OD 1

APO/24/2020
in
CS/188/2017
IA No:GA/1/2020, GA/2/2020

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

PUNJAB NATIONAL BANK
Vs.
N. S. ENGINEERING PROJECT PVT. LTD. AND ORS.

BEFORE:
The Hon'ble JUSTICE SANJIB BANERJEE
AND
The Hon'ble JUSTICE ARIJIT BANERJEE
Date: December 17,2020

Appearance:
Mr. Samrat Sen, Sr. Adv.
Mr. Abhishek Banerjee, Adv.
Mr. Joydip Banerjee, Adv.
Ms. Parna Roychoudhury, Adv.

Mr. Dipanjan Dutta, Adv.
Mr. Sayan Dutta, Adv.

Mr. Tanay Agarwal Adv.
Mr. Zeeshan Haque, Adv.
Mr. Ishan Saha, Adv.

The Court: In view of the good grounds shown, the order dismissing the appeal for default on March 11, 2020 is recalled and the appeal is readmitted.

The restoration application, GA No. 1 of 2020, is allowed as above.

The appellant is aggrieved by an order of the Commercial Division declining extension of time to file its written statement, despite the matter being governed by the proviso to Section 15(4) of the Commercial Courts Act, 2015. The principal ground urged is that the Court of the first instance failed to notice the meritorious grounds indicated in the petition and merely proceeded to record that no reasons had been furnished for the delay, to reject the application for extension. The first respondent-plaintiff says that the appeal is not maintainable and the merits of the matter cannot be gone into. Towards such end, the plaintiff refers to Section 13 of the Act, particularly, the restriction imposed by the proviso thereto that governs the nature of the judgment or order that may be appealed against. To boot, the plaintiff reads sub-section (2) of Section 13 of the Act to limit the operation of the proviso and emphasise on the impermissibility of any appeal from an order beyond what is recognised in amended Order XLIII of the Code of Civil Procedure, 1908 and Section 37 of the Arbitration and Conciliation Act, 1996.

Following the institution of the suit sometime in the year 2017, it stood transferred to the Commercial Division of this Court by operation of law and such exercise was completed in 2017 itself. The plaint was amended, necessitating a fresh writ of summons being served with the amended plaint. It is, thus, the subsequent writ of summons which is of relevance in the present context. Such writ of summons was served on or about April 29, 2019 and the 120-day period stipulated under the amended Code for a written statement to be filed in a commercial suit expired on or about August 26, 2019. The application for extension of time was made on or about November 20, 2019.

The proviso to Section 15(4) of the Act affords a degree of latitude in respect of suits which are transferred to the Commercial Division and the strict command of Order V Rule 1(1) of the Code, as amended by the Act of 2015, would not apply in respect of a transferred suit; the Commercial Division or the Commercial Court having an element of discretion to prescribe a new time period within which the written statement may be filed in a suit transferred to the Commercial Division or Commercial Court.

It has now been judicially established that the timelines indicated for the various activities to be performed in course of a commercial suit are, by and large, mandatory. At any rate, there is no flexibility in the time to file the written statement; the only exception being when the suit stands transferred to the Commercial Division. It is in such context that the appellant says that the wholesome reasons indicated at paragraphs 4 to 8 of the application for extension of time ought to have satisfied the Court of the first instance.

Section 13 of the Act of 2015 deals with appeals. Though the heading refers to appeals from decrees, the body of the provision refers to "judgment" and "order". If the obvious error in the provision or the tactless drafting thereof is ignored, Section 13 of the Act restricts the situations where an appeal may be carried from an order passed in a commercial suit and, in effect, does away with the operation of Clause 15 of the Letters Patent and the wider world that it covers in respect of matters on the Original Side of this Court. In such context, Section 13 of the Act, as amended, may be seen:

> "**13. Appeals from decrees of Commercial Courts and Commercial Divisions.**—(1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.
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> "(1-A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:
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> "Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and Section

37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

> "(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act."

Sub-section (1) of Section 13 of the Act is not relevant for the present purpose. Sub-section (1-A) is the applicable provision and it creates the substantive right of appeal. As is elementary, the right of appeal is a creature of statute and does not inhere in any litigant. It is only if a statute confers the right to prefer an appeal that an appeal would lie; there is no natural situation in which an appeal may lie. The proviso to sub-section (1-A) of Section 13 of the Act apparently limits the kind of orders from which an appeal would be maintainable. However, insofar as such proviso deals with appeals from a Commercial Division and also deals with appeals from a Commercial Court, an argument is available for a distinction to be made between the appeals coming from the two sources. It is precisely such contention that has been raised by the appellant herein to sustain the present action. The appellant asserts that in the absence of any expression like "and from no other order" as in Section 37 of the Act of 1996 which is referred to in the proviso, the proviso cannot be seen to imply that orders beyond Order XLIII of the amended Code would not be appellable, if some other source conferring the right of appeal were to be in existence. In the absence of the restrictive word "only" appearing in the proviso, such argument is appealing.

However, even if it is accepted for argument's sake that the absence of the restrictive expressions "only" and "and from no other order" may allow appeals against orders that may be regarded as judgments within the meaning of Clause 15 of the Letters Patent in respect of appeals arising out of the orders passed in the Commercial Division of this Court, sub-section (2) of the provision completely prohibits such interpretation. With the *non-obstante* clause at its beginning, the Letters Patent being specifically referred to and the word "or" preceding the reference to the Letters Patent in a negative sense, there is no escape from the mandate of the provision that no order passed, even by the Commercial Division of this Court, which does not fall within the ambit of the orders enumerated in Order XLIII of the Code as amended, would be appellable.

The fundamental cannons of statutory interpretation prohibit a provision being read in isolation. The full meaning of a provision has to be assessed from the company that it keeps, particularly, the immediate company. The proviso to sub-section (1-A) of Section 13 of the Act has, per force, to be read down by virtue of the all-encompassing sub-section (2) of Section 13 of the Act as the illusion as to the maintainability of appeals under Clause 15 of the Letters Patent by virtue of the proviso is undone by the strict and inflexible words of the succeeding sub-section.

It appears that in the legislature's eagerness to ensure that commercial disputes are speedily decided, timelines have been drawn in the Act of 2015. Higher authorities instruct that notwithstanding the view taken in respect of other timelines indicated in the Code as being directory rather than mandatory, the time-frames indicated in the Commercial Courts Act is at the very root of its purpose and, therefore, mandatory. In such a scenario, what the legislature has done is that it has robbed the right of appeal that existed prior to the Act. The appellant here is not left without a remedy. The Act of 2015 only makes it more difficult in requiring the appellant in the present scenario to approach the Supreme Court under Article 136 of the Constitution against the order impugned. In this case, there is no provision for an intra-court appeal from the order impugned.

In the light of the above, the appeal is held to be not maintainable. APO No.24 of 2020 and the interlocutory application therein being GA No.2 of 2020 stand dismissed as being impermissible.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SANJIB BENERJEE, J.)

(ARIJIT BANERJEE, J.)

kc/bp