

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.4591 OF 2021
IN
FIRST APPEAL NO.660 OF 2021

1. Kashida Developers Private
Ltd., Through its Directors -

1-A. Sandip s/o Omprakash Koyate
and Ors.

= APPLICANTS]
(Orig.Defendants)

VERSUS

N.P.S.Infrastructure through
its Owner -
Shri Neeraj s/o Prafulla Shaha

= RESPONDENT
(Orig.Plaintiff)

Mr.RN Dhorde, Sr.Counsel i/by Shri VR Dhorde,
Advocate for Appellants;

Mr.PV Mandlik, Sr.Counsel, i/by Shri AS Gandhi,
Advocate for Respondent.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 1st July, 2021.

PER COURT :-

1. Heard learned Sr.Counsel for the
respective parties.

2. Present application has been filed for
stay to the execution and implementation of the
judgment and decree dated 9.9.2020 passed by
learned Civil Judge, Senior Division, Rahata,
District Ahmednagar in Special Civil Suit No.
12/2019 (Old Special Civil Suit No.68/2012).

3. Learned Sr.Counsel appearing for the applicants-original defendants submitted that the impugned judgment suffers from many illegalities right from the point of jurisdiction. The learned Trial Judge has failed to apply proper legal provisions. If we peruse the plaint and the impugned judgment, it is clear that the amount that was claimed from the defendants, was to the tune of Rs.1,24,87,610/-, which the plaintiff contended that it was on account of a construction contract. If we consider the definition of "Commercial dispute" as per Section 2(c) of The Commercial Courts Act, 2015 (herein after referred to as the said Act), which came into force on 23.10.2015, then sub-clause (vi) thereof says that a dispute, arising out of construction and infrastructure contracts including tenders, is a commercial disputes. Therefore, after the said Act came into force, the present suit ought to have been transferred to the Commercial Court. Further, the said Act came to be amended by the Act of 28 of 2018 and if specified value up to and inclusive of Rupees One Crore was only to be tried at Civil

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Judge, Senior Division level even at a Taluka Court. However, if the specified value is more than Rupees One crore, then it should go to District Judge-1 at the District Head quarter as well as the Court of District Judge-2, if available at Taluka place. Section 15 of the said Act deals with Transfer of pending cases. Therefore, when the present suit was originally filed and it appears that it was at different place than Rahata in 2012 then it ought to have been transferred in 2015 to the appropriate Court under the said Act. It appears that the Court of Civil Judge, Senior Division came to be established at Rahata in 2019 and, therefore, the suit came to be transferred to that Court. However, still no efforts were made to transfer the suit. No doubt a specific contention that it is a commercial dispute appears to be not taken in the written statement by the present appellants; yet it was even for the Court to decide the same. Further, the Issue No.1 was in respect of valuation. The point could have been covered in that issue; yet the finding has been given in the affirmative. The suit was for recovery of amount which was more than Rupees One crore though the

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decree has been passed to the tune of Rs. 61,84,212/- and, therefore, the said Court had no jurisdiction at all to decide the dispute.

4. Another fact which was not considered at all was that even the defendants have filed Special Civil Suit No.8/2014 for recovery of Rs. 5,71,26,794/- and that was not considered along with this suit. On merits also, it can be seen that the plaintiff had not produced original documents and only summary of the accounts was produced which could not have been taken as proof for any outstanding amount. When the defendants had come with a case that, in fact, there is an amount outstanding from the plaintiff to them, unless those matters would have been tried together, the learned Trial judge could not have come to a different conclusion and, therefore, all these points are required to be gone into in the First Appeal. The learned Sr. Counsel, therefore, prayed for stay to the impugned judgment and decree.

5. Per contra the learned Sr. Counsel, representing the Respondent – original plaintiff, submitted that since money decree has been passed,

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it cannot be stayed. At no earlier point of time a specific contention was raised by the defendants that the said Court had no jurisdiction to try the said suit. In view of Section 15 of the said Act, in fact, the transfer was not warranted. No steps, as contemplated under sub-section(5) of Section 15 of the said Act, were ever taken by the defendants. Sub-section (5) of Section 15 of the said Act, reads thus, -

“(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.”

6. The suit, which has been filed by the present appellants is on different footing and this suit need not have waited or need not be tried along with the other suit. The entire evidence that was adduced by the plaintiff has been properly assessed by the learned Civil Judge, Senior Division and, therefore, it need not be disturbed. As regards the extract of the account is concerned,

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though objection was raised, it has been dealt with by the learned Trial Judge and it is specifically stated that when those accounts were received by the defendants and those have been properly proved, they are definitely the basis for the decree. He, therefore, prayed for rejection of the application.

7. At the outset, definitely since the decree that has been passed is a money decree, the law stands that it should not be normally stayed. However, in the present case, jurisdiction of the trial Court, which passed the decree itself, is challenged. Prima facie, there appears to be substance in the same. As aforesaid, Section 2 of the said Act provides for definitions. Section 2(c) (vi) reads that, construction and infrastructure contracts, including tenders would be "commercial dispute". There is no dispute about the fact that the basis on which the plaintiff wanted to recover the amount is the construction contract. No doubt, the suit initially came to be filed in the year 2012 and the Commercial Courts Act came into force on 23.10.2015. Section 15 of the said Act deals with transfer of pending cases. It says in sub-section (1) in assertive manner that

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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. Sub-section (2) states that all suits and applications 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. Only proviso to sub-section (2) states that where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court, need not be transferred. This is not the case here. Sub-section (5) states that 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. Definitely it is required to be considered as to whether this suit could have been saved under subsection (5). But prima facie, it appears that subsection (5) is relating to the territorial jurisdiction and not as regards pecuniary jurisdiction. Further, Section 12 of the said Act deals with determination of Specified Value. Subsection (1)(a) thereof states that where the relief sought in a suit or application is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of filing of the suit or application, as the case may be, shall be taken into account for determining such Specified Value. Here in this case, the Specified Value, that was determined by the plaintiff itself, was more than Rupees one crore, i.e. 1,24,87,610/- and, therefore, prima facie there appears to be substance in the submissions advanced on behalf of the defendants (present applicants) that the point as regards the jurisdiction of the Court, which decided the

Special Civil Suit No.12/2019, will have to be gone into and further, the fact that is also required to be noted is that in view of the Amendment Act of 28/2018, the Government of Maharashtra had constituted and appointed the Commercial Courts from 3rd July, 2019 and their jurisdiction is bifurcated on the basis of Specified Value. The Court of senior most Civil Judge Senior Division in District Head Quarters and the Court of senior most Civil Judge, Senior Division, if any, at Taluka Head Quarters in the State, is designated as Commercial Court at District Level for deciding commercial disputes of specified value up to and inclusive of Rs.1 Crore; whereas the Court of District Judge-2 at District Head Quarter as well as the Court of District Judge-2, if available at Taluka place, shall be the Commercial Court for deciding commercial disputes of specified value above Rs.1 crore. The Notification dated 3rd July, 2019 issued by the Law and Judiciary Department, Government of Maharashtra, further states that where there is no post of District Judge-2 at Taluka Level, the Court of the District Judge-1 at Taluka level shall be the Commercial Court for

deciding the commercial disputes having specified value of more than Rs.1 crore. The Notification further states that the territorial jurisdiction of the Commercial Court shall be as per the respective jurisdiction of those Courts.

8. Another Notification of the same date, issued by Law & Judiciary Department, Government of Maharashtra, in exercise of powers conferred by section 3A of the Commercial Courts Act, 2015, as amended by Amendment Act of 28/2018, designated Court of District Judge-1 at District Head Quarter as well as Taluka Level as Commercial Appellate Court for entertaining appeals against the judgment and orders of the Courts of the Civil Judges, Senior Division, which are constituted as the Commercial Courts. That means by this Notification, if the Specified Value of the commercial dispute in a suit was Rs.1 crore or less than that and it is tried by the Court of Civil Judge, Senior Division, then the Appeal would lie before the District Judge-1 at the District Head Quarter. Under such circumstance, all these aspects are required to be considered in this First Appeal and, therefore, stay to the impugned decree

appears to be inevitable.

9. Another fact that is also required to be considered is, as to why the Trial Judge did not consider the suit filed by the defendants for recovery of the amount from the plaintiff along with this suit. It appears that parties have not come with a case that there was any other transaction or construction agreement they want which is involved in the present suit. Even the defendants had not filed counter-claim in this suit, but perusal of the written statement would definitely state that they were going to file another separate suit for the recovery of amount of Rs.2 crores. Then, whether it was in the interest of the parties to try both the suits together ought to have been properly considered ought to have been properly considered. A party may not point out that the other suit may be tried together with this suit. But when the fact is brought to the notice of the Court then the Court should visualize as to what kind of legal hurdles would be to decide any of the matters if they are not tried together and this can be only on the basis of what bearing the dispute has against one another. This point is

also required to be taken into consideration along with the other point that is raised that the suit came to be decreed only on the basis of summary of the accounts and not detailed account. A perusal of the Judgment would show that in an application under Order 38 Rule 5 of CPC, 8 twin bungalows as listed in para 1-B of Exhibit-8, came to be attached prior to the judgment by order dated 1.2.2013. Alternatively, it was stated that security should be given by the defendants for an amount of Rs.2 crores and fifty lakhs. Accordingly, the defendants had given security by giving a pursis on 11.4.2014. the said security given at Exh.108, has been continued by the learned Trial Judge by way of this decree till recovery of the decreetal amount. Now, the learned Sr. Counsel appearing for the original plaintiff submits that the said security by way of the pursis dated 11.4.2014, cannot be said to be a legal security. Important point to be noted is that at least whatever documents are with this Court right now, and the contents of the judgment would show that the plaintiff never objected to the said pursis and prayed for proper procedure and proper security to

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be given after the pursis dated 11.4.2014 till the decree passed on 9.9.2020. So for about six years when the plaintiff preferred to keep mum, then now, at this stage, when as per the decree, the Court has directed that it should be in force till the recovery of the decretal amount, no such objection needs to be attended. When that security is continued, definitely the impugned decree deserves to be stayed though it is the money decree. Hence, following order, -

ORDER

i. The Civil Application stands allowed in terms of prayer clause (A) till final disposal and decision of the First Appeal.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV