

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 1358 of 2021

M/s. K.B. Consortium

Vs.

Zenith Timber Products Pvt. Ltd. & anr.

For the Petitioner : Mr. Dhruba Ghosh,
Mr. Rohit Banerjee,
Mr. Suryaneel Das,
Mr. Aditya Mondal
..... advocates

For the Opposite Party
No. 1 : Mr. Aniruddha Chatterjee,
Mr. Aniruddha Mitra,
Ms. Sudipa Bhattacharyya,
Mr. Anirban Ghosh,
.....advocates

For the Opposite Party
No.2 : Mr. Deepak Kripalini.... Advocates

Heard on : 30.09.2021

Judgment on : 07.10.2021

Hiranmay Bhattacharyya, J.:-

The instant application is at the instance of the defendant no. 2 and is directed against an order being no. 11 dated July 30, 2021 passed by the learned Civil Judge, Junior Division, Second Court, Hooghly (Sadar) in Title Suit No. 279 of 2021.

By the order impugned, the application under Order 7 Rule 10 of the Code of Civil Procedure filed by the petitioner herein was rejected.

The case made out by the opposite party no. 1 herein in the plaint of the instant suit is summarised hereunder is as follows :-

The plaintiff approached the defendant no. 1 with a proposal for granting license in respect of an area of 20,000 square feet for the purpose of its saw-mill. The defendant no. 1 granted license for an area of 20,000 square feet which is described in schedule B to the plaint as per the terms stipulated in the license agreement dated August 1, 2019. The license agreement was for a period of 60 months with effect from 01.08.2019 to 31.07.2024. The defendants were trying to interfere and create disturbance in the peaceful possession of the plaintiff in respect of the B scheduled property and were trying to evict the plaintiff before the expiry of the agreed period. Thus, the opposite party no. 1 filed the instant suit praying for a declaration that plaintiff is a licensee under the defendant no. 1 in terms of the leave and license agreement dated August 1, 2019 and that the possession of the plaintiff cannot be disturbed without taking any due process of law. A decree for permanent injunction restraining the defendants from creating any disturbance towards the peaceful possession and/or running its saw-mill on the B scheduled property was also prayed for.

The defendant no. 2/ petitioner herein filed an application under Order 7 Rule 10 of the Code of Civil Procedure alleging that the suit relates to a commercial dispute as per the pleadings of the plaint and the plaintiff has deliberately undervalued the suit and has also not determined the specified value of the

subject matter of the commercial dispute with the sole motive to avoid payment of requisite ad valorem court fees. On such allegation the petitioner prayed for an order directing return of the plaint in Title Suit no. 279 of 2021 to be presented to the Court to which such suit should have been instituted.

The plaintiff/opposite party no. 1 herein contested the application under Order 7 Rule 10 of the Code by filing a written objection denying the material allegations contained therein.

The learned Trial Judge, by the order impugned, rejected the said petition under Order 7 Rule 10 of the Code. Being aggrieved against the said order, the defendant no. 2 has preferred the instant Civil Order.

Mr. Ghosh, the learned senior counsel for the petitioner contended that the plaintiff took possession of the immovable property in terms of an agreement for the purpose of using such immovable property exclusively in trade or commerce. He submitted that since the plaintiff raised a dispute arising out of such agreement the said dispute falls within the expression “commercial dispute” defined under Section 2(1)(c) of the Commercial Courts’ Act, 2015 (for short “the 2015 Act”). He further, contended that since the relief sought for in the suit relates to a right in respect of such immovable property the market value of the immovable property as on the date of filing of the suit should be taken into account for determining the specified value of the subject matter of the commercial dispute. In view of the provisions laid down under Section 12(1)(c) of the 2015 Act. By drawing the attention of the Court to an e-assessment slip issued by the Directorate of Registration and Stamp Revenue, Mr. Ghosh contended that the market value of

the suit property is about Rs. 1,52,12,588 which shall be taken to be the specified value of the commercial dispute. which shall be taken to be the specified value of the commercial dispute. He, thus, submitted that since the specified value of the subject matter of the commercial dispute exceeds Rs. 30 lakhs, the plaint of the instant suit should be returned for presentation before the appropriate Commercial Court. Mr. Ghosh, contended that the learned Trial Judge misinterpreted the definition of commercial dispute as provided in the 2015 Act in as much as the learned Trial Judge held that the suit is not commercial in nature because there is no commercial relation in between the plaintiff and two defendants.

Mr. Ghosh, the learned Senior Counsel relied upon a judgment of the Hon'ble Supreme Court of India in the case of *Ambalal Sarabhai Enterprise Ltd. vs. K.S. Infraspace and anr.* reported at (2020) 15 SCC 585 and submitted that a dispute relating to immovable property becomes a commercial dispute if it falls under Sub-clause (VII) of Section 2(1)(c) of the 2015 Act.

Mr. Kripalini, learned advocate appearing for the opposite party no. 2 adopted the argument advanced by Mr. Ghosh.

Mr. Aniruddha Chatterjee, the learned advocate for the plaintiff/ opposite party no. 1 seriously disputed the contention raised by Mr. Ghosh. He contended that the immovable property is not being used by the plaintiff for trade or commerce. According to Mr. Chatterjee the business of a saw-mill involves only manufacturing activities and as such it does not fall within the expression "used exclusively for trade or commerce". He further, contended that the cause of action for filing of the instant suit is the disturbance created by the defendant no.

2/petitioner herein in the peaceful possession of the plaintiff and such dispute cannot fall within the expression “commercial dispute” as there is no agreement between the plaintiff and the defendant no. 2 in respect of immovable property. He contended that the plaintiff has filed the suit for declaration of his right in terms of the license agreement and such suit was filed under the provisions of Section 34 of the Specific Relief Act and the suit has been valued according to the provisions laid down under Section 7(IV)(b) of the West Bengal Court Fees Act. Mr. Chatterjee lastly contended that even for the sake of argument the dispute in the instant suit can be said to be a commercial dispute even then a commercial dispute of any specified value cannot be tried by the Commercial Court. He contended that a commercial dispute of specified value less than Rs. 30 lakhs cannot be tried by the Commercial Court. In the instant case in the absence of any adjudication as to the specified value of the subject matter of the alleged commercial dispute the plaint of the instant suit cannot be returned by the Trial Judge.

Mr. Chatterjee, learned advocate for the opposite party relied upon a judgment of a co-ordinate bench of this Court passed on 24th June, 2021 in CO no. 759 of 2021 (Deepak Polymers Private Limited vs. Anchor Investment Private Ltd. in support of his submission that the dispute of the instant nature cannot be said to be a commercial dispute.

I have heard the learned advocates for the parties and have considered the materials on record.

From the statements made in the plaint it is evident that the plaintiff approached the defendant no. 1 with a proposal for grant of license in respect of an immovable property for the purpose of

its saw-mill. It, further, appears therefrom that pursuant to the license agreement the plaintiff was put in possession in respect of an immovable property. Upon a plain and meaningful reading of the plaint it appears that the plaintiff has alleged that the defendants are trying to evict the plaintiff from the immovable property before the expiry of the agreed period for which the plaintiff prayed for a declaration of his right to possess such immovable property in terms of the license agreement. The principal relief claimed in the suit was for declaration of his right under the license agreement. A consequential relief in the form of permanent injunction was also prayed for protecting his peaceful possession in the suit property being an immovable property.

The principal relief claimed in the suit is against the defendant no. 1 who is a party to the license agreement as licensor. The instant suit has been filed for adjudication of a dispute arising out of the license agreement relating to immovable property. The dispute is between the parties to such agreement.

Now, the question arises as to whether the immovable property is used exclusively in trade or commerce so as to bring the dispute within the ambit of a commercial dispute. It is not in dispute that the plaintiff took possession of such property for the purpose of its saw-mill. Though the business of saw-mill involves cutting of woods with the help of machinery but such activity involves monetary transaction and as such it comes within the definition of "trade or commerce". Thus, this Court is unable to accept the contention of Mr. Chatterjee that the user of the immovable property for the purpose of saw-mill cannot be said to be used exclusively in trade or commerce.

The next question arises as to whether the dispute involved in the instant suit can be taken out of the purview of a commercial dispute on the ground that allegations have been levelled against the defendant no. 2 in the plaint who is not a party to the license agreement. The principal relief has been claimed against a person who is a party to the agreement. The consequential relief is also prayed for against such party as well as against others who is allegedly trying to evict the plaintiff from the suit property along with the defendant no. 1. When the principal relief is against a party to an agreement and such dispute is a commercial dispute as per Section 2(1)(c)(vii) of the 2015 Act, the mere fact that in the consequential relief has been prayed for against a third party in addition to the person with whom an agreement is subsisting cannot take out such dispute from the ambit of a commercial dispute.

The Hon'ble Supreme Court of India in *Ambalal Sarabhai* (supra) held that the dispute relating to immovable property per se may not be a commercial dispute but it becomes a commercial dispute if it falls under Sub-clause (vii) of Section (2)(1)(c) of the 2015 Act. It was further held therein that the words "used exclusively in trade or commerce" are to be interpreted purposefully. The word "used" denotes "actually used" and it cannot be either "ready for use" or "likely to be used" or "to be used". It should be "actually used".

In the instant case, the plaintiff took the property for using the same for sawmill. It appears from a plain reading of the plaint that the property is actually used exclusively in trade or commerce. Thus, the dispute involved in the instant suit is a commercial dispute.

The co-ordinate bench in Deepak Polymer(supra) while dealing with a suit for recovery of possession of immovable property under Section 106 of the Transfer of Property Act held that the dispute involved in such suit is not a commercial dispute as the cause of action therein arose by virtue of the rights conferred under Section 106.

The said decision is distinguishable on facts as the plaintiff in the instant case has prayed for declaration of his right under a subsisting leave and license agreement.

Thus, this Court is of the considered view that the dispute involved in the instant suit is a commercial dispute falling under Section 2(1)(c)(vii) of the 2015 Act.

Now, it is to be decided whether the plaint of the instant suit is to be returned for filing before the appropriate Commercial Court.

The Commercial Courts' Act 2015 has been enacted to provide for constitution of Commercial Courts for adjudicating commercial disputes of high specified values. It is not in dispute that the commercial courts have been constituted for adjudicating commercial disputes of specified value not less than Rs. 30 lakhs.

Section 9 of the Code of Civil Procedure provides that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or implied barred. Explanation I appended thereto states that a suit in which the right to property is contested is a suit of a civil nature.

A dispute arising out of an agreement relating to an immovable property is civil in nature. However, in case such dispute arises out of agreements relating to immovable property used exclusively in trade or commerce, such dispute which are primarily civil in nature is a commercial dispute in terms of Section 2(1)(c)(vii) of the 2015 Act.

Prior to the commencement of 2015 Act, such commercial disputes were tried before courts under Section 9 of the Code of Civil Procedure. Commercial Courts are constituted at the district level as per the provisions of the 2015 Act for expeditious adjudication of commercial disputes of high specified value. Even provisions have been made in the 2015 Act for transfer of pending suits and applications to the commercial courts. Thus, the intention of the legislature is that the commercial disputes of high specified value only are to be tried by Commercial Courts.

Order VII Rule 10 of the Code provides that the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

This Court has already held that the dispute involved in the instant suit is a commercial dispute. But before deciding as to whether the instant suit should have been instituted before the Commercial Court, the specified value of the subject matter of the dispute is to be taken into consideration.

The instant suit has been valued by the plaintiff as per Section 7(iv)(b) of the West Bengal Court Fees Act. Since this Court has already held that the dispute involved in the instant suit is a commercial dispute, the specified value of the subject matter of such commercial dispute involved in the instant case is

to be determined in terms of the provisions laid down under Section 12(1)(c) of the 2015 Act and not as per Section 7(vii)(A) of the West Bengal Court Fees Act.

Though, the petitioner by producing an e-assessment slip has contended that the value of the property is much more than Rs. 30 lakhs, but the Court prior to passing an order for return of plaint has to arrive at a finding as to what is the specified value of the subject matter of the commercial dispute. In the absence of any determination of the specified value of the subject matter of commercial dispute in the instant case, this Court is not in a position to decide as to whether the plaint of the instant suit should be returned to the plaintiff for presenting the same before the appropriate Commercial Court.

The learned Trial Judge totally misinterpreted the definition of commercial dispute. The learned Trial Judge failed to appreciate that there is a gulf of differences between a commercial dispute and a commercial relation. As such the finding of the learned Trial Judge that the plaint cannot be returned as there is no commercial relation between the parties suffers from infirmity.

For the reasons as aforesaid the impugned order is set aside. The application under Order VII Rule 10 of the Code is remanded to the learned Civil Judge, Junior Division, Second Court, Hooghly (Sadar) with a direction to determine the specified value of the commercial dispute and thereafter decide as to whether the plaint of the Title Suit No. 279 of 2021 should be returned for presentation before the appropriate Court in the light of the observations made herein before.

CO No. 1358 of 2021 stands allowed.

There shall, however, no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)