

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**C.R. No.2669 of 2019 (O&M)
Date of Decision.30.04.2019**

D.K. Jain (since deceased) through LR ...Petitioner

Vs

C.S. Aggarwal and others ..Respondents

2. C.R. No.2687 of 2019

M/s Tower Leasing & Finance Ltd. ...Petitioner

Vs

C.S. Aggarwal and others ..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Abhishek Dull, Advocate
for the petitioners in C.R. No.2687 of 2019.

Mr. Hemant Bassi, Advocate and
Mr. Ajay Kumar, Advocate
for the petitioners in C.R. No.2669 of 2019.

Mr. Gorangg Gupta, Advocate
for respondents No.1 and 2.

-.-

AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two revision petitions bearing Nos.2669 of 2019 and 2687 of 2019 filed on behalf of two sets of defendants assailing the impugned orders dated 2.3.2019 (Annexure P-3), 13.3.2019 (Annexure P-5) and 3.4.2019 (Annexure P-8) and as well as impugned report dated 13.3.2019 (Annexure P-4) on the simple premise that in civil suit filed by the respondent-plaintiff claiming specific performance, the District Judge assuming the role under Section 24 of the Code of Civil Procedure, entertained

the application of the plaintiff and before transferring it to the Commercial Court, sought report which was without jurisdiction, in view of the provisions of sub-section 5 of the Section 15 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (for short 2015 Act).

Notice of motion.

Mr. Gorangg Gupta, learned counsel appearing for the caveator accepts notice for the respondents No.1 and 2.

Arguments of the parties have been heard.

The short point involved in the present revision petition is whether the District Judge can entertain the application dated 5.2.2019 on behalf of the plaintiff for transferring the civil suit for specific performance of agreement to sell pending before the Civil Judge. During the pendency of the aforementioned suit, an application (Annexure P-2) was submitted before the District Judge, Gurugram for transferring of the suit as the suit was purportedly covered under the provisions of 2015 Act. On receipt of the aforementioned application, the District Judge sought report from the Special Commercial Court and vide order dated 13.03.2019, on the basis of provisions of the Act, found the case to be covered under the commercial division and on the same day, the District Judge vide impugned order (Annexure P-5) transferred the suit to the Court of Special Commercial Court, Gurugram. The petitioners being aggrieved against the aforementioned order sought recall by submitting application (Annexure P-6), which has been dismissed vide impugned order dated 3.4.2019 (Annexure P-8).

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Abhishek Dull appearing for the petitioners in C.R. No.2687 of 2019 and Mr. Hemant Bassi, learned counsel appearing on behalf of the petitioners in C.R. No.2669 of 2019 submitted that provisions of Section 15(5) of the 2015 Act clearly reveal that jurisdiction for transferring the matter is only with the Commercial Appellate Division of the High Court and not of the District Judge but despite, noticing the aforementioned provisions, dismissed the application by referring to power on administrative side, which according to the submissions is totally without jurisdiction. Accordingly, it is a glaring case of jurisdictional error.

Per contra, Mr. Gupta, learned counsel appearing for the respondents submitted that the District Judge is not precluded from exercising such power in view of provisions of Section 16 of the Act. The present revision petitions in view of the provisions of sub-section 3 of Section 12 of 2015 Act are not maintainable. He further submitted that it would be a farcical exercise for setting aside the impugned orders as per provisions of Section 2(1)(vii), the nature of dispute squarely falls within the expression of commercial, thus, urges this Court for dismissal of the revision petitions.

I have heard learned counsel for the parties and appraised the paper book. It would be apt to reproduce provisions of Section 15 (5) and 16 of the 2015 Act:-

“15. Transfer of pending case. -

xxxxxx

xxxxxx

xxxxxx

(5) In the event that such suit or application is not transferred in the manner specified in sub-section (1),

sub-section (2) or sub-section (3), the Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes. (1) *The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.*

(2) *The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value.*

(3) *Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.”*

On juxtaposition of Section 15(5) and Section 16 (supra), the District Judge can only assume role by taking the aid of Code of Civil Procedure i.e. provisions of Section 24 of the CPC but in such case, no situation had arisen in view of Section 15(5) of the 2015 Act as the jurisdiction vests only with the Commercial Appellate Division of this Court. The District Judge, despite having brought

aforementioned provisions, instead of correcting the error, maintained the order. Such exercise of power, in my view, is *void ab initio*, wholly fallacious and perverse.

I would not be delving upon the interpretation of provisions of Section 2(1) (vii) as it is a question of ponderance to be decided by the competent court but not at this stage.

Resultantly, impugned orders dated 2.3.2019 (Annexure P-3), 13.3.2019 (Annexure P-5) and 3.4.2019 (Annexure P-8) and as well as impugned report dated 13.3.2019 (Annexure P-4) are set aside, leaving the parties open to resort to the remedies as noticed above, in accordance with law.

Both the revision petitions are allowed.

(AMIT RAWAL)
JUDGE

April 30, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No