

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1206 OF 2018**

C. Abdulla and Company, Thr. its
Managing Director/Aut. Sign., Hyder Ali Petitioner

Versus

M.K. Earthmovers and Transport, Thr.
its Partners, Dattaprasad Tirodkar Respondent

Mr. Jagannath Jayant Mulgaonkar, Advocate for the Petitioner.

Mr. Hanumant D. Naik, Advocate for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 9th July, 2019

ORAL ORDER:

The challenge in this petition is to the order dated 05.07.2018, below Exhibit-18, passed by the learned Senior Civil Judge at Ponda in Special Civil Suit No. 14/2014/A.

2. The petitioner is the defendant in the said suit. The respondent has filed the said suit against the petitioner for recovery of money, representing hire charges in respect of certain equipments, hired by the petitioner from the respondent, namely, four excavators. The case made out by the petitioner is that the respondent is class I civil contractor, undertaking government contracts and for the said purpose, the

respondent had hired excavators from the petitioner. The suit is for recovery of Rs.1,52,78,761/- alongwith interest.

3. The petitioner filed an application (Exhibit-18) in the said suit, claiming that the transaction, out of which, the suit claim arises is a commercial dispute, within the meaning of Section 2(1)(c)(vi) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Act, for short), in as much as the equipments were leased to the respondent for the purpose of construction and infrastructure contract.

4. The learned Trial Court has refused to accept that the dispute, out of which, the said transaction arises is a commercial transaction. In the opinion of the learned Trial Court, there is no commercial transaction between the petitioner and the respondent.

5. I have heard Mr. Mulgaonkar, the learned Counsel for the petitioner and Mr. Naik, the learned Counsel for the respondent.

6. It is submitted by Mr. Mulgaonkar, the learned Counsel for the petitioner that Section 15 of the Act mandates that a suit which is triable by a Commercial Court, has to be transferred to the Commercial Court. It is submitted that the definition of the Commercial Court as contained in Section 2(1) (b) of the Act, has to be broadly construed as the object of the Act is to see that commercial disputes are exclusively tried by the Commercial Courts. It is submitted that Section 2(1)(c) of the Act, if properly construed, would include a contract of the present nature, where the machinery was leased by the respondent for the purpose of construction and infrastructure contract undertaken by the petitioner.

7. Mr. Naik, the learned Counsel for the respondent has supported the impugned order. It is submitted that the exclusion of the jurisdiction of the ordinary Civil Court cannot be lightly inferred and the construction placed by the Trial Court, is a plausible view, which does not require interference.

8. I have carefully considered the submissions made. At the outset, it is necessary to mention that this Court would be slow in entertaining a challenge of the present nature to the jurisdiction of the Trial Court, at the instance of the defendant.

Ultimately, it is the plaintiff, who runs the risk of the decree, which he may eventually obtain, being rendered without jurisdiction. Nonetheless, the petitioner has raised a contention based on Section 2(1)(c)(vi) of the Act, claiming that the suit is exclusively triable by a Commercial Court, which contention has to be examined on its own merits. Section 2(1)(c) of the Act defines a “commercial dispute”, which to the extent relevant reads thus:

2(1)(c) “Commercial dispute” means a dispute arising out of-

- (i)*
- (ii)*
- (iii)*
- (iv)*
- (v)*
- (vi) Construction and infrastructure contracts, including tenders*

9. In the present case, in my considered view, the Trial Court has rightly found that there is no “construction and infrastructure contract”, between the petitioner and the respondent. Merely because the machinery, which is leased out to the petitioner, is used by him for the purpose of construction and infrastructure contract, cannot bring the contract of leasing of the machinery within the ambit of Section 2(1)(c) of the Act.

It is now well settled that the exclusion of the jurisdiction of the plenary Court of the civil jurisdiction, cannot be lightly inferred and unless and until there is a bar, which is express or by necessary implication, the jurisdiction of the Civil Court cannot be said to be excluded. In that view of the matter, no case for interference is made out. The petition is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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