

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.137 of 2022

=====

M/S Kumar Auto Infra Pvt. Ltd. having registered office at 1st Floor, Pankaj Market, Gudari Road, P.O.- Hajipur, P.S. - Hajipur, District - Vaishali through Pankaj Kumar Rai.

... .. Appellant/s

Versus

1. Binay Kumar Son of Late Chandra Sao, Resident of Flat No. 402, Pawan Pradeep Apartment, Khetan Lane, West Boring Canal Road, P.S.- S.K. Puri, District - Patna.
2. M/S Gayatri Engicon Pvt. Ltd. having registered office at Flat no. 402, Hari Apartment, Mohalla - East Patel Nagar, Road No. 10, Patel Nagar, District- Patna through its Director, Munilal Yadav.
3. M/s Gayetri Kumar Engicon, a partnership firm having address at 501, Sri Hari Apartment, Road NO. 10, Patel Nagar 23, through defendant No. 1 and 2.

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. P.N. Shahi, Sr. Adv.
For the Respondent/s : Mr. Jitendra Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

2 28-06-2022 The objection raised by the office does not appear to be justified, as against the order passed by the Commercial Court, an appeal under Section 13 of the Commercial Courts Act, 2015 has been filed.

The defect pointed out by the office is, therefore, ignored.

Heard Mr. P. N. Shahi, learned senior Advocate for the appellant/defendant and Mr. Jitendra Kumar, learned



Advocate for respondent no.1/plaintiff.

This appeal has been filed against the order passed by the learned Additional District Judge-XVIII, Patna cum- Special Commercial Court in Commercial Case No.3 of 2017, whereby two of the applications preferred by the appellant under Order VI Rule 15 (A) (4) and (5) of C.P.C. and under Order VII Rule 10 of C.P.C. respectively have been rejected.

Mr. Shahi, learned senior Advocate for the appellant / defendant has assailed the aforesaid orders on the ground that the dispute between the parties would not come within the category of commercial dispute as there is nothing on record to indicate that the dispute was with respect to agreement relating to immovable property used exclusively in trade and commerce.

The learned Counsel for the respondent/plaintiff has submitted that he was the assignee of the housing project under the name and style of Ram Gola City Project, to be built and constructed under the registered development agreement dated 28.09.2013 between the appellant-defendant no.1 and the land owner. On the asking of the appellant/defendant, the respondent/plaintiff had agreed to fund and financed the project and had entered into an agreement to take 15 % of the built up area and be a Director in the Board of Directors of the



defendant's company with share up to 30 % of the share capital.

During the prosecution of the case, two of the applications, as referred to above, were filed : one for striking off the averments made in the plaint for the same not having been verified by the deponent as mandated under Order VI Rule 15 (A) (4) and (5) of C.P.C.

The Commercial Court, on finding that similar application was rejected twice, refused to entertain the aforesaid application holding it to be a repetitive attempt to avoid the case being tried summarily as mandated under the Commercial Courts Act, 2015.

The other application under Order VII Rule 10 of C.P.C. was contested by the respondent/plaintiff on the ground that the issue involves the commercial use of the land in question, thereby bringing it within the commercial dispute as defined under Section 2 (1) (vii) of the Commercial Courts Act, 2015, which includes agreements relating to immovable property used exclusively in trade or commerce.

Mr. Shahi, learned senior Advocate for the appellant/defendant has raised the objection that the Commercial Court ought to have found out whether such agreement was with respect to immovable property which was



to be used exclusively in trade or commerce.

The land was assigned by the land owner for construction of multistoreyed building, which made it an agreement relating to immovable property used exclusively in trade or commerce.

The contention of the appellant-defendant, therefore, is not sustainable in the eyes of law.

We do not find any fault with the order passed by the Commercial Court, rejecting both the applications of the appellant-defendant under Order VI and Order VII of the C.P.C. respectively.

There is no merit in this appeal.

This appeal stands disposed of.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

sunilkumar/-ritik

U			
---	--	--	--

