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A.No.811 of 2023
in E.P.No.7 of 2017

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KRISHNAN RAMASAMY, J.,

This Application has been filed by the applicant/respondent seeking to transfer the above execution petition in E.P.No.7 of 2017 to jurisdictional Commercial Court constituted under the Commercial Courts Act, 2015, in accordance with the pecuniary jurisdiction.

2.Mr.R.Siddharth, Government Advocate appearing for the applicant would submit that the above execution petition has been filed for execution of the arbitral award dated 04.06.2016 and the subject matter of the arbitral award is commercial dispute as defined under Section 2 (1) (c) of the Commercial Courts Act, 2015 (hereinafter referred as 'the Act'). He fairly admitted the fact that the execution petition was filed in the year 2017. However, till date it is pending due to various appeal proceedings filed by the parties. He would further submit that the pending E.P. has to be transferred to the Commercial Court in accordance with Section 15 of the Commercial Courts Act and he



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reiterated Section 15 of the Commercial Courts Act and referred the order passed by this Court dated 31.01.2023 in A.No.5385 of 2022 in E.P.No.2965 of 2010. He would further submit that the applicant has deposited a sum of Rs.4 Crores and a balance sum of Rs.1.5 Crores is yet to be paid.

3.On the other hand, the learned counsel appearing for the respondent/petitioner strongly opposed for transfer of E.P. Proceedings before the Commercial Courts stating that the present dispute is not a commercial dispute since it was adjudicated long back and E.P. was filed 5 years back. He would further submit that once the decree is passed, there cannot be commercial dispute and therefore, Commercial Courts Act will not apply since the matter has been adjudicated before the commencement of the said Act.

4.Heard the learned counsel appearing for the applicant as well as



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the respondent and perused the materials available on records.

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5. There is no dispute with regard to the execution petition filed by the parties against the award passed by the learned Arbitrator. It is also not in dispute that there are number of proceedings filed against the execution petition and ultimately the applicant was un-successful and therefore, the applicant is bound by the order to be passed by the Execution Court. At this juncture, this applicant filed the present application to transfer the E.P proceedings to the Commercial Court stating that the Execution Petition is nothing but an application pending before the Execution Court within the meaning of the Act. In terms of Section 15 of the Act, the application requires to be transferred to the Commercial Courts since the subject matter therein is a commercial dispute. Learned counsel appearing for the applicant referred the judgment rendered by the High Court of Delhi in the case of ***Delhi Chemical and Pharmaceutical Works Pvt. Ltd. and another vs. Himgiri Realtors Pvt. Ltd*** and another reported in ***2021 SCC Online***



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Del 3603 : 2021 LLR 754. Paragraph Nos. 31 to 41 of the aforesaid

judgments are extracted hereunder:

“31. Section 2(1)(c) defines "commercial disputes" as a "dispute arising out of agreements, transactions, relationships, of the nature specified in various clauses thereunder. Section 6 and 7 of the Commercial Courts Act vest jurisdiction in the Commercial Court/Commercial Division, to try “all suits and applications relating to commercial disputes of a specified value”

32. According to the senior counsels for the judgment debtors, the jurisdiction of the Commercial Courts/Commercial Divisions is only over suits/arbitrations, subject matter whereof qualifies as a commercial dispute and not over proceedings for execution of the decrees passed in the said suits or over enforcement of awards passed in the said arbitrations. The question which arises is, whether a claim made by one against the other and controverted by the other, on adjudication thereof, whether by the Court or by the Arbitrator, ceases to be a "dispute", for it to be said that the proceedings



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for execution of adjudication of a commercial dispute, whether by way of a decree or an arbitral award, do not qualify as a "dispute".

33. Section 2(1)(i) of the Commercial Courts Act defines "Specified Value" in relation to a commercial dispute, as the value of a subject matter in respect of a suit as determined in accordance with Section 12. Reference therein is thus expressly to a "suit", as distinct from an "execution". Section 12 however refers to the specified value of the subject matter of the commercial dispute in a suit, appeal or application. Thereby, the ambit of specified value is increased, from that in Section 2(1)(i), with reference to a "suit alone, to an appeal or an application also. Finally, Sections 6 and 7, while prescribing the jurisdiction of Commercial Courts and Commercial Divisions, prescribe the said jurisdiction, to extend to try all suits and applications relating to a commercial dispute, again, vesting the jurisdiction in the Commercial Courts/Commercial Divisions, not only to try "suits" but also "applications".



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34. The question which arises is, whether Execution Petitions are "applications" within the meaning of Sections 10, 12, 6 and 7 of the Commercial Courts Act.

35. "Dispute is defined as a disagreement or argument between two people. "Application" is defined as a formal written request.

36. It is not as if, on adjudication of a dispute, resulting in a judgment/decree of a Court or award of an Arbitral Tribunal, the "dispute between the parties comes to an end or nothing remains to be adjudicated between the parties. Section 47 of the CPC, in Part-II titled "Execution" Itself, in this respect provides that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. It is evident therefrom that a judgment or a decree of the Court or the award of an Arbitral Tribunal, do not put an end to the "dispute between the parties and it is not as if execution is merely an administrative task, with no adjudication



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involved. It would be incongruous to hold that the jurisdiction of the Commercial Courts/Commercial Divisions extends only to adjudication of commercial disputes till the stage of adjudication and not to adjudication of commercial disputes arising in the course of execution. Once it is so, the word "dispute in Section 2(1)(c) would extend to adjudication of disputes arising during execution of arbitral awards subject whereof falls within the jurisdiction of the Commercial Courts Act and the Commercial Court and Commercial Division would also have jurisdiction over the applications for execution of arbitral awards of a specified value, subject matter whereof was a commercial dispute.

37. There is another aspect. A claimant in a dispute is not interested merely in adjudication thereof. The claimant is interested in delivery to him, of what he claims to be due and what has been adjudicated to be due to him from the opposite party. The Commercial Courts Act, as laid down in HPL (India) Ltd. supra also, was enacted to provide for speedy disposal of high value commercial disputes and their early resolution. The resolution of a commercial dispute is not complete, till the fruit



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thereof is in the hands of whosoever is found to be entitled thereto. Supreme Court also recently in *Rahul S. Shah v. Jinendra Kumar Gandhi* 2021 SCC OnLine SC 341 has lamented on the troubles of the decree holder, in not being able to enjoy the fruits of litigation on account of inordinate delay caused during the process of execution of the decree and has referred to the observations in a judgment of 1872 vintage of the Privy Council in the *General Manager of the Raja Durbhunga v. Maharaja Coomar Ramaput Singh* 1872 SCC Online PC 16, that the actual difficulties of a litigant in India begin when he has obtained a decree. This being the state of affairs, to hold that the Jurisdiction of the Commercial Courts/Commercial Division does not extend to execution but ends with adjudication, would defeat the very purpose and object of the Commercial Courts Act i.e. of speedy disposal and resolution of commercial disputes of a specified value. To hold that the Commercial Courts/Commercial Divisions would not have jurisdiction over applications for execution of a judgment or decree or for enforcement of an arbitral award, subject matter whereof was a commercial dispute would in our opinion sound the death knell



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for the objective behind setting up of the Commercial Courts and the Commercial Divisions.

38. One of us (Rajiv Sahai Endlaw, J.) sitting singly, in Bayer Intellectual Property GMBH V. Symed Laboratories Ltd. 2019 SCC OnLine Del 7410 also held that if the decree is of a Commercial Court, its execution will lie in a Commercial Court only and would not lie in an Ordinary Civil Court which has jurisdiction to entertain suits of a noncommercial nature and that an application or execution of a decree in a commercial suit would lie in a Commercial Court only.

39. Order XXI Rule 11(2) of the CPC provides that every 'application for execution of a decree shall be in writing, signed and verified. Thus the CPC, in accordance wherewith an arbitral award is to be executed/enforced, envisages such execution to be by way of an 'application' and since the jurisdiction of the Commercial Courts/Commercial Divisions extends vide Sections 6 and 7 of the Commercial Courts Act extends, besides over suits, also over applications relating to commercial disputes, such jurisdiction would also extend over



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execution applications. Similarly, in respect of arbitration matters subject matter whereof is a commercial dispute, the jurisdiction of the Commercial Courts/Commercial Divisions, vide Section 10(2) extends to "all applications... arising out of such arbitration". Since "dispute" does not come to an end till what has been found due in arbitration to the claimant is in the hands of the claimant, an application for enforcement of the arbitral award arises from arbitration, within the meaning of Section 10(2) of the Commercial Courts Act. Section 36 of the Arbitration Act provides for enforcement of the arbitral award in accordance with the provisions of the CPC, in the same manner as if it were a decree of the Court. Execution of a decree of the Court, per Section 38 of the CPC, has to be by the same Court which passed the decree. Since the jurisdiction over arbitrations subject matter whereof is a commercial dispute, is of the Commercial Courts/Commercial Divisions, applying Section 38 of the CPC, the jurisdiction for enforcement of awards of arbitration subject matter whereof is a commercial dispute, has to be of the Commercial Courts/Commercial Divisions,



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40. The argument of the senior counsels for the judgment debtors, that Commercial Courts/Commercial Divisions do not have jurisdiction over executions because there is no specified value of the execution applications also stands negated vide Section 38 of the CPC which provides for jurisdiction for execution to be of the same Court which passed the decree. The “specified value” has been defined in Section 2(i) of the Commercial Courts Act, of the Commercial disputes and an application for execution, as aforesaid, arises therefrom.

41. We are thus unable to accept the arguments of the senior counsels for the judgment debtors that the application for execution of an arbitral award subject matter whereof was a Commercial Division and lies before the ordinary original civil court and this appeal would thus not be governed by the provisions of Section 13 of the Commercial Courts.”

6.A perusal of the above paragraphs, it is clear that the execution



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petition is nothing but the application referred in Sections 6, 7 and 15 of the Commercial Courts Act. Even after the filing of the execution petition, if a particular dispute is termed as a commercial dispute, in view of commencement of Commercial Court Act, the Act will apply. The judgment passed by the Delhi High court in the above referred case is squarely applicable for the case in hand. This Court has no hesitation to hold that the present dispute is commercial dispute and the execution petition filed is nothing but an application within the meaning of the Commercial Courts Act.

7.A perusal of Section 15 of the Commercial Court Act, it is clear that any pending proceedings has to be transferred to the Commercial Courts. Therefore, the execution proceedings ought to have transferred to the Commercial Court, however, still it is pending before the learned Master.

8.In view of the above, the present application is allowed. The



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Registry is directed to transfer the E.P from the learned Master and
post before this Court on 22.02.2023.

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