

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Present: THE HON'BLE JUSTICE HARISH TANDON & THE HON'BLE JUSTICE PRASENJIT BISWAS

STP Limited

Vs.

The State of West Bengal

F.M.A 1233 of 2022 WITH CAN 1 of 2022

For the Appellant: Mr. Utpal Bose, Sr. Adv.

Mr. Hasnuhana Chakraborty, Adv.

Mrs. Saroj Tulsian, Adv.

Judgment On: 23.12.2022

Appearance: PRASENJIT BISWAS, J.:

As per earlier direction dated 25.11.2022 passed by this court affidavit of service was affected upon the Respondent, despite it has not ventured to appear before this court at the time of hearing.

Let the affidavit of service be kept with the record.

Ld. Counsel appearing on behalf of the Appellant was present.

The instant appeal is preferred by the appellant challenging the impugned order dated 06.07.2022 passed by the Learned Additional District Judge 1st Court, Howrah passed in connection with Other Suit No.22 of 2008.

Whereby and where under Arbitral Award dated 16.04.2008 passed by the Arbitrator in connection with Memo No.2857- R/Adt. Dt.29.11.2000 is set aside by the Court below.

Mr. Utpal Bose, learned Senior Counsel for the Appellant assailed before us inter alia that the court below has acted illegally and with material irregularity in passing the impugned order and also failed to exercise the jurisdiction vested in him by law while passing the said judgment.

Ld. Counsel further submitted that the dispute between the parties is a commercial dispute within the meaning of the Commercial Courts Act, 2015 and the court below

did not have jurisdiction to try, determine and hear the case inasmuch as the same involved commercial dispute within the meaning of Section 2 (1) of the Act.

Ld. Counsel at the time of hearing drew our attention about the Notification No. 197-J.-the 28th June, 2016 of Government of West Bengal, Judicial Department, Writers ' Building, Kolkata-700001 which reflects about the local limits of the jurisdiction of the Commercial Court at Rajarhat, the areas included within the districts of North 24 Parganas, Nadia, Hooghly and Howrah.

As per submission made by the learned Advocate appearing for the appellant that the impugned order is without jurisdiction, bad in law and may be set aside. According to the Ld. Counsel the present suit is a suit which is to be treated as a commercial suit to be tried by the Commercial Court and the subject matter of the commercial dispute involved in the suit comes within the purview of the definition of commercial dispute as in Section 2 (1) (c) of the Act.

We have anxiously considered the submission advanced by the learned counsel. Perused the impugned order and other materials available on record.

To resolve the issue arising for consideration, it is essential to understand the objective of the enactment with reference to the relevant provisions. The Commercial Courts Act, 2015 was enacted with the objective of providing an independent mechanism for early resolution of high-value commercial disputes involving complex facts and questions of law.

The Act of 2015 defines a commercial dispute which is required to be tried by a Commercial Court in the case it is within the jurisdiction of District Court and by a Commercial Division if it is within the jurisdiction of a High Court. The definition of ' commercial disputes ' appears in Section 2 (1) of the said Act.

It appears that the impugned judgment was passed on 06.07.2022 by the Court below after commencement of Notification No.197-J.-the 28th June, 2016 which has included the district Howrah under the local limits of the jurisdiction of the Commercial Court at Rajarhat.

Section 15 of the Act, 2015 provides as under:-

Section 15:-Transfer of pending cases.

(1) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division.

(2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court:

Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).

A bare reading of Section 15 (2) of the Act, 2015 shows that all suits and applications, including application under the Arbitration and Conciliation Act, 1996 relating to a commercial dispute of a Specified Value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court, with the exception that if final judgment has been reserved such case shall not be transferred.

Section 15 has provided for a mechanism by which, a suit or a proceeding governed by the Act of 1996 which involves a commercial dispute within the meaning of the Act of 2015 and is of a specified value as specified under the Act of 2015, has to be transferred to the Commercial Division or Commercial Court, as the case may be, for consideration. However, in matters which comes within the purview of Section 15 of the Act of 2015, and where, final judgement has been reserved, then, such suit or proceedings are not to be transferred to the Commercial Division or the Commercial Court, as the case may be.

As has been noted herein above, suits and applications under the Act of 1996 pending before the regular court are required to be transferred to the Commercial Division or the Commercial Court if it satisfies the criteria laid down under Section 15 of the Act of 2015. Section 15 has provided for two entry routes to the Commercial Division or the Commercial Court, as the case may be, in respect of a suit or application under the Act of 1996. A suit or an application governed by the Act of 1996 can be transferred to the Commercial Court or the Commercial Division, as the case may be, either by the Court itself in seisin of such suit or the application under the Act of 1996, or on an application by the parties to the suit or the application under the Act of 1996.

As per Section 2 (1) (i), " specified value ", in relation to a commercial dispute, means the value of the subject-matter in respect of a suit, as determined in accordance with Section 12, which shall not be less than three lakh rupees or such higher value, as may be notified by the Central Government.

Section 12 of the Act prescribes the methodology for determination of Specified Value.

Section 6 of the Commercial Courts Act, 2015 deals with jurisdiction of Commercial Court, which is extracted below for ready reference:-

" 6. Jurisdiction of Commercial Court.= The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction. "

Section 10 of the Commercial Courts Act lays down that the Courts constituted under Commercial Courts Act, 2015 shall have jurisdiction in respect of arbitration matters.

Section 10 of the said Act entails that:

"10. Jurisdiction in respect of arbitration matters. Where the subject matter of an arbitration is a commercial dispute of a Specified Value and

(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted. "

A bare perusal of Sections 6, 10 and 15 of the Commercial Courts Act reveals that the Courts constituted under said Act will have jurisdiction to try a suit or application provided (1) it relates to a commercial dispute and (2) it has a specified value. In other words, a dispute, which does not satisfy these two conditions, cannot be entertained by a Commercial Court.

Every application filed under Section 34 of the Arbitration and Conciliation Act cannot be transferred to the commercial Court under Section 15 (2) of the Commercial Courts

Act, 2015 and only such applications will be required to be transferred, which are relating to a commercial dispute of a specified value.

Even after constitution of a commercial court for the district Howrah, Commercial Disputes under the Specified Value was adjudicated by the court below which is off without jurisdiction.

The dispute, between the parties fall under clause of Section 2 (1) (c) of the Act, which defines ' commercial disputes '.

In the factual matrix of the present case, the suit was not transferred to the Commercial Court under Sub Section (2) of Section 15 of the Act of 2015. None of the parties to the suit approached the Civil Court to have the present suit withdrawn from the regular Court and transferred to the Commercial Court for trial. Though plea has not been taken that court below lacks inherent jurisdiction yet we find that there is no fetter on the part of the appellant to take such plea at the appellate stage. Since, the present suit involves a commercial dispute within the meaning of the Act of 2015 and is to be tried by the Commercial Court. An order passed by a Court without jurisdiction over the subject matter or on other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction.

The defect of jurisdiction strikes at the authority of the Court to pass an order which cannot be cured by consent or waiver of the party. So, the present suit is required to be transferred to the Commercial Court for hearing.

In view of the aforesaid discussion, this Court has no hesitation in holding that the dispute between the parties is a ' commercial dispute ', therefore, learned court below erred in adjudicating the application filed by the petitioner under Section 34 of the Arbitration and Conciliation Act.

In the heels of surrounding facts and circumstances, we are also of the mindful opinion that the matter consequently warrants remand to the Learned Court below with a direction to transfer the same to the commercial court at Rajarhat for re-hearing in accordance with the Act of 2015.

Accordingly, the appeal is allowed.

The impugned order dated 06.07.2022 passed by the Learned Additional District Judge, 1st Court Howrah passed in connection with Other Suit No.22 of 2008 is hereby set aside.

The Learned Additional District Judge 1st Court Howrah is hereby directed to transfer case record to the Commercial Court, Rajarhat at once.

The Commercial Court Rajarhat is directed to hear the matter afresh and to dispose of the suit by pronouncing judgment afresh in accordance with the law as expeditiously as possible preferably within one month from the date of communication of the order.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)
(Prasenjit Biswas, J.)