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Ct. No. 37

Akd

In the High Court at Calcutta
Civil Appellate Jurisdiction
Commercial Division

F.M.A. 734 of 2022
CAN 1 of 2022

P. C. Chandra Gems Private Limited
Vs.
Godrej Consumer Products Limited & Anr.

Mr. Arindam Guha,
Mr. Saumasish Sengupta,
Mr. Balarko Sen.

... for the appellant.

Mr. Tilok Kumar Bose,
Mr. R. K. Khanna,
Mr. Sarathi Dasgupta.

... for the respondent no. 1.

Re: CAN 1 of 2022

When the matter is listed for disposal of an application being CAN 1 of 2022 filed in connection with the instant appeal, we find that the appeal can be conveniently disposed of without calling for Lower Court Records or preparation of paper books.

The suit was filed way back in the year 2012 for recovery of money for goods sold and delivered to the extent of Rs.80,18,973/- with other consequential reliefs.

After the promulgation of Commercial Courts Act, 2015 the said suit was transferred to the Commercial Court and an application was taken out by the respondent that the cause of action pleaded in the plaint does not come within the definition of “commercial dispute” given under Section 2(1)(c)(i) of the said Act and, therefore, the said suit is required to be re-transferred to the Civil Court.

While the said application was taken out, the learned Judge of the Commercial Court records the provision contained in Section 19 of the Commercial Courts Act, 2015 in the following:

“5. Now, as per the amended provision of Section 19 of the Commercial Act, 2015 as amended in the Amendment Act, 2018:

“...19. Save as otherwise provided, the provisions of this Act shall apply only to cases relating to commercial disputes filed on or after the date of commencement of this Act...”

Taking aid of the aforesaid quoted provision, the learned Judge in the Commercial Court is of the view that the aforesaid suit having filed prior to the commencement of Commercial Courts Act and, therefore, in view of the aforesaid provision the same is required to be returned to the original Court where it was instituted.

Our attention is drawn to Section 19 of the Commercial Courts Act, 2015 which runs thus:

“19. Infrastructure facilities.- The State Government shall provide necessary infrastructure to facilitate the working of a Commercial Court or a Commercial Division of a High Court.”

It is pointed out that the learned Judge without venturing to look into the provisions contained in Section 19 of the Act has, in fact, relied upon Section 19 of the Commercial Courts, Commercial Division

and Commercial Appellate Division of High Courts (Amendment) Act, 2018 having brought to amend some of the provisions of the Commercial Courts Act by way of insertion, substitution or omission. Section 19 of the said amending Act does not in expressed term says that the suit which was filed prior to coming in force of the Commercial Courts Act shall not be transferred to the Commercial Court; rather the said amending Act has its restricted applicability to the provisions of the said amended Act to apply prospectively and not from retrospective operation. The said Section 19 of the amended Act is quoted as under:-

“19. Save as otherwise provided, the provisions of this Act shall apply only to cases relating to commercial disputes filed on or after the date of commencement of this Act.”

It is apparent and clear from the meaningful reading of the said provision that it has its applicability to the provisions of the amending Act and does not abridge or override the substantive provision contained in the parent Act and, therefore, the learned Judge of the Commercial Court has misdirected himself in passing the impugned order.

In view of the above, the impugned order is set aside.

The matter is remitted back to the Commercial Court for deciding the application filed by the respondent after affording an opportunity of hearing to the respective parties and by recording proper reasons in accordance with law.

The appeal and the connected application are thus disposed of.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)

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