

CR No.4903 of 2019

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.4903 of 2019 (O&M)

Date of decision:01.10.2019

M/s Tower Leasing Finance Limited and others

... Petitioners

Vs.

C.S. Aggarwal and others

... Respondents

CR No.4914 of 2019 (O&M)

D.K.Jain (since deceased) through LR

... Petitioner

Vs.

C.S. Aggarwal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arun Jain, Senior Advocate with
Mr. Abhishek Dhull, Advocate
for the petitioner (in CR No.4903 of 2019).

Mr. Hemant Bassi, Advocate
for the petitioner in CR No.4914 of 2019.

Mr. Gorangg Gupta, Advocate
for the respondent.

AMIT RAWAL J.

This order of mine shall dispose of two revision petitions bearing Nos.4903 of 2019 filed on behalf of petitioner-defendant no.9 and 4914 of 2019 through LRs of defendant no.1 against the order dated 09.08.2019 of Civil Judge (Senior Division), Gurugram.

Brief facts of the case are that contesting respondents no.1 and 2 instituted a civil suit before the Civil Judge, Gurugram for possession by

way of specific performance and permanent injunction. Defendant no.1 entered into agreement to sell dated 05.02.2007 with the plaintiffs. As per averments in suit, agreement to sell was executed with the concurrence of defendant no.12. Defendants on appearance, instituted an application by invoking provisions of Order 7 Rule 11 of Code of Civil Procedure for rejection of plaint and also raised the objection under Order 2 Rule 2 of Code of Civil Procedure, which was dismissed, vide order dated 12.08.2014. Revision petition preferred against the same was also dismissed, vide order dated 08.01.2019. After the dismissal, plaintiffs chose to file an application before the District Judge for transfer of the civil suit to the Additional District Judge, Gurugram, Commercial Court. The District Judge, vide order dated 02.03.2019 sought report from the concerned officer and on receipt of the report dated 13.03.2019, noticed that suit was of commercial dispute and directed the the same to be transferred on even date i.e. 13.03.2019. The aforementioned order was challenged in this Court, vide CR No.2669 of 2019 titled as 'D.K.Jain (since deceased) through LR Vs. C.S.Aggarwal and others' and CR No.2687 of 2019 titled as 'M/s Tower Leasing & Finance Ltd. Vs. C.S.Aggarwal and others'. This Court, vide order dated 30.04.2019 (Annexure P-2) while allowing the petitions, set aside the order.

Mr. Arun Jain, learned senior counsel assisted by Mr. Abhishek Dhull, Advocate appearing on behalf of petitioner in CR No.4903 and Mr. Hemant Bassi, Advocate appearing on behalf of petitioner in CR No.4914 of 2019 submitted that after the order of this Court, respondents again

submitted application dated 14.05.2019 (Annexure P-3) for transfer of the suit to Commercial Court. The aforementioned application was contested by raising preliminary objections qua maintainability as well as jurisdiction of the Court. However, the trial Court vide impugned order transferred the suit. In support of the contention, cited the provisions of Section 15(5) of the Arbitration and Conciliation Act, 2015 (for short 2015 Act). The subject matter of suit land is agricultural and as per the provisions of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015, commercial dispute would mean a dispute arising out of agreements relating to immovable property used exclusively in trade or commerce. The following three conditions are required to fulfilled:-

- i) The dispute must be relating to immovable property
- ii) The property must have already been put in use and
- iii) It must be used for trade and commerce.

The expression used in the above definition denotes “actually used” and not merely “ready for use”, thus, word “commercial dispute” has to be construed strictly because the purpose of enactment of the Commercial Court Act was/is to provide speedy trial.

The jurisdiction to transfer the suit only vested with Commercial Appellate Division of the High Court and not the District Judge. The trial Court misconstrued the direction of this Court, as on reading of the provisions of Section 15(5), jurisdiction of the District Judge to transfer the suit by entertaining purportedly under provisions of Section 24 of Code of Civil Procedure has already been held to be not maintainable.

The trial Court did not construe the order dated 30.04.2019 in correct perspective. The respondent-plaintiffs are delaying the execution of their own suit and nothing prevented them to approach this Court under sub-section 5 of Section 15 of Arbitration and Conciliation Act, 2015.

Per contra, Mr. Gorangg Gupta, learned counsel appearing on behalf of the respondent submitted that expression “commercial dispute” relating to in Section 2(i)(c)(vii) of 2015 Act is of wide import and similarly the word used would also include the expression 'capable of being used' thus, agreement which relates to immovable property to be exclusively used for trade, decision thereof would be within the domain of commercial dispute and Civil Judge would not have jurisdiction to try and thus, order is perfectly legal and justified and does not call for any interference under Article 227 of the Constitution of India. He further prayed for dismissal of petitions with exemplary costs.

In support of aforementioned contention, relied upon the judgment of Bombay High Court in **Kanchanganga Realtors Pvt. Ltd., through its Director Company and others Vs. Monarch Infrastructure Developers Pvt. Limited and others 2019 SCC Online Bom 240.**

I have heard the learned counsel for the parties and appraised the paper book . It would be relevant to extract the findings of this Court rendered in CR No.2669 of 2019 and other connected matter i.e. CR No.2687 of 2019, decided on 30.04.2019 whereby petitioners in previous round of litigation impugned the order of District Judge whereby suit

aforementioned, was transferred under the provisions of Section 24 of Code of Civil Procedure. The same read thus:-

“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. -

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(5) In the event that such suit or application is not transferred in the manner specified in sub-section (1), 3 of 5 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), 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.”.

Though in the order extracted above, this Court had only extracted provisions of sub-section 5 of Section 15 of 2015 Act but on going through the provisions which are extracted herein below, either it was the duty of Court or one of the parties to the lis, to move an application at an appropriate time.

15. (1) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996, relating to a commercial dispute of a Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division.

(2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996, relating to a commercial dispute of a Specified Value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court:

Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).

(3) Where any suit or application, including an application under the Arbitration and Conciliation Act, 1996, relating to a commercial dispute of Specified Value shall stand transferred to the Commercial Division or Commercial Court under sub-section (1) or section (2), the provisions of this Act shall apply to those procedures that were not complete at the time of transfer.

(4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issue such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance with Order XIVA of the Code of Civil Procedure, 1908:

Provided that the proviso to sub-rule (1) of rule 1 of Order V of the Code of Civil Procedure, 1908 shall not apply to such transferred suit or application and the court may, in

its discretion, prescribe a new time period within which the written statement shall be filed.

(5) In the event that such suit or application is not transferred in the manner specified in sub-section (1), (2) or (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.”

However, in instant case, suit is already pending for almost 10 (ten) years and many applications, preface of which have already been given in previous paragraph, particularly when plaintiffs failed to avail the remedy of transfer i.e. situation envisaged under sub-section 15(1 to 4), then Legislature has given liberty to either of the parties to the suit to move an application for withdrawal of suit or prefer application before Competent Court i.e. Appellate Commercial Division of “this Court”. Thus, in my view, application of the respondent-plaintiff (Annexure P-3) before the Civil Judge was not maintainable and its entertainment thereof, lacks jurisdiction. Though in first blush argument of Mr. Gorang Gupta, Advocate after having read the contents of judgment cited (supra) looked attractive but

since this Court in earlier round of litigation did not ponder upon the applicability of Section 2(1)(c)(vii) read with Explanation A of 2015 Act, I would not be further delve upon the same, for, Bombay High Court was called upon to interpret the provisions, ibid for referring to the dispute, thus, said argument, in my view, at this stage would be premature.

There is another aspect of matter. From the plain and simple meaning of sub-section (5) of Section 15 of 2015 Act, it is discernible that if remedy as envisaged under sub-sections (1) and (2) is not availed, remedy for either of the parties to the suit is to move an application for transfer before the Court having competent jurisdiction, i.e. Appellate Commercial Court of this Court. Application (Annexure P-3) was before the trial Court was not maintainable. The impugned order is not sustainable and hereby set aside. Interim order granted by this Court, vide order dated 04.09.2019 stands vacated.

Disposed of.

(AMIT RAWAL)
JUDGE

October 01, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No