

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

TRANSFER APPLICATION NO.2 OF 2023

Dinesh Gopal Keni

... Applicant

Versus

State of Goa thr. Chief
Secretary And Anr.

... Respondents

Mr Neelesh A. Takkekar, Advocate for the Applicant.

**Mr Nihal Vernekar, Additional Government Advocate
for Respondents No.1 and 2.**

CORAM: M. S. KARNIK, J.

DATED : 25th APRIL 2023

P.C.:

1. Heard Mr Takkekar, learned counsel for the petitioner and Shri Nihal Vernekar, learned Additional Government Advocate for respondents 1 and 2.

2. This is an application for direction to the registry of the Additional District Judge-I at Mapusa to transfer the civil suit to the Commercial Court of competent jurisdiction. The applicant filed a suit before the District Court as he was under the impression that as the State of Goa was a party, the suit has to be instituted before the District Court under the provisions of The Goa Civil Courts Act, 1965. The suit pertains to the recovery of unpaid bills with respect to works executed under a tender which was floated by respondent no.2. It was when the matter came up for hearing before the Additional District Judge

at Mapusa, the Court was of the opinion that the nature of the suit being a commercial dispute as defined under Section 2(vi) of the Commercial Courts Act, the matter cannot be tried before the Additional District Judge and the plaintiff ought to seek transfer before the competent Court of jurisdiction.

3. There is no dispute that since the disputes involved in the suit are of a commercial nature, the suit will have to be transferred before the Commercial Court at Mapusa.

4. It would have been appropriate if the applicant made a formal application to the Additional District Judge at Mapusa for transfer of the suit to the Commercial Court in view of Sub-section 5 of Section 15 of the Commercial Courts Act, 2015. Learned counsel submitted that such an application has to be made in the light of provisions of Sub-section 5 of Section 15 of the said Act. It is further submitted by learned counsel that the applicant did have a remedy to make an application under Section 24 of the Code of Civil Procedure for transfer of the suit from the Court of Additional District Judge to the Commercial Court, being the Civil Judge Senior Division, which is designated as a Commercial Court, but was under the impression that in view of the provisions of Sub-section 5 of Section 15 of the Act, the application will have to be made to this Court for transfer.

5. Having not made an application to the Additional District Judge for transfer of the suit or approached the Principal District Judge for transfer of the suit, in the ordinary course, it would have been appropriate on my part to direct the applicant

to adopt such a course in the first instance. However, learned counsel for the applicant submitted that an oral request was made to the Additional District Judge at Mapusa for transfer of the suit but the learned Judge expressed an opinion that the applicant must take steps as per law and according to me rightly so, as there was no formal application on record.

6. Be that as it may, in any case, the suit has to be tried by the Commercial Court in view of the provisions of the Commercial Courts Act, 2015, and there is no dispute as regards this fact. Instead of directing the applicant to file an appropriate application before the concerned Court, this application can be allowed in terms of prayer clause (A) and it is, accordingly, so allowed. Clause (A) reads thus: -

'A. This Hon'ble court be pleased to pass an order directing the registry of the Hon'ble Addl District Judge-I at Mapusa to transfer the Civil Suit Bearing No.CS/3/2022 to the Commercial Court of competent jurisdiction.'

7. No cost.

M. S. KARNIK, J.

MARIA SUZANA
REBELLO

Digitally signed by MARIA SUZANA
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