

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 6th November, 2017

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TR.P.(C.) 18/2017

M/S R B ENTERPRISES

..... Petitioner

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

Versus

JAI DEEP GOEL

..... Respondent

Through: Ms. Anjali Chopra, Advocate

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TR.P.(C.) 20/2017

AVNEET GOYAL

..... Petitioner

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

Versus

JAI DEEP GOYAL

..... Respondent

Through: Ms. Anjali Chopra, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. These petitions, under Section 24 of the Code of Civil Procedure, 1908 (CPC), seek transfer of Suits being CS No.518/2016 (renumbered as CS No.13173/2016) titled *Shri Avneet Goyal vs. Shri Jai Deep Goyal* and Suit being CS No.519/2016 (renumbered as CS No.13174/2016) titled *Shri Jai Deep Goel vs. M/s R.B. Enterprises* both of the Court of Ms. Vandana Chauhan, Additional District Judge-15, (Central District), Tis Hazari Courts, Delhi to this Court.
2. Notice of the petition was ordered to be issued and the counsel for the respondent appears.
3. The senior counsel for the petitioners has argued:

- (i) that the first of the aforesaid Suit was instituted by the petitioner Avneet Goyal against Jai Deep Goyal for recovery of Rs.99,13,337/-;
 - (ii) that the second of the Suits aforesaid was instituted by the respondent Jai Deep Goyal against the petitioner R.B. Enterprises for recovery of Rs.54,98,150/-;
 - (iii) that both the Suits aforesaid were filed / instituted in this Court;
 - (iv) that on enhancement of the minimum pecuniary jurisdiction of this Court on enactment of Delhi High Court (Amendment) Act, 2015, both the Suits aforesaid were transferred to the subordinate courts;
 - (v) that both the Suits are commercial suits within the meaning of The Commercial Courts, Commercial Divisions and Commercial Appellate Division of High Courts Act, 2015 ('Commercial Courts Act' for short);
 - (vi) that as per the first proviso to Section 7 of the Commercial Courts Act, said Suits ought not to have been transferred to the subordinate courts and have been wrongly transferred.
4. Reliance is placed on the order dated 2nd November, 2016 in TR.P.(C) No.117/2016 titled ***Bimla Agarwal vs. Gupta International & Others*** of this Court.
5. The counsel for the respondent opposes the transfer.
6. I have considered the aforesaid contentions of the learned senior counsel for the petitioner.
7. Vide Delhi High Court (Amendment) Act, 2015, the minimum pecuniary ordinary original civil jurisdiction of this Court was enhanced from that in excess of Rs.20 Lakhs to that in excess of Rs.2 Crores.

However, simultaneously therewith, the Commercial Courts Act aforesaid was also enacted which created Commercial Divisions in the High Courts having original civil jurisdiction and vide Section 7 thereof provided that 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 the High Court.

8. Section 2(i) of the Commercial Courts Act defines “specified value” in relation to commercial dispute as the value of the subject matter in respect of a suit as determined in accordance with Section 12 and which shall not be less than Rs.1 Crore or such higher value as may be notified by the Central Government.

9. Both the aforesaid Suits are for recovery of less than Rs.1 Crore and thus not of the specified value.

10. The same would thus not qualify them as falling within the jurisdiction of the Commercial Division of this Court.

11. The contention of the senior counsel for the petitioners however is that since the said Suits were instituted prior to coming into force of the Commercial Courts Act, notwithstanding being of less than the specified value defined in the Commercial Courts Act, are to be tried by this Court only in terms of the first proviso to Section 7 of the Commercial Courts Act.

The said proviso reads as under:

“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.”

12. On it being enquired from the senior counsel for the petitioner, as to how the Suits aforesaid qualify the requirement of “stipulated by an Act to lie in a court not inferior to a District Court”, the senior counsel for the petitioner has drawn attention to Section 25 of the Punjab Courts Act, 1918 extended to Delhi and which provides as under:

“25. Original jurisdiction of District Judge in suits –
Except as otherwise provided by any enactment for the time being in force, the court of the District Judge shall have jurisdiction [in every original civil suit the value of which does not exceed rupees twenty lakhs.]”

The said provision as applicable to Delhi also, has been amended simultaneously with the High Court Amendment Act to substitute the words “rupees twenty lacs” with the words “rupees two crores”.

13. I have enquired from the senior counsel for the petitioner, whether the petitioner, who has instituted the Suit for recovery of money, is not interested in expeditious recovery of its money. Judicial notice can be taken of the fact that owing to the respective roster of the ordinary original civil jurisdiction of this Court and of the courts of the District Judges/Additional District Judges, disposal of suits before the District Judges or Additional District Judges is much quicker than the disposal of suits before this Court. The only reason which can be fathomed for the petitioners herein to seek transfer of the Suits which are pending before the Additional District Judge, can be to avoid liability under a decree likely to be passed in the Suit filed by the respondent and to avoid dismissal of own Suit which appears to have been filed only for the purpose of contesting the claim in the Suit filed by the respondent.

14. With the aforesaid intent, the petitioner is found to be erroneously applying the principle of interpretation of statutes, ignoring the difference between the words “stipulated by an Act to lie in a Court not inferior to a District Court” and the words prescribing the pecuniary jurisdiction of the Court of the District Judge. Merely because the Punjab Courts Act, while prescribing the hierarchy / classes of courts and while stipulating the pecuniary jurisdiction of each of such class of courts, has stipulated the maximum pecuniary jurisdiction of the Court of the Civil Judge as that above that of the Court of small causes and not in excess of Rs.3 Lakhs and of the court of the District Judge as not in excess of Rs.2 Crores does not mean that the Punjab Courts Act stipulates that a suit for recovery of money cannot lie in a court inferior to a District Court.

15. What the language of the first proviso to Section 7 of the Commercial Courts Act conveys is that there should be a statutory bar, as is to be found in Section 134 of the Trade Marks Act, 1999 and Section 62 of the Copyright Act, 1957, to institution of a Suit for reliefs claimed thereunder in a court inferior to the court of the District Judge. There is no such bar in Section 25 of the Punjab Courts Act, 1918.

16. The Full Bench decision of this Court in ***Subhashini Malik Vs. S.K. Gandhi*** (2016) 233 DLT 83 held that pecuniary limits of jurisdiction prescribed for administration of justice and Section 15 of the CPC do not divest the Courts of a higher pecuniary jurisdiction from entertaining the suits below their minimum pecuniary value. On the same parity of reasoning, in ***Shriram Pistons & Rings Ltd. Vs. Manju Awasthy*** (1997) 68 DLT 112, it has been held that there is no bar in exercise of powers under Section 24 of the CPC to transfer of a suit from a court to a court higher than

the court of minimum pecuniary jurisdiction as per the valuation of that suit.

17. Section 25 of the Punjab Courts Act, 1918 is not found to stipulate, within the meaning of the first proviso to Section 7 of the Commercial Courts Act, that a suit for recovery of money will not lie in a court inferior to a District Court. Admittedly the Suits are now pending in the court of the Additional District Judge.

18. As far as the reliance by the learned senior counsel for the petitioner on the judgment aforesaid of this Court is concerned, the same does not consider the aforesaid aspects and the judgment is per incuriam qua the same. The said judgment in turn refers to paras 17&18 of ***Kamal Sharma vs. Blue Coast Infrastructure Development Pvt. Ltd.*** 2016 229 DLT 438 and to para no.8 of ***Guinness World Records Ltd. Vs. Sababbi Mangal*** 230 (2016) DLT 377.

19. This Court in ***Kamal Sharma*** supra was concerned with the question whether this Court, notwithstanding the enhancement in the minimum pecuniary jurisdiction of the Court and notwithstanding the Notification for transfer of pending suits below the enhanced minimum pecuniary jurisdiction of this Court to the subordinate Courts, could consider an application for amendment of the plaint to enhance the valuation of the relief claimed in the suit for the purpose of court fees and jurisdiction. It was held that this Court was not *functus officio* and did not lack jurisdiction to deal with such an application. This Court in ***Kamal Sharma*** was not concerned with the issue as had arisen in ***Bimla Agarwal*** supra or has been raised by the senior counsel for the petitioners herein. The observations in para nos.17&18 of ***Kamal Sharma*** thus cannot be held to be laying down anything contrary to what I have held above.

20. Similarly, *Guinness World Records Ltd.* supra was not concerned with the issue as has been raised by the senior counsel for the petitioners and observations in para no.8 thereof quoted in *Bimla Agarwal* supra cannot be read out of context. The question for consideration in *Guinness World Records Ltd.* was whether “IPR matters covered under the different provisions of the Trade Marks Act, Copyright Act, Designs Act, Patents Act and Geographical Indication of Goods (Registration and Protection) Act, 1999” pending in this Court on the date of coming into force of the Commercial Courts Act and even if the pecuniary jurisdiction of these matters was below Rs.1 crore were liable to be transferred to the subordinate Courts. It was held that the said matters were covered by the first proviso to Section 7 of the Commercial Courts Act and thus not liable to be transferred.

21. Learned senior counsel for the petitioner has also contended that there was no need for issuance of the Notification dated 28th April, 2016 if that were so. The said Notification is as under:

“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 the 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 inferior to a District Court, which have been transferred to the District Courts pursuant to the Notification

No.27187/DHC/Org1. 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.”

22. The said notification was issued because it was found that Suits which were stipulated by an Act to be not triable by a court below the District Court were also being transferred. I have already hereinabove explained that the Suits subject matter of these petitions do not fall in that category.

23. There is no merit in the petitions. In fact the petitions are found to be in abuse of the process of the Court and intended to interfere in decision of the Suits of which transfer is sought.

24. Dismissed.

NOVEMBER 06, 2017

‘pk/gsr’..

RAJIV SAHAI ENDLAW, J.