

2

\$~A-11

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

% Date of decision : 2.11.2016

+ TR.P.(C.) 117/2016 & CM Nos.38068-38069/2016

BIMLA AGGARWAL Petitioner

Through Mr.P.D.Gupta, Sr.Adv.with
Mr.Abhishek Gupta, Advocate

versus

M/S GUPTA INTERNATIONAL & ORS Respondent

Through Mr.Anil Kumar Gupta, Ms.Nishtha
Garg and Mr.Abhishek Rana, Advocates for R-1 to
R-3

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present petition filed under section 24 of the Code of Civil Procedure the petitioner seeks transfer of Suit No.226 /2016 (re-numbered as CS(OS)612827/2016) titled as M/s Gupta International and Others vs. Ashok Kumar Singhal & Another pending in the court of Ms.Savita Rao, Additional District Judge (West) to be tried before Commercial Division of this court. The admitted case of the parties is that the subject matter of the suit is a commercial dispute. M/s Gupta International, Smt.Bimla Gupta and Shri Om Prakash Gupta i.e. the respondents No.1 to 3 filed a suit against the petitioner and respondent No.4 on the original side of this Court in respect of a dispute relating to partnership agreement between the parties. The suit

CM(M)836/2013

Page 1

3

was transferred by this Court vide order dated 10.5.2016 to the Court of Additional District Judge, West in view of Notification No.27187/DHC/Orgl. Dated 24.11.2015.

2. The petition relies upon a circular of this Court dated 28.4.2016 to contend that the suit is now to be tried by a Commercial Division of this court.

3. Learned senior counsel appearing for the petitioner relies upon a judgment of this Court in the case of *Kamal Sharma & Ors. vs. Blue Coast Infrastructure Development Pvt Ltd., 229(2016) DLT 438* to contend that in pending suits involving commercial disputes which were pending before this Court and were transferred to the District Court vide notification No.27187/DHC/Orgl. dated 24.11.2015 are to be re-transferred back to this court to be heard by the Commercial Division of this Court.

4. The notification dated 28.4.2016 issued by the Registrar General of this Court reads as follows:-

“Hon’ble the Chief Justice vide Notification dated 28th April, 2016 has been pleased to order issuance of the following addendum to Notification No.27187/DHC/Orgl. dated 24.11.2015:-

“All suits and applications covered by the first proviso to Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 filed or pending as on 26.10.2015 on the Original Side of the Delhi High Court, shall remain in the Delhi High Court and shall be heard and disposed of by the Commercial Division of Delhi High Court.”

In terms of the said addendum, all suits and applications relating to commercial disputes stipulated by an Act to lie in a Court not

4

inferior to a District Court, which have been transferred to the District Courts pursuant to the Notification No.27187/DHC/Orgl. Dated 24.11.2015 shall be recalled back to the Delhi High Court for being heard and disposed of by the Commercial Division of Delhi High Court. Parties to such suits or applications may also approach the concerned District Courts for sending such suits or applications to Delhi High Court for disposal by the Commercial Division of Delhi High Court. All such suits and applications that shall be recalled, on receipt from the District Courts, in the first instance shall be listed before the Joint Registrars for fixation of dates for listing before the Commercial Division of the Delhi High Court.”

5. The said Notification dated 28.4.2016 is issued as an addendum to the earlier Notification dated 24.11.2015. The said Notification dated 28.4.2016 states that suits and applications of commercial disputes which were transferred to the District Court vide Notification dated 24.11.2015 are to be recalled back to be heard by the Commercial Division of this Court.

6. This court in the case of *Kamal Sharma & Ors. vs. Blue Coast Infrastructure Development Pvt Ltd. (supra)* also noted that even suits or applications which fell below the specified value of Rs.1 crore being pending commercial disputes will continue to be heard by the commercial division of this court. Relevant portion of the judgment reads as follows:-

“17. Consequently, pending cases involving a commercial dispute of the specified value of Rs.1 crore and above, were retained in this Court for purpose of trial.

18. So far as the suits and applications, which were filed and pending prior to the enforcement of the Commercial Courts Act are concerned, the first proviso to Section 7 carves out a limited exception by providing 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

5

on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court. This means that even if such suits or applications fall below the specified value of Rs.1 crore, the pending commercial disputes would continue to be heard by the Commercial Division of the High Court, provided that such commercial disputes, under a statutory stipulation, could lie in a Court not inferior to the Court of a District Court.”

7. Reference may also be had to the judgment of this Court in the case of *Guinness World Records Limited vs. Sababbi Mangal*, 230 (2016) DLT 377 wherein it was noted as follows:-

“8.It is clear that the expression 'and filed' has been elaborated by the Legislature to mean those cases which are filed or pending i.e even if a case is pending as on the date of bringing in the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, such pending cases will be continued to be tried by the Commercial Division of the High Court irrespective of these matters not being above the specified value and being below the specified value upto Rs. 1 crore. There cannot be any other interpretation of the expression being of the words and 'filed or pending' as found in the first proviso to Section 7 of the Act of 2015. If these words are to be interpreted to mean that cases which are filed and pending will have to be transferred since their pecuniary value is less than rupees one crore, then the same will defeat the intention of the legislature in changing the language of the first proviso to Section 7 whereby the words 'and filed' has been amended to 'and filed or pending'.”

8. It is manifest from a reading of the above Notification and judgments of this court that the matter being a commercial dispute which was pending before this court and was transferred to the District Court in view of the earlier Notification dated 24.11.2015 has now to be re-transferred back to be

6
heard by the Commercial Division of this court.

9. The present petition is accordingly allowed. The matter will stand transferred from the court of Ms.Savita Rao, Additional District Judge (West) and will be listed before the concerned Joint Registrar on 21.12.2016.

10. Petition and all pending applications stand disposed of accordingly.

Walt

JAYANT NATH, J

NOVEMBER 02, 2016

n