

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6991 OF 2018

M/s. Chaitanya Electricals Pvt. Ltd.,
Shree Nivas, Civil Hospital Road,
Jalgaon

Through its Director,
Sanjeev Dattatray Ajnadkar,
Age : 59 years, Occ. Business,
r/o. Adarsh Nagar, Jalgaon,
Tq. and Dist. Jalgaon

..Petitioner

Vs.

Rail Vikas Nigam Ltd.,
Chief Project Managar,
Signal and Telecom Division,
Block No.5A, B, C and D,
Maruti Business Park,
Beside Rajkumar College,
G.E. Road, Raipur – 492 001
Dist. Raipur
and others

..Respondents

Mr. G.S.Rane, Advocate for petitioner
Mr. N.R.Shaikh, Advocate for respondent no.1
Mr. A.V.Patil-Indrale, *Amicus Curiae* (appointed)

**CORAM : R.G. AVACHAT, J.
DATE : OCTOBER 17, 2019**

ORDER :-

Heard learned Counsel for the parties.

2. The challenge in this Writ Petition is to the order dated 13.02.2018 passed by learned Principal District Judge, Jalgaon, rejecting Civil Misc. Application No.248 of 2017.

FACTS :-

3. The petitioner is a private limited company. It deals in the work of Railway signaling and telecommunication. On the recommendation of respondent no.1, respondent no.2 awarded a contract of Railway signaling of twelve Railway stations in Salka Road – Anuppur Section of Bilaspur Division of South Eastern Railway for a total consideration of Rs.11,10,79,442/-. Accordingly, an agreement and letter of acceptance came to be executed. One of the clauses of the agreement pertains to encashment of bank guarantee only with the written prior consent of respondent no.1.

4. In May, 2013, respondent no.2 submitted the bank guarantee for encashment without any prior

approval of respondent no.1. The petitioner, therefore, instituted a suit, being Regular Civil Suit (R.C.S.) No.191 of 2013, for declaration that respondent no.2 is not entitled for encashment of the bank guarantee.

Thereafter, in July, 2013, the petitioner instituted another suit, being Special Suit No.115 of 2013, for recovery of money amounting to Rs.1,45,73,726/- with 18% interest thereon. A relief of injunction was also prayed for against respondent no.3 – Jalgaon Janata Sahakari Bank Ltd.

5. On coming into force of the Commercial Courts Act, 2015, ("Act of 2015" for short), came to be transferred to the Commercial Court. The suit came to be renumbered as R.C.S.No.1 of 2017. The petitioner filed application, being Civil Misc. Application No.248 of 2017, for transfer of R.C.S.No.191 of 2013 to the Commercial Court. On hearing parties to the application, learned Principal

District Judge rejected the application. This is how, the petitioner – Company is before this Court.

6. Mr.Rane, learned Counsel for the petitioner, would submit that if both the suits are decided by two different Courts, there is every possibility of two inconsistent findings, being emerged on the basis of the same set of facts. Learned Counsel took me through the relevant provisions of the Code of Civil Procedure and the Act of 2015.

Mr.Shaikh, learned Counsel for respondent no.1, stoutly resisted the Writ Petition. According to him, the commercial suit would be governed by the provisions of the Act of 2015. Decrees that may be passed in both the suits, appeals would be required to be filed thereagainst before two different forums.

Mr.A.V.Patil-Indrale, learned Counsel ably assisted this Court.

7. The petitioner is the plaintiff in both the

suits. Perusal of both the complaints would indicate that the causes of action therein are based on the same set of facts. The parties to both the suits are same. If both the suits are decided by the respective Courts, there is every possibility of two inconsistent decisions being there. The Court of District Judge is seized of the commercial suit. The said suit would be governed by the provisions of the Act of 2015, while the first suit to be governed by Code of Civil Procedure.

8. Since both the suits are between the same parties and based on the same set of facts, with a view to avoid inconsistent decisions being emerged, both the suits need to be tried by one and the same Court. By virtue of Section 16 of the Maharashtra Civil Courts Act ("the Civil Courts Act", for short), the Court of cadre of the Additional District Judge is competent to try a civil suit. At this stage, one need not worry about what would be the forum before which, exception may be taken to the decree passed in

both the suits. True, the appeal from decree that may be passed in commercial suit, would necessarily lie to the High Court. So far as regards the decree that may be passed in a civil suit, the forum for appeal would be the Principal District Judge.

9. Learned Principal District Judge found that in view of Section 15(5) of the Act of 2015, he cannot withdraw suit from the file of learned Civil Judge, Junior Division, and transfer it to the file of the Commercial Court. It needs no mention, the Commercial Court, in the present case, is a Court of learned Additional Sessions Judge. Section 16 of the Civil Courts Act gives powers to the District Judge to refer to the Additional District Judge, subordinate to him, any original suit and proceedings of a civil nature. The Additional District Judge shall have jurisdiction to try said suit and dispose of such application. In such case, the appeal against the decree and order passed by the Additional District Judge, shall lie to the District Judge or to

the High Court, according to the amount of value of the subject matter.

The same indicates that the Principal District Judge has a jurisdiction to refer any Additional District Judge, any original suit for trial in accordance with law.

10. Since both the suits are between the same parties and arising out of the same set of facts, it is desirable that both the suits are decided by one and the same Court. In that view of the matter, interference is called for with the impugned order.

11. The Writ Petition is allowed in terms of Prayer Clause (A). The Civil Misc. Application No.248 of 2017 is allowed. Both the suits be tried and disposed of simultaneously, as expeditiously as possible.

[R.G. AVACHAT, J.]

kbp