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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

***CIVIL REVISION APPLICATION NO.42 OF 2019
(WRIT PETITION NO. OF 2019)***

M/s.B.G.Shirke Construction Pvt. Ltd. ..Petitioner.

V/s.

Bhagwan Dyanu Thorat & Ors. ..Respondents.

Mr.Drupad S.Patil for the petitioner.

Ms.Shraddha V.Thorat for respondent No.1.

CORAM: M.S.SONAK, J.

DATE : MARCH 12, 2019

ORAL JUDGMENT

Heard Mr.Drupad Patil, learned counsel for the petitioner and Ms.Shraddha Thorat, learned counsel for respondent No.1.

2. This Civil Revision Application is filed against the order dated December 10, 2018 made by the learned District Judge-I, Satara rejecting the petitioner's application Exhibit-255 questioning the jurisdiction of a Commercial Court to entertain the present suit as a Commercial Suit by applying the provisions of Commercial Courts, Commercial Division and Commercial

Appellate Division of High Courts Act, 2015 ('the said Act' for short).

3. Ms.Thorat, learned counsel for respondent No.1 refers to section 8 of the said Act and submits that there is a bar against the entertainment of revision application of the petitioner against an inter interlocutory order. Mr.Patil accepts this position and craves leave to convert this Civil Revision Application into Writ Petition. In the peculiar facts and circumstances of the present case and since after hearing the matter, I am satisfied that there is no case made out to interfere with the impugned order, leave is granted for the said conversion. Necessary amendment to be carried out forthwith.

4. Mr.Patil, learned counsel for the petitioner submits that in this case, the petitioner (respondent No.1-original plaintiff) and respondent No.1 (original defendant No.1) had entered into an agreement dated June 6, 2002, no doubt in relation to the immovable property. Mr.Patil, however, submits that the agreement was only in order to enable the petitioner to extract sand, stones and soil from the immovable property, which the petitioner has to use for the purpose of construction of highway

and other infrastructure project. Mr. Patil points out that the petitioner is basically a contractor who was awarded the contract for the said infrastructure project by the Government or agencies of the Government. He submits that it is clearly not a case of dispute arising out of the agreement relating to immovable property '*used exclusively in trade and or commerce*'.

5. Mr. Patil, in the alternate submits that a commercial dispute can arise only if the immovable property was “used” exclusively in trade or commerce. He submits that this means a commercial dispute will arise only if the immovable property in question was, exclusively used in trade or commerce. He submits that in the present case, the immovable property in question was to be used in trade or commerce in future. Therefore, the dispute as raised, did not qualify to be styled as a “*commercial dispute*” as defined under section 2(1)(c)(vii) of the said Act. He relied on the decision of the Delhi High Court in the case of ***Soni Dagve and others vs. M/s. Trans Asian Industries Expositions Pvt. Ltd. - AIR 2016 (Delhi) 186*** in support of his contention.

6. Ms. Thorat defends the impugned order on the basis of reasoning reflected therein.

7. The rival contentions now fall for determination.

8. The suit with which we are concerned was initially

instituted in the year 2006 as a Regular Civil Suit in the Court of Civil Judge, S.D. Karad. Thereafter, upon coming into force of the said Act, the suit was transferred to Commercial Court. The petitioner, original defendant No.1, by application at Exhibit-255 questioned the jurisdiction of the Commercial Court by urging that the dispute involved in the suit was not at “*commercial dispute*” as defined under section 2(1)(c) of the said Act. Vide impugned order dated December 10, 2018, learned Commercial Court has dismissed the application Exhibit-255 and held that the dispute was indeed a commercial dispute above specified value and consequently, Commercial Court had the jurisdiction to entertain such a suit.

9. Section 2(1) (c) (vii) of the said Act defines the expression “*commercial dispute*” to *inter alia* mean a dispute arising out of 'agreement relating to immovable property used exclusively in trade or commerce'.

10. In the present case, there is no doubt that dispute has arisen out of agreement dated June 6, 2004 which relates to an immovable property. The recitals in the agreement acknowledges the property in question is not fit for agricultural but the same is fit only for quarrying rocks, stones, soil etc.. The agreement then provides that the

petitioner subject to payment of agreed compensation may undertake quarrying operations for removal of rocks, stones, soil etc. from out of immovable property which forms the subject matter of the agreement dated June 6, 2004.

11. The dispute as projected in the plaint is that the petitioner is a contractor undertaking projects for construction of roads or other infrastructure projects. For purpose of such contracts, the petitioner requires material like rocks, stones, soil etc. and it is for this purpose that the petitioner entered into agreement dated June 6, 2004 in order to be able to quarry rocks, stones and soil etc. from out of immovable property. In fact, even the petitioner has admitted that the petitioner is a contractor undertaking contracts for construction of roads and other infrastructure projects. The petitioner has also admitted that the agreement dated June 6, 2004 was entered into in order to be able to quarry rocks, stones, soil etc. for use in the infrastructure projects and road projects undertaken by the petitioner. Thereafter, some disputes have arisen under agreement dated June 6, 2004 relating to immovable property in question. From the pleadings in the plaint, it is clear that the disputes arose out of agreement dated June 6, 2004 which relates to the immovable property which is used exclusively in trade or commerce by the petitioner. Therefore, there is no error in the view taken by the learned Trial Judge that this is a case of dispute arising out of

agreement relating to the immovable property used exclusively in trade and commerce.

12. Learned counsel for the petitioner, however, attempted to raise some factual disputes in relation to cause of action as projected and pleaded in the plaint. At this stage, it is not possible to go into such factual disputes. For the purpose of determining jurisdiction, what is relevant is the averments in the plaint that the averments in the plaint indeed indicate that the disputes have arisen between the parties out of agreement dated June 6 2004 relating to immovable property used exclusively for trade or commerce. Therefore, the dispute which has so arisen, qualifies to be regarded as “*commercial dispute*”, in terms of section 2(1)(c) (vii) of the said Act.

13. The second contention raised by Mr. Patil by emphasizing on the word “*used*” as it appears in section 2(1)(c) (vii) of the said Act in the first place, is not quite clear. In any case, nothing in section 2(1) (c) of the said Act supports the construction that only a dispute which arises out of agreement relating to immovable property which was in the past used for exclusive purpose of commerce or trade, will qualify as a commercial dispute. In any case, from the pleadings in the plaint, it is quite clear that the plaintiff has alleged that the immovable property was used for exclusive purpose of trade or commerce by the petitioner

and some disputes have arisen on account of such user. Accordingly, there is no merit in Mr. Patil's second contention.

14. The decision in *Sone Dave (supra)* was made in the context of facts, which have absolutely no relevance to the facts in the present case. Mr. Patil placed special emphasis on the observations in paragraphs 15, 17 and 28 of *Sone Dave (supra)*. On the conjoint reading of such paragraphs, it is clear that the learned Single Judge of the Delhi High Court has taken the view that a dispute which arises out of agreements relating to immovable property '*illegally used in trade and commerce*' will not amount to '*commercial dispute*' under section 2(1)(c) of the said Act. In any case, the provisions in section 2(1)(c) of the said Act are quite broadly paraphrased and make reference to disputes arising out of agreement relating to immovable property used exclusively in trade and commerce. Thus, it is not possible to accept Mr. Patil's second contention as well.

15. For all the aforesaid reasons, there is no case made out to interfere with the impugned order. The petition is, therefore, liable to be dismissed and it is hereby dismissed.

16. There shall be no order as to costs.

(M.S.SONAK, J.)