he prefers an appeal in the High Court instead of choosing to file a petition to vacate the ad interim injunction. Even in case of appeal against an ad interim injunction, the appellate Court will not be bound to apply its mind to all the contentions, which the Original Court is bound to consider on the case shown by the party affected by ad interim order.

23. So Section 104 CPC read with Order 43 Rule 1 CPC makes it clear that the appeal lies from the orders enumerated under Section 104 and Rule 1 of the Order 43 of CPC and from no others. To this extent similar is the provision in Section 37 of the Act, 1996, which also provides that “the appeal shall lie from the following orders and from no others”.

24. Once interpreting the provisions of Section 104 read with Order 43 Rule 1 CPC, it was held by this Court in ***Innovative Pharma Surgicals*** (supra) that an order of ad-interim injunction is appealable under Rule 1(r) of Order 43 pending the final disposal of the application under Order 39 Rules 1 & 2 the same principle can be applied, so as to hold that when an interim injunction is granted under Section 9 of the Act, 1996 pending consideration of the main petition under Section 9, such order would also be appealable under Section 37(1)(b) of the Act, 1996 itself.

25. The order dated 19.12.2025 as reproduced above and under challenge in the appeal, is certainly an order under Section 9 of the Act, 1996 and as the Special Court has directed “the parties to maintain status-quo ante as on the

date of filing of the petition under Section 9". We are of the further view that it cannot be said that, that is not an extra ordinary circumstance.

26. Sri Umar Abdullah, learned counsel for the respondent placed reliance in the judgment ***National Thermal Power Corporation v. Meghalaya Power Distribution Limited (NTPC) Corporation limited***². In the said case, the appeal was filed against the order dated 10.05.2021 whereby the commercial court refused or rejected an application under Order 39 Rule 4 for vacation of ad-interim status quo order dated 22.04.2024 passed in Section 9 petition. The question was with respect to the maintainability of the appeal against the order dated 11.05.2021. The High Court of Meghalaya observed that Section 37(1)(b) contemplates appeals against final orders only and not against ad-interim orders.

27. Paras 30, 31 and 38 of ***National Thermal Power Corporation*** (supra) reads as under:

"30. A plain reading of the provisions which are quoted above, maps out the contours of the procedural law to be applied in considering commercial appeals, which then have to be placed against a given set of facts and circumstances to determine the issue. In the instant case, the appeal is against an order dated 11.05.2021 whereby the learned Commercial Court has refused or rejected an application under Order 39 Rule 4, for vacation of an ad-interim status quo order dated 22.04.2021 passed in a Section 9 application. This Court on the question of maintainability therefore, has only to examine whether the appeal against the order dated 11.05.2021 is maintainable at all under the Commercial Courts Act read with the Arbitration Act.

31. Section 37 (1) (b) contemplates appeals against final orders only and not against ad-interim orders and this stipulation is underlined by the fact that the words 'and from no others' has been used in the said provision. Read together with Section 8 of the Commercial Courts Act, the scope of an appeal is further narrowed down, inasmuch as, this provision bars any petition against an interlocutory order of a Commercial Court, including an order on the issue of jurisdiction. Further, it is

² 2021 SCC OnLine Megh 134

stipulated that any such challenge will be subject to the provisions of Section 13, and shall be raised only in an appeal against a decree of a Commercial Court. Coming to Section 13 of the Commercial Court Act, this provision clearly does not confer an independent right of appeal and the proviso to Section 13 (1A) has circumscribed the types of appeals that can be preferred by making it subject to Order 43 CPC and Section 37 of the Arbitration Act. What emerges therefore, is that the instant appeal has to satisfy the test of Section 37 which as observed hereinabove, provides for a limited right of appeal against orders mentioned in Section 37 (1) and from no others.

.....

38. This judgment which is exhaustive and is holding the field in such matters, has also analyzed and distinguished the various judgments which have also been cited by the learned counsels for both the parties and as such it will not be necessary to discuss the various authorities that have been relied upon any further. What follows therefore is that as per the law interpreted and laid down by the Hon'ble Supreme Court, there is no independent right of appeal under Section 13 (1A) of the Commercial Courts Act, the Arbitration Act is a complete code by itself and if an appeal is not maintainable under Section 37, the same cannot be sustained with the support of the Commercial Courts Act; that there is no independent right of appeal under Order 43 Rule (1) (r) CPC, and that interlocutory orders are not appealable, so also interim orders under Section 9."

28. With respect we are not in the agreement in view taken by Meghalaya High Court in ***National Thermal Power Corporation*** (supra) to the extent that Section 37(1)(b) contemplates appeals against the final orders only and not against the ad-interim orders. We are of the view that as ad-interim order is of the nature which is covered under clause (b) of 37(1) of the Act, 1996 or/and can be covered under Order 43 Rule 1 CPC, then such an order would also be appealable in view of Section 13 of the Act, 2015.

29. In ***Kandla Export Corpn. V. OCI Corpn.***³ the Hon'ble Apex Court held that Section 13 (1) of the Commercial Courts Act, is in two parts. The main provision is 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. It was observed that the

³ (2018) 14 SCC 715

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 43 of the Civil Procedure Code, 1908 and Section 37 of the Arbitration Act. The Hon'ble Apex Court held that it will be noticed that orders that are not specifically enumerated under Order 43 CPC would, not be appealable.

30. Paragraphs – 13 and 14 of ***Kandla Export Corpn.*** (supra) are reproduced as under:

“13. 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.* [*CIT v. Indo-Mercantile Bank Ltd.*, 1959 Supp (2) SCR 256 : AIR 1959 SC 713] , thus : (SCR pp. 266-67 : AIR pp. 717- 18, paras 9-10)

“9. ... 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.

‘8. ... 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 J&K* [*Abdul Jabar Butt v. State of J&K*, 1957 SCR 51 : AIR 1957 SC 281 : 1957 Cri LJ 404] , SCR p. 59 : AIR p. 284, para 8). Bhagwati, J., in *Ram Narain Sons Ltd. v. CST* [*Ram Narain Sons Ltd. v. CST*, (1955) 2 SCR 483 : AIR 1955 SC 765] , said : (SCR p. 493 : AIR p. 769, para 10)

‘10. 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 RNT, J & VN, J CRP No. 900 of 2024 16 provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.’

10. Lord Macmillan in *Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality* [*Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality*, 1944 SCC OnLine PC 7 : (1943-44) 71 IA 113] laid down the sphere of a proviso as follows : (IA p. 122 : SCC OnLine PC)

‘... 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 *Toronto Corpn. v. Attorney-General of Canada* [Toronto Corpn. v. Attorney-General of Canada, 1946 AC 32 (PC)] , AC p. 37.)"

14. 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 43 of the Code of Civil Procedure Code, 1908, and Section 37 of the Arbitration Act. It will at once be noticed that orders that are not specifically enumerated under Order 43 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."

31. We are of the view that the impugned order is covered under Section 37(1)(b) of the Act, 1996 and also under Order 43 Rule 1(r) CPC in the light of law as laid down in ***Innovative Pharma Surgicals*** (supra).

32. In view of the aforesaid, the appeal is maintainable.

33. Office objection is overruled.

34. Let the appeal be numbered.

35. Learned counsel for the respondents submits that the interim order dated 19.12.2025 was further extended on 22.12.2025 but there is in challenge to the order dated 22.12.2025 and now the next date fixed is 24.12.2025.

36. Post on 30.12.2025.

37. This order will not come in the way of learned Special Judge in deciding the pending petition under section 9 of the Act, 1996.

38. The application for stay filed in this appeal will be considered on the next date, if the occasion so arises after this appeal is numbered.

RAVI NATH TILHARI, J

MAHESWARA RAO KUNCHEAM, J

Dated: 23.12.2025
Note: L.R. copy be marked
Issue CC tomorrow
B/o.
AG