

S/L 4
09.9.2022
Court No.652
SD

CO 1762 of 2021

M/s. NBCC (India) Limited
Vs.
M/s. Urmila R.C.P. Projects Private Limited

Mr. Arnab Chakraborty
Ms. Pragya Bhowmik

...for the Petitioner.

Mr. Subir Sanyal
Mr. Sutirtha Das
Mr. Z.A. Tarafder

...for the Opposite Party.

Being aggrieved by the order no.1 dated 02.9.2021 passed by the learned District Judge, Barasat, North 24-Parganas in Misc. Appeal No.88 of 2021 arising out of Title Suit No.420 of 2021, the present revisional application has been preferred.

The said suit was filed for declaration that notice dated June 28, 2021 issued by the defendant is illegal and void and also for a decree for permanent injunction restraining the defendant from revocation of the bank guarantees being No.HARMU/URCP/BG-211149371/14-15, 0002119IPG026502 and 0002119IPG026197.

In that suit, the plaintiff prayed for granting ad interim injunction and learned Civil Judge (Junior Division), 1st Court at Barasat was pleased to pass the interim order of status quo in connection with the aforesaid bank guarantees till next date. Being aggrieved by that order, the defendant preferred appeal before the learned District Judge being Misc. Appeal No.88 of 2021 and the learned District Judge

by the impugned order dated 02.9.2021 was pleased to hold that the nature of the suit comes within the purview of definition of 'commercial dispute' as provided in the Commercial Courts Act, 2015 and accordingly, appellate court finds it proper to direct the appeal be transferred to the Commercial Court at Rajarhat which do have the appropriate pecuniary jurisdiction to try the appeal/suit and she also pointed out that all points to be kept open for adjudication by the concerned commercial court.

At the time of hearing, Mr. Arnab Chakraborty, learned advocate appearing for the petitioner, submits that present suit falls within the purview of definition of 'commercial dispute' and as such, the trial court has got no jurisdiction to pass any interim order. However, the learned appellate court has send the appeal only before the commercial court for disposal but she ought to have transferred the suit itself before the Commercial Court at Rajarhat.

Mr. Subir Sanyal, learned advocate for the opposite party, submits that there is no dispute that the nature of the suit involves commercial dispute and learned appellate court has directed to send the appeal as well as the suit before the Commercial Court at Rajarhat. He further submits that the injunction order granted by the trial court should continue.

Having considered the aforesaid facts and circumstances of the case and that admittedly the present dispute comes within the definition of 'commercial dispute',

the trial court is directed to transmit the case record at once before the Commercial Court at Rajarhat within a period of seven days from the date of communication of the order.

The learned Commercial Court at Rajarhat will dispose of the plaintiff's prayer for injunction under Order XXXIX Rule 1 and 2 along with the defendant's application under Order XXXIX Rule 4 and also application under Order VII Rule 11 of the Code of Civil Procedure within a period of two weeks after the ensuing puja vacation.

Till disposal of the said applications, the defendant will not encash the bank guarantees being No. HARMU/URCP/BG-211149371/14-15, 0002119IPG026502 and 0002119IPG026197.

However, it is made clear that this Court has not gone into the merits of the case and learned court will dispose of the aforesaid applications without being influenced by any of the observations made by this Court, keeping all points open for adjudication by the concerned commercial court.

Accordingly, C.O. 1762 of 2021 is disposed of.

There will be no order as to costs. Department is directed to send copy of this order at once to Civil Judge (Jr. Division), 1st Court at Barasat at once.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)