

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 788 OF 2017

SHRI CHERUPARAMBIL MATHEW ... PETITIONER

Versus

SHRI ERIC EUSEBIO FURTADO & 11 ORS., ... RESPONDENTS

Shri R.G. Ramani, Advocate for the Petitioner.

CORAM:- C. V. BHADANG, J.

DATE: 6th SEPTEMBER, 2017

ORAL ORDER:

The challenge in this petition is to the order dated 29.07.2017 (below Exhibit-201), in Special Civil Suit No. 18/2006/III, by which, the learned Trial Court, has refused to transfer the suit to the Commercial Court. The said application was filed by the petitioner under Section 15(2) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Act, for short), on the ground that the transaction, which is subject matter of dispute in the suit, is a commercial transaction, covered by Section 2(1)(c)(vii) and (xxi) of the Act.

2. The brief facts are that the petitioner (plaintiff) is having an agreement of agency executed by the original

defendant nos. 1 to 10, which agreement is dated 23.09.2005. There is a Power of Attorney executed by the defendant nos. 1 to 10 in favour of the petitioner on the same date. As per the said contract of agency and the Power of Attorney, the petitioner was entitled to sell the suit property belonging to the defendant nos. 1 to 10 and out of the consideration, an amount at the rate of Rs.600/- per square metre was payable to defendant nos. 1 to 10 and the petitioner was entitled to retain the balance.

3. Subsequently, disputes and differences arose between the parties, which led the petitioner to file the aforesaid suit, *inter alia* for the relief of cancellation of agreement to sell, executed by defendant nos. 1 to 10 in favour of defendant no. 12 and for declaring the said agreement to be null and void. The petitioner also sought specific performance of the agreement of the agency, by directing the defendant no. 11 to pay Rs.1,82,64,600/- to the defendant nos. 1 to 10 and directing defendant nos. 1 to 12 to jointly and severally pay the petitioner an amount of Rs.1,17,35,400/- alongwith interest.

4. The Act came into force during the pendency of the suit i.e. on 23.10.2015, which led the petitioner to file the aforesaid application (Exhibit-201), seeking transfer of the suit to

the Commercial Court.

5. The learned Trial Court has found that the suit is essentially for specific performance and although, it is valued in excess of Rs.1 crore, the transaction or dispute cannot be said to be a commercial dispute, within the meaning of Section 2(1)(c) (vii) and (xxi) of the Act.

6. I have heard Shri Ramani, the learned Counsel for the petitioner, perused record and the impugned order and I do not find that any case for interference is made out.

7. Section 2(1)(c) of the Act reads thus:

"2. Definitions-(1) In this Act, unless the context otherwise requires,

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

(Emphasis supplied)

It can thus be seen that a commercial dispute, within the meaning of Section 2(1)(c)(vii) of the Act, would be a dispute in respect of the agreements relating to immovable property, used exclusively in trade or commerce.

Section 2(1)(c)(xxi) of the Act stipulates that a contract of agency, relating to 'any of the above' i.e. falling within Section 2(1)(c)(i) to (xx) of the Act, would also be covered and would come within the ambit of a commercial dispute. It can thus be seen that disputes arising of all contracts of agency, although, in excess of value of Rs.1 crore, cannot per se be termed as commercial disputes. The subject property has not been used for trade or commerce. Thus, on conjoint reading of Section 2(1)(c)(vii) and (xxi) of the Act, in the context of the facts obtaining in the present case, it is clear that the dispute is not a commercial dispute, requiring the suit to be transferred to the Commercial Court. I have carefully gone through the impugned

order and I do not find that it suffers from any infirmity. The petition is without any merit and is accordingly dismissed.

C.V. BHADANG, J.

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