

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**C.O. No.552 of 2021
IA No: CAN 1 of 2021**

**Amit Guha Roy
Vs.
Amlan Chowdhury & another**

For the petitioner	:	Mr. Animesh Paul, Ms. Fatima Hassan
For the opposite parties	:	Mr. Pankaj Agarwal
Hearing concluded on	:	09.08.2021
Judgment on	:	11.08.2021

Sabyasachi Bhattacharyya, J:-

1. The present revisional application has been filed, challenging the later portion of an order dated December 7, 2020 passed in Miscellaneous Case No.47 of 2020, whereby the application filed by the opposite parties under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act") was transferred to the Commercial Court at Rajarhat for hearing.
2. Learned counsel for the petitioner contends that the court below acted without jurisdiction in passing the portion of the order impugned herein, in view of the claim in the application under Section 9 of the

1996 Act being restricted to interim orders in the nature of injunction and furnishing a bank guarantee to the tune of Rs. 17,90,000/- as security in favour of the present opposite parties.

3. Learned counsel contends that, as per the relevant Notification dated March 20, 2020 published in the Calcutta Gazette (annexed to the present revisional application), the pecuniary jurisdiction in case of Commercial Courts at Siliguri, Asansole, Alipore and Rajarhat shall not be an amount less than Rs.30,00,000/-.
4. Since the dispute involved in the application under Section 9 of the 1996 Act pertains to a maximum claim of an amount of Rs.17,90,000/-, which is much below the lower limit of Rs.30,00,000/-, the application ought to have been heard by the ordinary civil court having jurisdiction, as opposed to the commercial court.
5. Learned counsel appearing on behalf of the opposite parties argues that, since the application under Section 9 of the 1996 Act arises out of a dispute having the value of about Rs.35,20,000/-, as stated in paragraph no.27, Clause (c) of the said application itself, the matter falls squarely within the purview of the relevant Notification and the Trial Judge was justified in transferring the matter to the Commercial Court at Rajarhat.
6. Upon hearing learned counsel for both the parties, it is relevant to observe that a “commercial dispute” means a dispute *arising out of* the subjects mentioned in Section 2(1)(c) of the Commercial Courts Act,

2015 (hereinafter referred to as “the 2015 Act”). The expression “arising out of” is significant and broad enough to take within its fold any sort of dispute arising out of the said subject-matters, having a valuation as indicated in the relevant Notification.

7. In the present case, although Rs.17,90,000/- has been claimed by way of security deposit, it is pleaded in the application under Section 9 of the 1996 Act itself, at paragraph no.27(c) thereof, that the claim of the petitioners therein (present opposite parties) is to the tune of Rs.35,20,000/-. Hence, the matter squarely falls within the definition of a “commercial dispute” as envisaged in the 2015 Act.
8. Looking at the matter from another perspective, Section 42 of the 1996 Act stipulates that, notwithstanding anything contained elsewhere in Part-I of the said Act or in any other law for the time being in force, where with respect to an arbitration agreement any application under the said Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.
9. The language of the said section clearly indicates that, in the event an application under Section 9 of the 1996 Act is filed before a particular court, the said court shall have jurisdiction not only over all subsequent applications arising out of the agreement and the arbitral proceedings but jurisdiction over the arbitral proceedings as well. By necessary implication, subsequent challenges, if preferred under

Section 34 and/or Section 37 of the 1996 Act, which would relate to the main dispute under arbitration, would also have to be preferred before the court entertaining the application under Section 9.

- 10.** This will create an obvious anomaly since although, as per the relevant Notification dated March 20, 2020, the Commercial Court shall have jurisdiction over the arbitral proceedings and subsequent applications in connection therewith, in view of Section 42 of the 1996 Act, such applications will have to be preferred before the ordinary civil court having jurisdiction, which is diametrically contrary to the contemplation of Section 6 of the 2015 Act. Section 6 of the 2015 Act stipulates that the Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State and over which it has been vested territorial jurisdiction.
- 11.** Hence, although the Rajarhat Commercial Court would have jurisdiction otherwise over the arbitral proceedings and connected applications, if filed subsequently, in terms of Section 6 of the 2015 Act, the said Court will be denuded of such jurisdiction by operation of Section 42 of the 1996 Act, by virtue of the application under Section 9 of the 1996 Act being presented before the ordinary civil court having jurisdiction. On a harmonious construction of the statutes of 1996 and 2015, such an interpretation is absurd and not tenable in the eye of law.
- 12.** Hence, on both counts, the trial judge acted in consonance with law in relegating the matter under Section 9 of the 1996 Act to the

Commercial Court at Rajarhat for hearing, since the said application itself indicates, in paragraph 27(c) thereof, that the dispute between the parties, which would be subject to arbitration, is for damages to the tune of Rs.35,20,000/-, which falls within the domain of the said Commercial Court as per the relevant Notification.

13. In such view of the matter, there is no scope of interference with the impugned order.
14. Thus, C.O. No.552 of 2021 is dismissed on contest. IA No: CAN 1 of 2021 is also disposed of accordingly.
15. The merits of the respective contentions have not been gone into and the Commercial Court at Rajarhat will be free to decide all issues raised independently in accordance with law, without being influenced in any manner by any of the observations made herein. The said court is further requested to dispose of the proceeding under Section 9 of the Arbitration and Conciliation Act, 1996 as expeditiously as the business of the said court permits, preferably within 3 months of communication of this order to the court.
16. There will be no order as to costs.
17. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)