

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 22.08.2016

+ **FAO(OS) 50/2016**

HINDPAL SINGH JABBAL & ORS

..... Appellants

versus

JASBIR SINGH & ORS

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. A.K.Singla, Sr.Adv. with Mr. Abhimanyu
Singh Khatri and Mr. Abhishek Khanna

For the Respondent No.1 : Mr P.S.Bindra

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. The present appeal is directed against the order dated 14.12.2015 passed by a learned single Judge of this court whereby the learned single Judge has directed that the suit be transferred to the jurisdiction of the District Judge (West), Tis Hazari Court, Delhi on account of the fact that there has been an amendment in Section 5(2) of the Delhi High Court Act, 1966 brought out by Section 2 of the Delhi High Court (Amendment) Act, 2015 whereby this court would exercise jurisdiction in ordinary civil suits only if the value of such suits exceeded Rupees two crores.

2. Sections 2 and 4 of The Delhi High Court (Amendment) Act, 2015, being relevant to this case, are set out below:-

“2. In sub-section (2) of section 5 of the Delhi High Court Act, 1966, for the words “rupees Twenty lakhs”, the words “rupees two crore” shall be substituted.

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4. The Chief Justice of the High Court of Delhi may transfer any suit or other proceedings which is or are pending in the High Court immediately before the commencement of this Act to such subordinate court in the National Capital Territory of Delhi as would have jurisdiction to entertain such suit or proceedings had such suit or proceedings been instituted or filed for the first time after such commencement.”

3. Admittedly, the value of the suit in the present case is less than 2 crores.

4. The order dated 24.11.2015 (as amended on 24.07.2016) passed by Hon’ble the Chief Justice in exercise of powers under section 4 of The Delhi High Court (Amendment) Act, 2015, *inter alia*, stipulates as under:-

“(i) All suits or other proceedings pending in the Delhi High Court on the Original Side below the value of rupees one crore, excepting those cases in which final judgments have been reserved, be transferred to the jurisdictional subordinate courts.

(ii) All suits or other proceedings the value of which is rupees one crore and above but does not exceed rupees two crores, other than those relating to commercial disputes the specified value of which is not less than rupees one crore (as defined in The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015), pending in the Delhi High Court on the Original Side, excepting those cases in which final judgments have been reserved, be transferred to the jurisdictional subordinate courts.

The Transfer of cases to the subordinate courts shall commence from today i.e., 24.11.2015.”

5. This case has had a chequered history. Initially, the suit was filed being CS(OS) No. 927/2001 and was valued at approximately Rs.10.50 lacs. At that point of time, the lower limit of the pecuniary jurisdiction of this Court for ordinary civil suits was in excess Rs.5 lacs. That was subsequently amended on 22.08.2003 whereby the minimum pecuniary limit was raised to in excess of Rs. 20 lacs. As such on 10.11.2003 this Court transferred the said CS(OS) 927/2001 to the District Court.

6. While the matter was proceeding before the District Court, in the course of cross-examination of the plaintiff as PW-2 it was admitted that the value of the property in question was Rs. 1 crore. Having noticed this, the Additional District Judge by an order dated 13.04.2010 returned the plaint under the provisions of Order 7 Rule 10(2) of the CPC to be filed before this court inasmuch as the value of the suit was clearly above Rs.20 lacs. Being aggrieved, the appellant/plaintiff filed an appeal being FAO (OS) No. 219/2010. That was disposed of by an order dated 05.05.2011 whereby a learned single Judge of this court held that Order 7 Rule 10(2) CPC ought not to have been taken recourse to, instead, the entire suit ought to have been transferred under Section 24(5) CPC to this court. It was ordered accordingly.

7. Thereafter the suit which had been numbered as suit No. 81/2003 before the District Court, having been transferred to this court, was

renumbered as CS(OS) 1625/2011. The suit proceeded and evidence was partly recorded before a learned single Judge of this court.

8. As mentioned above, with effect from 26.10.2015, Section 2 of the Delhi High Court (Amendment) Act, 2015 amended Section (5)(2) of the Delhi High Court Act, 1966 and, once again, the minimum pecuniary limit of the original side of this court was raised to “above rupees two crores”.

9. For the sake of convenience, Section 5(2) of the Delhi High Court Act, 1966 after the amendment of 26.10.2015 is as under:-

“5. Constitution of Commercial Appellate Division.-(1)

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(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Appellate Division.”

10. While it is an admitted position that an ordinary civil suit can no longer be tried by this court if the valuation of the suit is not in excess of Rs. 2 crores, it is argued by Mr Singla, the learned senior counsel appearing for the appellant / plaintiff that the present suit was within the definition of “commercial dispute” as set out in Section 2 (1)(c)(vii) of The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts, Act, 2015 (hereinafter referred to as ‘the Commercial Courts Act’) which came into force on 23.10.2015. Mr Singla also referred to Section 2(1)(i) of that Act which defined the expression “Specified value” in relation to a commercial dispute to mean the valuation of the subject matter

in respect of a suit as determined in accordance with Section 12 which shall not be less than rupees one crore or such higher valuation as may be notified by the Central Government. Section 12 (1)(c) of the Commercial Courts Act stipulates that in determining the ‘specified value’ of the subject matter of the commercial dispute in a suit, where the relief sought relates to immovable property or to a right therein, the market value of the immovable property, as on the date of the filing of the suit, should be taken into account. It was, therefore, contended by Mr Singla that since the value of the immovable property on the date on which the suit was originally filed was Rs. 1 crore, the stipulation as regards ‘specified value’ indicated in Section 2(1)(i) read with Section 12(1)(c) was clearly satisfied. Thus, according to Mr Singla, the suit would have to be tried by the Commercial Division of the High Court in view of the Section 7 of the Commercial Courts Act.

11. The relevant provisions of the Commercial Courts Act are set out herein below:-

“2. Definitions.— (1) In this Act, unless the context otherwise requires,—

(a) xxx xxx xxx xxx

(b) xxx xxx xxx xxx

(c) “commercial dispute” means a dispute arising out of—

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

(ii) export or import of merchandise or services;

- (iii) issues relating to admiralty and maritime law;
- (iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;
- (v) carriage of goods;
- (vi) construction and infrastructure contracts, including tenders;
- (vii) agreements relating to immovable property used exclusively in trade or commerce;
- (viii) franchising agreements;
- (ix) distribution and licensing agreements;
- (x) management and consultancy agreements;
- (xi) joint venture agreements;
- (xii) shareholders agreements;
- (xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;
- (xiv) mercantile agency and mercantile usage;
- (xv) partnership agreements;
- (xvi) technology development agreements;
- (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;
- (xviii) agreements for sale of goods or provision of services;
- (xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;
- (xx) insurance and re-insurance;
- (xxi) contracts of agency relating to any of the above; and

- (xxii) such other commercial disputes as may be notified by the Central Government.

Explanation.— A commercial dispute shall not cease to be a commercial dispute merely because—

- (a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;
- (b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions”

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“2(1)(i) “Specified Value” in relation to a commercial dispute, shall mean the value of the subject matter in respect of a suit as determined in accordance with section 12 which shall not be less than one crore rupees or such higher value, as may be notified by the Central Government.”

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“7. Jurisdiction of Commercial Divisions of High Courts.— All suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court:

Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed or pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court:

Provided further that all suits and applications transferred to the High Court by virtue of sub-section (4) of Section 22 of the Designs Act, 2000 (16 of 2000) or Section 104 of the Patents Act, 1970 (39 of 1970) shall be heard and disposed of by the Commercial Division of the High Court in all the areas

over which the High Court exercises ordinary original civil jurisdiction.”

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“12. Determination of Specified Value.— (1) The Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application shall be determined in the following manner—

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining specified value;

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12. The learned counsel for the respondent No. 1 submitted that no interference with the impugned order is called for. He submitted that the first and foremost point to be considered is whether the present dispute is covered under the expression ‘commercial dispute’ under the said Commercial Courts Act. The learned counsel for respondent No. 1 submitted that the suit is essentially one seeking cancellation of General Powers of Attorney, Sale deeds and for recovery of possession. He submitted that the suit does not have any element of a ‘commercial dispute’ as defined in Section 2(1)(c) of the Commercial Courts Act. It was submitted that the expression “agreements relating to immovable property” appearing in the said provision did not bring within its fold the General

Powers of Attorney and Sale deeds which are not in the nature of agreements. Therefore, according to the learned counsel for respondent No. 1, on this ground alone, this appeal requires to be dismissed.

13. After having heard the learned counsel for the parties, although we have sympathy for the appellant because of the twists and turns this case has taken consequent upon amendments to the Delhi High Court Act, 1966, in law, we do not find any infirmity with the impugned order dated 14.12.2015. The reason being that the present suit is essentially one seeking cancellation of General Powers of Attorney, Sale Deeds and a decree for possession. Neither General Powers of Attorney nor sale deeds can be regarded as “agreements relating to immovable property”. A sale deed brings about a conveyance of property and cannot, by any stretch of imagination, be construed as an “agreement relating to immovable property”. The distinction between a sale and a contract for sale of immovable property has been brought out in Section 54 of the Transfer of Property Act, 1882 itself in the following manner:-

54. “Sale” defined.- “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale How made. – Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.- A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

14. In so far as a General Power of Attorney is concerned, it does not amount to an ‘agreement relating to immovable property’ for the simple reason that the attorney holder (donee) only gets a power from the owner (donor) to transact business on his behalf. Section 1A of the Powers-of-Attorney Act, 1882 defines ‘Power-of-attorney’ to include any instrument empowering a specified person to act for and in the name of the person executing it. As such, it cannot be construed to be an agreement relating to immovable property.

15. We are not going into the issue as to whether the subject property is used ‘exclusively in trade or commerce’ as we are of the view that the nature of the dispute raised in the present suit does not concern any “agreement relating to immovable property.”

16. We may also notice that the definition of commercial dispute in Section 2(1)(c) indicates 21 different types of transactions all of which pertain to contracts/agreements of commercial transactions and none of which relate to any conveyance of immovable property. Therefore, in our

view the subject matter of the present suit does not fall within the ambit of “commercial dispute” as specified in Section 2(1)(c) of the Commercial Courts Act. That being the case, Commercial Courts Act would not apply and amendment brought to the Section 5(2) of Delhi High Court Act, 1966 whereby the pecuniary jurisdiction has been raised to in excess of rupees two crores would clearly apply.

17. In view of the above, we do not find any fault with the impugned order dated 14.12.2015. The appeal is dismissed. However, because of the history of this case, we request the concerned ADJ (West), Delhi to expedite the disposal of this case and to dispose the same preferably within six months.

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

AUGUST 22, 2016

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