

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1048 OF 2018****OCEAN MARINE ENVIRONMENT COATINGS****PVT. LTD.,****... Petitioner****Versus****A. P. USMANI.****... Respondent**

Adv. Yogesh V. Nadkarni for the Petitioner.

Adv. R. G. Ramani with Adv. P. Kakodkar for the Respondent.

Coram:- C. V. BHADANG, J.**Date:- 11th December 2018****Oral Order:**

By this petition, the petitioner/plaintiff is challenging the order dated 15/10/2018 passed by the Commercial Court at Margao in Special Civil Suit (Commercial)No. 8/2017. By the impugned order, the Commercial Court has come to the conclusion that it lacks territorial jurisdiction and the plaint is required to be returned. However, the Commercial Court while so holding has decided to intimate the petitioner in terms of Order VII Rule 10-A of C.P.C that it proposes to return the plaint to be presented before the proper Court.

2. I have heard Shri Nadkarni, the learned counsel for the petitioner and Shri Ramani, the learned counsel for the respondent, for some time.

3. It is submitted by Shri Nadkarni, the learned counsel for the petitioner that the order would not be appealable under Order XLIII Rule 1(a) of C.P.C as the Court has opted to adopt the procedure specified in Rule 10-A (5) of

Order VII of C.P.C.

4. On the contrary, it is submitted by Shri Ramani, the learned counsel for the respondent that it is only where the petitioner/plaintiff files an application under Rule 10A (2) of Order VII of C.P.C and thereby submits to the order of the Court, that the right of appeal would be lost, as the order would no longer be appealable, in view of the provisions of Rule 10-A (5) of Order VII CPC . He has placed reliance on the decision of the Karnataka High Court in the case of **M/S. INSTRUMENTS INCORPORATED VS. M/S. INDUSTRIAL CABLES (INDIA) LTD. AND OTHERS, AIR 1996 KARNATAKA 360**, in order to submit that it is only where the plaintiff submits to the order of the Court and elects to file an application under Order VII Rule 10-A (2) of CPC, that the order would cease to be appealable and not otherwise.

5. I have considered the submissions made and I find that the learned counsel for the respondent is right that only where the petitioner submits to the order of the Court by filing an application under Rule 10-A (2) of Order VII that the order would cease to be appealable by virtue of Rule 10-A (5) of Order VII of CPC. This is apparent from the bare reading of Order XLIII Rule 1(a), which prescribes that an appeal shall lie from the order under Rule 10 of Order VII of CPC except where the procedure specified in Rule 10-A of Order VII has been followed. Principally the Commercial court has already

come to the conclusion that it lacks territorial jurisdiction and the plaint is therefore liable to be returned. Thus in effect the order is relatable to one under Rule 10 of Order VII CPC and in absence of the petitioner following the procedure as prescribed in Rule 10-A of CPC, the order would not cease to be appealable.

6. At this stage, Shri Nadkarni, the learned counsel for the petitioner submits that the petitioner shall file an appeal before the appropriate forum and requests for extension of the interim relief for a period of two weeks. In that view of the matter, the writ petition is disposed off as not maintainable. The petitioner would be at liberty to take recourse to the remedy in accordance with law and, if so advised.

7. The ad interim relief already operating to continue for a period of two weeks from today.

C. V. BHADANG, J.

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