

OCD-1

ORDER SHEET
APOT/152/ 2023
With
CS/133/2015
IA No.GA/1/2023

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

M/S. STAR PAPER MILLS
Versus
EASTERN COALFIELDS LIMITED

Before:

The Hon'ble Justice I. P. MUKERJI

And

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 13th July, 2023

Appearance:

Ms. Sristi Barman Roy, Adv.

Mr. Siddhartha Sharma, Adv.

Mr. Rishav Dutt, Adv.

Ms. Shalini Basu, Adv.

..for the appellant

Mr. Pradipta Basu, Adv.

Mr. Nilankan Banerjee, Adv.

..for the respondent

The Court: Certain provisions of the Civil Procedure Code have been engrafted in the Commercial Courts Act, 2015 in a Schedule for the purpose of early and proper disposal of commercial suits. Strict timelines have been prescribed within which certain procedural acts to get the suit ready for hearing by filing of written statement, discovery of documents and so on have to be carried out. For filing written statement, the time prescribed by the statute has to be strictly adhered to. There is no power given to the Court to extend the time. (See S.17 of the said Act read with the first Schedule relating to Order VIII Rule 1 of CPC). But in other procedural matters like discovery of documents, the court has been given the power to extend the time if reasonable cause is shown.

Order XI Rule 1(4) of the Code of Civil Procedure, amended and

also similarly engrafted in the said schedule to the said Act, provides that along with the plaint the documents in the power, possession, control or custody of the plaintiff have to be disclosed in a list. The plaintiff has the right to disclose additional documents within 30 days of filing of the suit which time-period can be extended by the court on reasonable cause being shown.

What has happened in this matter is this. The suit by the appellant/plaintiff claiming damages against the respondent/defendant for wrongful termination of a fuel supply agreement dated 26th August, 2013 between the parties was filed in the Ordinary Original Civil Jurisdiction of this Court in 2015. The defendant filed their written statement. The suit did not progress any further. The said Act did not apply to it.

Therefore, we can assume that the appellant/plaintiff retained their right to make a complete discovery of documents.

On 20th April, 2022, the suit was transferred to the Commercial Division of this Court and marked and numbered accordingly.

Now the question is regarding the applicability of the above provisions of Order XI to this kind of a suit.

We are all conversant with the general law that unless specifically taken away any right which has accrued to a party is deemed to have been preserved by a new statute or amending Act, under section 6 of the General Clauses Act.

The Commercial Courts Act, 2015 became applicable to the suit only after 20th April, 2022.

Now on that date, the right of making a full discovery of documents remained vested in the appellant/plaintiff. There is nothing in the said Act which took away such vested right. Therefore, Order XI as far as the appellant/plaintiff is concerned, had to be interpreted so as to give an opportunity to each party to disclose documents under Order XI Rules 1 to 4.

Under such circumstances, the application for disclosure of additional documents filed by the appellant/plaintiff on 16th January, 2023 ought to have been reasonably considered by the court.

In our opinion, the court has taken a very pedantic view of the law. In the facts and circumstances, to deny the right to disclose and rely on documents by the appellant-plaintiff would not sub-serve the ends of justice but would go a long way to defeat it.

Dispensing with all formalities, we have heard out the appeal. We set aside the judgement and order dated 11th April, 2023.

To expedite the suit, we direct both the parties to make cross discovery of documents by 11th August, 2023; inspection forthwith. Thereafter, the suit may be mentioned before the appropriate court for trial.

The appeal (APOT 152 of 2023) is allowed.

The connected application (IA No.GA/1/2023) is disposed of.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)