

August 17, 2023  
Sl. No.21  
Court No.19  
s.biswas

CO 2061 of 2023

*TDI International Private Limited*

*vs.*

*Airports Authority of India*

Mr. Anirban Ray  
Ms. Anamika Pandey  
Ms. Amrita Pandey  
Mr. Debraj Saha  
Mr. Ghanshyam Pandey

... for the petitioner

Mr. Anup Kanti Poddar  
Ms. Khusboo Ruia

... for the opposite party

This revisional application has been filed challenging an order dated March 31, 2023 passed by the learned Judge, Commercial Court, North 24 Parganas at Rajarhat, in Money Suit No.28 of 2018, renumbered as Money Suit No.05 of 2019 (CC).

By the order impugned, the learned court below rejected the application filed by the defendant under Order 7 Rule 10 of the Code of Civil Procedure. The defendant prayed for return of plaint to the court of ordinary civil jurisdiction.

According to the defendant, the suit should have continued as an ordinary money suit in the court of civil jurisdiction and ought not to have been transferred to the commercial court, to be heard as a commercial suit.

The contention of the defendant was that neither any mercantile agreement nor a licensing agreement or service agreement existed between the parties. The licensing agreement, on the basis of

which the defendant was allowed to advertise on the space at the airport premises, admittedly expired in April 2014. The claim relates to the period subsequent to the expiry of the licence. Admittedly, the licence was not extended.

According to Mr. Ray, the business transaction between the parties ended. At best, the airport authorities were claiming licence fees which was a money claim arising out of alleged user of the space without extension of the licensing agreement. When the commercial relationship ended between the parties, the subsequent claim in the absence of a mercantile relationship would not be governed by the definition of 'commercial dispute'.

The learned court below recorded the submissions of the respective parties, but rejected the application with only one observation that the application for return of plaint was misconceived and even payment of arrears of licence fees, after termination of the licence agreement, was covered by the Commercial Court's Act.

In my opinion, the learned court below ought to have delved deeper into the matter by considering the submissions of the respective parties and then arrived at the final decision with reasons, with specific reference to definition of a commercial

dispute, the explanation thereto and principles laid down by courts of law in this regard.

The order impugned is set aside and the matter is sent back to the learned court below, for a fresh decision. Such decision shall be arrived at upon giving an opportunity to the parties to make their respective submissions. It is made clear that the application shall be finally disposed of within a fortnight from the next date fixed, by passing a reasoned order.

All the parties are directed to act on the basis of the server copy of the order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

**(Shampa Sarkar, J.)**