

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

Present:

The Hon'ble Justice Krishna Rao

**RVWO 10 of 2023
With
IA No: GA 1 of 2023
&
RVWO 13 of 2023
With
IA No: GA 1 of 2023**

**ANE Industries Private Limited
Versus
J.K. Engineering Private Limited**

Arising Out Of

**IA No: GA 4 of 2022
With
IA No: GA 5 of 2023
In CS 213 of 2016**

**J.K. Engineering Private Limited
Versus
ANE Industries Private Limited**

Mr. Jayanta Kumar Mitra, Sr. Adv.
Mr. Sabyasachi Choudhury
Mr. Partha Sarathi Bhattacharya
Mr. Soujya Roy

... For the petitioner/defendant.

Mr. Ishaan Saha
Mr. Tanuj Kakrania
Mr. Shiv Ratan Kakrania
Mr. Karanjeet Sharma
Mr. N. Das

... For the respondent/plaintiff.

Hearing Concluded On : 18.08.2023

Judgment on : 08.09.2023

Krishna Rao, J.:

1. The defendant has filed an application for review of the order passed by this Court dated 2nd March, 2023. The application for review was filed on the ground that this Court while disposing of GA 4 of 2022 in CS No. 213 of 2016 dated 2nd March, 2023 held that the Commercial Courts Act, 2015 came into force with effect from 31st December, 2015 but the Commercial Court were established at Calcutta on 20th March, 2020 and thus in terms of Section 15 of the Commercial Courts Act, 2015, the suit filed by the plaintiff is required to be transferred to the Commercial Division.
2. Mr. Jayanta Kumar Mitra, Learned Senior Advocate representing the defendant submitted that as per Section 1 (3) of the Commercial Courts Act, 2015 is deemed to have been come into force on 23rd October, 2015 but the plaintiff has filed this suit on 18th August, 2016 and thus it could not be regarded that the suit was pending at the time when the Commercial Courts Act, 2015 came into force.

- 3.** Mr. Mitra, Learned Senior Advocate submitted that by a Notification dated 16th July, 2016, the Commercial Division of this Court was constituted and the suit was filed on 18th August, 2016 i.e. subsequent to the Constitution of Commercial Division of this Court and thus, it could not be said that the suit filed by the plaintiff was pending at the time when the Commercial Courts Act, 2015 came into force.
- 4.** Mr. Mitra, Learned Senior Advocate submitted that the Notification dated 20th March, 2020 has nothing to do with the establishment of Commercial Division of this Court and was notified under Section 3 (1A) of the Commercial Courts Act, 2015 and not an order of the Chief Justice of Calcutta High Court establishing Commercial Court under Section 4 of the Commercial Courts Act, 2015. He submits that the Notification dated 20th March, 2020 issued by the State Government under Section 3 (1A) of the Commercial Courts Act, 2015, after the said Act was amended in 2018, which was not available at the time when the Act came into force on 23rd October, 2015.
- 5.** Mr. Mitra, Learned Senior Advocate submitted that by the Notification dated 20th March, 2020, the pecuniary jurisdiction of the Commercial Court, including Commercial Division of Calcutta High Court was fixed but the same has nothing to do with the establishment of Commercial Division of Calcutta High Court.
- 6.** Mr. Mitra, Learned Senior Advocate submitted that this Court while passing the order dated 2nd March, 2023 has not considered the

paragraphs 7, 8 and 9 of GA 4 of 2022, the reasons for which the defendant has prayed for rejection/dismissal of the suit filed by the plaintiff. Mr. Mitra submitted that in GA 4 of 2022, the defendant has sought for the withdrawal of the counter claim for filing at the appropriate forum but no reason is stated in the order dated 2nd March, 2023 while the prayer made by the plaintiff was not allowed.

7. Mr. Mitra, Learned Senior Advocate submitted that there is a mistake or error apparent on the face of record as the order under review has not considered the relevant order/notification issued under the Commercial Courts Act, 2015.
8. *Per contra*, Mr. Ishaan Saha, Learned Advocate representing the plaintiff submitted that Section 2 (1) (i) of the Commercial Courts Act, 2015 does not provide the Specified Value itself and it merely prescribes a lower limit below which the Specified Value to be notified by the Central Government cannot fall. He submits that Section 3 (1A) empowers the Government to issue a notification specifying the pecuniary value, which shall be less than Rs. 3,00,000/- or such higher value for the whole or part of the State, as it may consider necessary.
9. Mr. Saha submitted that while empowering the State Government to notify the Specified Value, and prescribing the minimum limit, thereof Section 3 (1A) also does not proceed to prescribe the Specified Value, itself, which is left to be fixed at the discretion of the State Government upon consultation with the High Court.

10. Mr. Saha submitted that a combined reading of Section 2 (1) (i) and Section 3 (1A) of the Commercial Courts Act, 2015, it is apparent that no specified value is prescribed in the Act itself. The Specified Value is left to be fixed by the State Government at its discretion, by way of delegated legislation. He submitted that the Notification 20th March, 2020 is issued in supersession of an earlier Notification 15th November, 2018. He further submitted that the Commercial Courts Act, 2015 itself did not prescribe a Specified Value but only prescribed the floor or lower limit, below, which is the Specified Value to be notified, could not fall, no Specified Value existed for the State of West Bengal prior to 15th November, 2018. He submitted that the suit was filed on 18th August, 2016, prior to the notification of any Specified Value for the State of West Bengal and remained pending at the time when Specified Value was notified on 20th March, 2020.

11. Mr. Saha relied upon the judgment passed by the Coordinate Bench of this Court reported in ***AIR 2021 Cal 190 (Laxmi Polyfab Private Limited –vs- Eden Realty Ventures Private Limited)*** and submitted that Section 15 has a terminus by reason of the user of the word “pending”. The terminus is the date when the Specified Value is notified. The terminus shifts with the re-working of the Specified Value or in the other words, in the present case, if the authorities issue a notification stipulating that Specified Value under the Act of 2015 would be Rs. 3,00,000/- then all suits and applications relating to a commercial dispute of such Specified Value pending in High Court

where there is a Commercial Division and in any Civil Court in respect of which a Commercial Court has been constituted and shall be transferred to the Commercial Division or the Commercial Court as the case may be.

12. Mr. Saha submitted that from a reading of the scheme of the Act as a whole it is apparent that though the Commercial Courts Act, 2015 deemed to have been come into force on 23rd October, 2015, the Commercial Courts and the Commercial Division of the High Court cannot begin to exercise its jurisdiction until the Specified Value is notified. He submitted that the Specified Value was notified on 20th March, 2020 and the suit was filed on 18th August, 2016 which is prior to the notification of the Specified Value and thus the suit filed by the plaintiff is deemed to be a pending suit and thus eligible for transfer under Section 15 of the Commercial Courts Act, 2015.

13. Considered the submissions made by the respective parties, perused the materials available on record and the judgment relied by the plaintiff. Admittedly, the plaintiff had filed the suit before the Ordinarily Original Civil Jurisdiction on 18th August, 2016 and the suit is of commercial in nature. In the suit, the defendant had filed an application being GA 4 of 2022 praying for rejection of the plaint and for dismissal of the suit. On the other hand, the plaintiff had filed an application being GA 5 of 2023 for transfer of CS No. 213 of 2016 to the Commercial Division under Section 15 of the Commercial Courts Act, 2015.

- 14.** This Court has disposed of both the applications by a common order dated 2nd March, 2023 by passing the following order :

“It is admitted that the suit filed by the plaintiff is commercial in nature and the suit is required to be decided by the Commercial Court. As per record, the plaintiff has filed the suit on August 18, 2016. The Commercial Courts Act, 2015 came into force with effect from 31st December, 2015 but the Commercial Courts were established at Calcutta only on 20th March, 2020 and thus in terms Section 15 of the Commercial Courts Act, 2015, the suit filed by the plaintiff is required to be transferred to the Commercial Division.”

- 15.** The main contention of the Learned Counsel for the defendant that this Court while passing the order dated 2nd March, 2023 has committed an error by taking into consideration that the Commercial Courts Act, 2015 came into force with effect from 31st December, 2015 and the Commercial Court was established at Calcutta only on 20th March, 2020 and thus this Court was of the view that the suit was pending before this Court when the Commercial Court was established at Calcutta as the plaintiff had filed the suit on 18th August, 2016.
- 16.** By a Notification dated 16th July, 2016 in exercise of power conferred under Section 5 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Court Act, 2015, the Hon’ble Chief Justice has constituted the Commercial Appellate Division of Calcutta High Court consisting of two Hon’ble Judges for the purpose of exercising the jurisdiction and powers conferred on Commercial Appellate Division by the Act and in the same notification, in exercise of

power conferred under Section 4 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Court Act, 2015, the Hon'ble Chief Justice constituted the Commercial Division of Calcutta High Court consisting of one Hon'ble Judge for the purpose of exercising the jurisdiction and power conferred on the Commercial Division by the Act.

17. After the Notification dated 16th July, 2016, the Commercial Division of this Court was inaugurated on 18th September, 2017 and Commercial Division has started functioning from the 12th March, 2018. On 20th March, 2020, the Government of West Bengal had issued three Notifications in exercise of power conferred by sub Section (1) of Section 3, under sub Section (1A) of Section 3 and under sub Section (2) of Section 3 of the Commercial Courts Act, 2015. In the Notification under Sub Section (1A) of Section 3, the pecuniary jurisdiction of the Commercial Division of the High Court is fixed at an amount exceeding rupees Rs. 10,00,000/-.

18. Section 2 (i) of the Act of 2015 describes Specified Value which reads as follows :

“(i) “Specified Value”, in relation to a commercial dispute, shall mean 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] rupees or such higher value, as may be notified by the Central Government.”.

Before the amendment dated 3rd May, 2018, the Specified Value was not less than one crore Rupees.

- 19.** The transfer provisions of pending suits and applications as has been incorporated in Section 15 of the Act of 2015, allows two methods of transfer of the pending suits and applications. One method of transfer is a transfer contemplated under Sub-section (1), (2) and (3) of Section 15 which, the Court in seisin of the suit or application transfers such suit or application on a finding that, the dispute involved is a commercial dispute within the meaning of the Act of 2015 and is of Specified Value. The other mode of transfer is on an application of a party to the Commercial Appellate Division of the High Court.
- 20.** Section 15 of the Act of 2015 has to be read along with Sections 6 and 7 of the Act of 2015.
- 21.** Sections 6 and 7 of the Act of 2015 are as follows:-

“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. Explanation.—For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of sections 16 to 20 of the Code of Civil Procedure, 1908 (5 of 1908).

7. Jurisdiction of Commercial Divisions of High Courts.—All suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial 45 Division of that High Court: Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed or

pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court: Provided further that all suits and applications transferred to the High Court by virtue of sub-section (4) of section 22 of the Designs Act, 2000 (16 of 2000) or section 104 of the Patents Act, 1970 (39 of 1970) shall be heard and disposed of by the Commercial Division of the High Court in all the areas over which the High Court exercises ordinary original civil jurisdiction.”

22. Sections 6 and 7 of the Act of 2015 have vested the Commercial Court and the Commercial Division of a High Court with jurisdiction to try all suits and applications relating to a commercial dispute of Specified Value. Under Section 7 of the Act of 2015, all suits and applications relating to commercial disputes of a Specified Value filed in a High Court having Ordinary Original Civil Jurisdiction shall be heard and disposed of by the Commercial Division of the High Court. The two provisos to Section 7 of the Act of 2015 are not material in the instant matters.

23. In the case of ***Laxmi Polypab Pvt. Ltd. (Supra)***, the Coordinate Bench of this Court held that :

“A suit which has been filed subsequent to the notification of the Specified Value in the Ordinary Original Civil Jurisdiction of the High Court cannot be transferred to the Commercial Division of the High Court by virtue of Section 15(1) of the Act of 2015. A suit filed subsequent to the notification of the Specified Value in the Ordinary Civil Jurisdiction of a High Court having a Commercial Division cannot be said to be a “pending” suit within the meaning of Section 15(1) of the Act of 2015. The moment a suit is not “pending” in terms of Section 15(1) of the Act of 2015, the same cannot be transferred to the Commercial Division by virtue of Section 15(1) of the Act of 2015. Whether or not such a suit can be transferred under Section 15(5) of the Act of

2015 has not fallen for consideration and therefore, such issue is not answered.

73. *Despite the absence of power under Section 15(1) of the Act of 2015 to transfer a suit relating to a commercial dispute of a Specified Value filed in the Ordinary Original Civil Jurisdiction of the High Court, having a Commercial Division, to the Commercial Division of such High Court, after such suit being filed subsequently to the specification of the Specified Value, the Court has powers under Order VII Rule 10 of the Code of Civil Procedure, 1908 to deal with the same. Power under Order VII Rule 10 of the Code of Civil Procedure 1908 stands regulated by Section 15(1) of the Act of 2015 so far as pending suits relating to a commercial dispute of the Specified Value in the Ordinary Original Civil Jurisdiction of the High Court. Once the suit has been filed beyond date of the notification of the Specified Value, Order VII Rule 10 of the Code of Civil Procedure, 1908, governs the field.*

74. *In exercise of powers under Order VII Rule 10 of the Code of Civil Procedure, 1908, the Court has to return the plaint to be filed before the Court having jurisdiction. In the case of a suit relating to a commercial dispute of the Specified Value filed in the Ordinary Original Civil Jurisdiction of the High Court having a Commercial Division, filed beyond the date of notification of the Specified Value, the plaint of such a suit must be returned to the plaintiffs for presentation before the appropriate Court, in exercise of powers under Order VII Rule 10 of the Code of Civil Procedure, 1908. Once the same is done, the plaintiff in such a suit has to file the plaint of such suit in the same High Court but in the Commercial Division of such High Court. Once the same is done, the question of operation of Section 12A of the Act of 2015 will arise.*

76. *A suit transferred under the provisions of Section 15 of the Act of 2015 has to be considered as the continuation of the old suit now to be tried either in the Commercial Division or in the Commercial Court as the case may be. However, a suit involving a commercial dispute and of the Specified Value filed subsequent to the notification of the Specified Value has to be transferred to the Commercial Court or the Commercial Division as the case may be under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908. Such suit when presented before the*

Commercial Court or the Commercial Division has to be treated as a fresh suit in view of the ratio laid down in Modern Construction and company (supra).

77. *The second to the fourth issues that have fallen for consideration can be answered in the manner following: – (A) Suits involving a commercial dispute filed in the Ordinary Original Civil Jurisdiction subsequent to the date of the notification of the Specified Value are not maintainable in such jurisdiction in view of provisions of section 7 of the Act of 2015. 53 (B) In the event, in a suit governed by scenario (A) above, the plaintiff applies for transfer, the same can be granted under Order VII Rule 10 of the Code of Civil Procedure, 1908 (C) On an order under Order VII Rule 10 of the Code of Civil Procedure, 1908 being passed, the plaint has to be returned to the plaintiff to be filed before the appropriate forum. (D) The rigors of Section 12 A of the Act of 2015 will apply to the suit returned under Order VII Rule 10 of the Code of Civil Procedure, 1908 for it to be instituted before the Commercial Division on its presentation.”*

- 24.** In the present case, the plaintiff filed the suit on 18th August, 2016 and the claim of the plaintiff is more than one crore. At the time of filing of the suit by a Notification dated 16th July, 2016, the Commercial Division of the Calcutta High Court was established but the plaintiff has filed the suit in the Ordinary Original Civil Jurisdiction instead of Commercial Division.
- 25.** The contents of the plaintiff that only by way of Notification dated 20th March, 2020, the Government of West Bengal has notified the Specified Value and thus it cannot be said that the suit is filed prior to the establishment of the Commercial Division at Calcutta.
- 26.** In I.A G.A No. 4 of 2022, the defendant has made the following averments in paragraphs 7, 8, 10 and 11 which reads as follows:

“7. It is pertinent to mention that the Commercial Courts Act, 2015 was promulgated on 23rd October, 2015 and the Commercial Division of this Hon’ble Court was constituted by notification No. 2810G dated 16th July 2016 by the then Hon’ble Chief Justice of this Hon’ble Court. The present suit was filed thereafter on 18.08.2016.

8. As per the provision of the Commercial Courts Act, 2015, the Commercial Division this Hon’ble Court has the jurisdiction to hear and dispose of all suits and applications relating to commercial disputes the specified value. The valuation of the present suit is over and above the specified value.

10. The petitioner in this case has filed its written statement on December 21, 2018 wherein it has made a counter claim against the plaintiff. The suit being not maintainable and as such counter claim is also being arising out of a Commercial Dispute the petitioner may be permitted to withdraw such counter claim and file its claims in appropriate Forum.

11. In the suit, the plaintiff has obtained an interlocutory decree dated 7th February 2019 passed on an interlocutory application being GA No. 2522 of 2016. Copy of the judgment and order dated 7th February, 2019 is annexed hereto and marked with the letter “B”. The said judgment and decree dated 7th February, 2019 and all orders passed in the present suit be recalled and/or set aside, being without jurisdiction and pending disposal of the present application be stayed.”

27. By an order dated 7th February, 2019, this Court had passed judgment on admission against the defendant. The defendant has preferred an appeal against the said judgment and by an order dated 19th November, 2019, the Appellate Court had modified the Judgment dated 7th February, 2019. The order passed by the Appellate Court was further modified by an order dated 14th January, 2020.

- 28.** This Court while disposing of G.A No. 4 of 2022 and G.A No. 5 of 2023 by an order dated 2nd March, 2023 inadvertently recorded that the Commercial Courts Act, 2015 came into effect from 31st December, 2015 instead of 23rd October, 2015 and this Court also inadvertently recorded that Commercial Courts were established at Calcutta on 20th March, 2020 instead on 16th July, 2016 and due to the said observation, this Court had transferred the suit filed by the plaintiff from Ordinary Division to Commercial Division. This Court also finds that the contentions made by the defendant in paragraphs 7, 8, 10 and 11 was not considered consequently no order was passed in terms of prayer (b), (c) and (d) of the said application.
- 29.** Considering the above circumstances, this Court finds that the order passed by this Court dated 2nd March, 2023, was on account of some mistake and the error apparent on the face of record as mention in paragraph 28 (supra), accordingly, common order passed in G.A No. 4 of 2022 and G.A No. 5 of 2023 date 2nd March, 2023 in CS 213 of 2016 is recalled. **RVWO 10 of 2023 with GA 1 of 2023** and **RVWO 13 of 2023 with GA 1 of 2023** are **allowed**.
- 30.** Commercial Court established by Notification dated 16th July, 2016 and the suit filed by the plaintiff on 18th August, 2016 that is after the establishment of the commercial Court at Calcutta. As regard the Notification dated 20th March, 2020 that is only with regard to the Specified Value which the State Government has notified in terms of Section 3(1A) of the Commercial Courts Act, 2015. As per Section 2(i) of

the Commercial Courts Act, 2015, the initial Specified Value was not less than one crore and the suit filed by the plaintiff is more than one crore and thus the notification dated 20th March, 2020 is no way connected with the present case.

- 31.** In view of the above, the suit filed by the plaintiff cannot be transferred to the Commercial Division of this Court as the suit is filed after establishment of Commercial Division and thus the plaint is returned to the plaintiff to present before the appropriate Court in accordance with law.
- 32.** As regard to withdrawal of counter claim of the defendants, the defendant have specifically stated that as the suit is not maintainable before this Court and the counter claim filed by the defendant is arising out of the plaint. In para 31 (supra), this Court has returned the plaint and thus the defendant is allowed to withdraw the counter claim.
- 33.** Plaintiff had obtained judgment on admission by an order dated 7th February, 2019 and subsequently the said order was modified by the Hon'ble Appellate Court. At the time of deciding the said issue, the defendant has not raised the issue with regard to the maintainability of the suit now, this Court has decided that the suit cannot be transferred to the Commercial Division and the plaint is returned to the plaintiff and thus the order dated 7th February, 2019 is recalled.

34. In view of the above prayers (a), (b) and (c) of **G.A No. 4 of 2022 in CS 213 of 2016** is **allowed** and **G.A No. 5 of 2023 in CS 213 of 2016** is thus **dismissed**.

(Krishna Rao, J.)