

IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

CS/69/2017

Subrata Kumar Ghose

Vs.

rites Limited & Anr.

Mr. Arijit Basu

...For the plaintiff.

Heard on : 10.01.2023

Judgment on : 25.01.2023

Krishna Rao, J.:

The plaintiff has filed the instant suit praying for decree of Rs. 2,89,65,649.00/- against the defendant no. 1 along with interest @ 18% per annum and other relief.

In response to an Open Tender no. 49/OT/DVC KTPS/OHE/PKG-VIIA/2010, dt. 21.09.2010, the plaintiff has participated in the said tender process for design, drawing, supply, erection, testing and commissioning of

25 KV AC OHE (Phase – I) and switching station in connection with construction of Railway infrastructure for Koderma Thermal Power Station (KTPS) of the defendant no. 2.

The defendant no. 1 being the agent of the defendant no. 2 had issued a Letter of Acceptance in favour of the plaintiff in connection with the above mentioned tender work for a total contract price of Rs. 4,63,14,319.39/- dt. 09/10.12.2010. On 28.12.2010, the defendant no. 1 has issued work order with respect of the aforementioned work to the plaintiff. On 17.01.2011, the site was handed over to the plaintiff but after mobilising resources for survey of the site, the plaintiff realise that the civil portion of the work was incomplete with regard to earth filling and soil level formation. By way of communication dt. 04.02.2011, the defendant no. 1 had requested the plaintiff for depositing of Performance guarantee and other documents. The Railway authorities have approved the drawing submitted by the plaintiff on 11.04.2011 and thereafter on 05.05.2011, a formal contract was entered between the plaintiff and the defendant no. 1.

The plaintiff has filed the suit against the defendants for recovery of amount as the defendant no. 1 had terminated the contract of the plaintiff with effect from 21.01.2012 on the ground of poor progress of work and the earnest money deposit, performance guarantee and security deposit were also forfeited by the defendant no. 1.

The defendants have not filed the written statement and accordingly the suit is proceeded as 'Un defended Suit' against the defendants. The

plaintiff has examined himself as PW-1 and during his evidence altogether 77 documents were exhibited.

Now the suit is fixed for passing judgment. After going through the pleadings of the plaint, documents and the evidence of the plaintiff, this Court finds that there was a contract between the plaintiff and the defendant and due to termination of the contract and forfeiture of earnest money deposit, performance guarantee and security deposit, the plaintiff has filed the instant suit. This Court finds that the suit filed by the plaintiff is in connection with the commercial dispute which is required to be tried by the Commercial Court.

The plaintiff has filed the suit on 03.04.2017 before this Court by obtaining leave under Clause 12 of Letters Patent and Order II Rule 2 of the Code of Civil Procedure and had not filed the suit before the Commercial Court or Commercial Division.

Section 15 of the Commercial Courts Act, 2015 reads as follows : -

“Section 15 of the Act, 2015 provides as under:—

Section 15 : - Transfer of pending cases.—

- (1) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 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.*
- (2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), 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:*

Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).

A bare reading of Section 15 (2) of the Act, 2015 shows that all suits and applications, including application under the Arbitration and Conciliation Act, 1996 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, with the exception that if final judgment has been reserved such case shall not be transferred.

Section 15 has provided for a mechanism by which, a suit or a proceeding governed by the Act of 1996 which involves a commercial dispute within the meaning of the Act of 2015 and is of a specified value as specified under the Act of 2015, has to be transferred to the Commercial Division or Commercial Court, as the case may be, for consideration. However, in matters which comes within the purview of Section 15 of the Act of 2015, and where, final judgement has been reserved, then, such suit or proceedings are not to be transferred to the Commercial Division or the Commercial Court, as the case may be.

As has been noted herein above, suits and applications under the Act of 1996 pending before the regular court are required to be transferred to the Commercial Division or the Commercial Court if it satisfies the criteria laid down under Section 15 of the Act of 2015. Section 15 has provided for two entry routes to the Commercial Division or the Commercial Court, as the

case may be, in respect of a suit or an application under the Act of 1996. A suit or an application governed by the Act of 1996 can be transferred to the Commercial Court or the Commercial Division, as the case may be, either by the Court itself in seisin of such suit or the application under the Act of 1996, or on an application by the parties to the suit or the application under the Act of 1996.

As per Section 2(1)(i), “specified value”, in relation to a commercial dispute, means the value of the subject-matter in respect of a suit, as determined in accordance with Section 12, which shall not be less than three lakh rupees or such higher value, as may be notified by the Central Government. Section 12 of the Act prescribes the methodology for determination of Specified Value.

Section 6 of the Commercial Courts Act, 2015 deals with jurisdiction of Commercial Court, which is extracted below for ready reference:—

“6. Jurisdiction of Commercial Court. -- The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.”

The defect of jurisdiction strike at the authority of the Court to pass an order which cannot be cured either by way of consent or waiver of the party. The present suit is filed on 03.04.2017 and leave under Clause 12 of

the Letters Patent and Order II Rule 2 of CPC was obtained on the same day. On the date of filing of the instant suit Commercial Courts Act, 2015 has already came into force with effect from 23.10.2015 but the plaintiff has filed the suit before this Court, thus this Court has no jurisdiction to entertain the suit filed by the plaintiff.

In view of the above, **CS 69 of 2017 is dismissed.** Decree be drawn accordingly.

(Krishna Rao, J.)