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CS.No.225 of 2021 and
A.No.5741 of 2022

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R.N.MANJULA, J.,

The Registry has placed a note by raising a clarification on the basis of the letter dated 14.07.2023 given by the learned counsel for the defendants to the Registrar requesting to transfer the suit to the Commercial Division. It is stated in the letter that the suit claim falls within the definition of Section 2(1)(c)(vi) and 2(1)(c)(xviii) of the Commercial Courts Act-2015.

2. When the matter was taken up today, Mr.Raghavan, learned counsel for the plaintiff submitted that the suit has been filed for recovery of a sum of Rs.9,34,79,262.73/- being the due to the plaintiff Electricity Broad. The defendant is a company involved in business of manufacturing and sales of fly ash bricks, blocks and other building materials. Fly Ash is a fine grey Amorphous powder rich in Silica Alumina and spherical in shape. The properties of fly ash vary widely both physically and chemically depending upon the nature of coal, the efficiency of coal combustion.



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2.1. The defendant has entered in to a Memorandum of Understanding on 11.11.2005 with the plaintiff's Electricity Board. In accordance with the said Memorandum of Understanding the defendant has to complete the insulation of fly ash classification and collection system. The Tamil Nadu Electricity Board erects such systems at its 5 units of Ennore Thermal Power Station by installing, commissioning, maintaining and collecting fly ash. As per the Memorandum of Understanding, after a period of 14 years from the date of commissioning of the system, the modified system will become the property of the Board. Since the defendant delayed the erection of the modified system the plaintiff has entered into a revised Memorandum of Understanding with the defendant and India Cements Limited and according to that the service charges payable for the fly ash collection were revised. The defendant was paying Rs. 350/- per MT towards such service charges and that was enhanced to Rs.700/-per MT through plaintiff's notification dated 01.03.2011.

2.3. Litigations have been filed by the defendant in this regard and accordingly the service charges have been modified from time to time. The defendant defaulted to make service charges for several lakhs against



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the lakhs of Metric Tonnes of fly ash and he has to pay the said dues along with interest and that is the suit claim.

2.4. The learned counsel for the plaintiff further submitted that even if the suit claim might fall under the classification of Commercial dispute, Civil Court Jurisdiction is not a bar by any explicit provisions in the Commercial Court Act-2015. Before filing a commercial suit Pre Institution Mediation and Settlement mechanism contemplated under Section 12-A was also not followed by the plaintiff. Sec.11 of the Commercial Court Act speaks only about the suits which are not to be entertained by the Commercial Courts. And it does not place any bar on the Civil Court to entertain the commercial matters.

2.4. The object of establishing the commercial court is to expedite the proceedings. If the plaintiff does not opt to avail the advantage of the special legislation that will not disqualify him to contest the suit before the ordinary Civil Courts and hence, there is no necessity to transfer this case to the Commercial Court. Further, the trial has been commenced and chief affidavit of PW.1 was also filed. Since the suit filed by the plaintiff falls within Section 9 of the Civil Procedure Code, there is no bar for the Civil Court to continue the proceedings.



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3. Mr.V.P.Raman, the learned counsel for the defendant submitted that even though Sec.11 of the Commercial Courts Act cannot be considered as a bar for Civil suits, the definition of commercial dispute would show that the suit of this nature falls only within Section 12 A. He further submitted that the pending Commercial disputes before the Civil Court as on the date when the Act came into force were transferred to the Commercial courts and hence, it goes without saying that the new suits should only be filed by invoking the jurisdiction of the Commercial Court and not before the Civil Courts.

3.1. Sec.7 of the Commercial Act would also mandate that all suits relating to commercial disputes shall be heard and disposed by the Commercial Courts of the High Court, which has the original Civil Court jurisdiction. He further submitted that there are certain advantages like time bound expeditious trial, cost and enhanced fee for Advocates. Such advantages cannot be lost by allowing the plaintiff to subject himself to the jurisdiction of the Civil Court.

DISCUSSION

4. The reading of the Commercial Court Act would only reveal that the Commercial Courts are yet another type of Civil Courts specially



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designed to deal with the Commercial disputes. The commercial dispute is also a suit within the meaning of Sec.9 of the Civil Procedure Code. However certain Courts are designated to entertain and dispose such litigations as expeditiously as possible. This is with the object of facilitating ease of business by taking into consideration of the economical aspects of commercial activities.

6. As rightly pointed out by the learned counsel for the plaintiff Sec.11 of the Commercial Courts Act only prescribes bar for the commercial courts to entertain other litigations which are expressly or impliedly barred to be entertained by the Civil Courts. This is obviously because of the fact that the Commercial Courts are also one of the division of Civil Courts and hence the suits which can not be entertained by the Civil Court can not be received by the Commercial court also.

7. Sec.12-A would encourage the parties to subject themselves for Pre Suit Mediation and Settlement, in case no urgent interim relief is needed. No doubt, the Commercial Court Act would give extra allowance to the parties to the litigation in terms of speed, cost and other benefits. As far as the High Court is concerned, only those High Courts which has the original jurisdiction alone can have the Commercial division. Though



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the litigants might claim that they can opt to subject themselves to the jurisdiction of the Civil Court and or to participate the proceedings before the regular Courts, when special Courts are formed to handle particular class of litigations in a particular manner, uniformity should be maintained in the interest of the justice administration. Hence those cases which fall under the classification of Commercial disputes should be allowed to be handled by the Commercial division of the High Court. In fact, such judicial discipline is required to avoid any further confusion.

8. Sec.7 speaks about the jurisdiction of the Commercial division to hear and dispose the Commercial disputes. The above provision does not mention the word institution. However, if a suit is not instituted, the hearing of its not possible. Hence, Sec.7 implies the institution of commercial suits by invoking the commercial jurisdiction and not the ordinary civil courts. The omission of a one word 'institution' in Sec.7 cannot be magnified to the extent of defeating the very purpose of the legislation.

9. This Court has a duty to say something about the nature of the suit also. Sec.7 says empowers only the commercial courts to render a finding as to whether the suit is a commercial suit or not. Even if this



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court can not render a finding as to the nature of the suit, it has to be satisfied whether the suit can be *prima facie* considered as a commercial suit.

10. In fact to render a finding as to whether a suit is a commercial or not, would arise only when there is any disagreement between the parties as to the nature of the suit. In that case, it is the commercial court which needs to decide on it. In the case in hand, the learned counsel for the plaintiff does not dispute about the nature of the case. His only contention is about his entitlement to maintain such kind of suits before the regular civil bench itself.

11. With these observations, the Registry is directed to place this case before the commercial division after obtaining necessary orders from the Hon'ble Chief Justice.

07.09.2023

jrs



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