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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 28th August, 2023*

+ **FAO (COMM) 92/2023**

NARENDRA KUMAR Appellant

Through: Mr. Arvind Kr. Gupta & Mr. Rishi
Bharadwaj, Advocates.

versus

M S OM DAILY NEEDS RETAILING PVT LTD & ANR.

..... Respondents

Through: Mr. Sushant Singhal, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Appeal under Order XLIII Rule 1(a) of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) read with Section 13 of the Commercial Courts Act, 2015 (*hereinafter referred to as 'CCA, 2015'*) has been filed on behalf of the appellant against the Order dated 20.03.2023 passed by the learned District Judge, Commercial Court-03, South, Saket Court, New Delhi, whereby the Plaint under Order VII Rule 10 of CPC, 1908 was returned.

2. **Facts in brief** are that the appellant/plaintiff had filed a Civil Suit bearing No. CS 196/2019 against the defendant/respondent for recovery, possession and mesne profits in respect of suit premises which was on lease for a period of four and half years for commercial purposes. On expiry of the Lease Deed on 31.01.2019, the defendant/respondent failed to handover the possession and hence the Civil Suit was filed.



3. The defendant entered his appearance before learned ADJ and the application under Order XXXIX Rule 10 CPC of the plaintiff/appellant was allowed and respondent was directed to deposit Use and Occupation charges with effect from January 2019 @ Rs.4,75,000/- per month. Thereafter, an application under Order XII Rule 6 CPC dated 28.11.2019 was filed by the plaintiff/appellant seeking judgment on admissions and the reply was filed thereto. The matter was thereafter fixed on 17.05.2021 for the arguments on application under Order XII Rule 6 CPC. The learned ADJ at this stage found that it was a commercial dispute and since the Commercial Courts had already been constituted in Delhi, directed the same to be placed before learned Principal District and Sessions Judge *vide* Order dated 18.02.2022.
4. The learned District and Sessions Judge, South District, Delhi transferred the case *vide* Order dated 18.08.2022 and directed the parties to appear before the District Judge (Commercial Court) on 26.08.2022.
5. The learned Commercial Court Judge registered it as a Commercial Suit on 26.08.2022. However, *vide* impugned Order dated 20.03.2023, learned Commercial Judge returned the plaint to be filed before the Commercial Court by observing that the case was originally filed before the Civil Court and there was no power of transfer of the Commercial Suit from the Court of learned ADJ to the Commercial Courts.
6. The impugned order has been assailed on the grounds that a suit pending in a Civil Court in a District can be transferred to a Commercial Court in terms of Section 15(2) of the CCA, 2015.
7. Learned counsel on behalf of the appellant has submitted that the Commercial Courts were constituted in Delhi District Court, South on 16.12.2019 *vide* Notification No. Judl-II/F.75/South/Saket/2019 28815-



28829. The present Suit had been instituted on 16.03.2019 before the learned ADJ at which time the Commercial Courts had not been constituted in the District. Therefore, the transfer of the case from the Court of learned ADJ to the Commercial Court after its constitution, is in accordance with the Notifications of Delhi High Court. The impugned Order is therefore liable to be set aside.

8. Submissions heard.

9. The basic question for determination is whether a suit filed before the ordinary Civil Court of learned ADJ can be transferred to a Commercial Court if it is found that the suit pertains to a commercial dispute.

10. The Commercial Courts, Commercial Division and Commercial Appellate Division of Delhi High Court, 2015 was enacted with effect from 31.12.2015. Section 15(2) of the CCA, 2015 reads as under :-

“2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court:

Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section.”

11. This implies that Section 15(2) of the CCA, 2015 was not to be effective in future but was an enabling provision for transfer of all the pending suits of commercial nature from the regular Civil Courts to the Commercial Courts. The present Suit has been instituted on 16.03.2019 i.e. post 2015 and thus, the provisions of Commercial Courts Act, 2015 as



amended on 03.05.2018 would become applicable.

12. The amendment of the CCA, 2015 in 2018 with effect from 03.05.2018 introduced Section 12A which provided for the Pre-Institution Mediation and Settlement. Aside from this, the CCA, 2015 provides for different specifications and requirements for filing of the commercial suits. It should be not only of the specified value which is between Rs. 3,00,000/- to Rs.2,00,00,000/- for District Courts but also provides a specific format for filing a commercial suit. The plaint has to be supported by a Statement of Truth. In addition, Section 12A CCA, 2015 amends the provisions of the CPC, 1908 to be made applicable to the commercial suits. There is therefore, a distinct and a much more stringent procedure applicable to the Commercial Suits as compared to the Civil Suits.

13. In the present case, the Suit had been filed as a regular Civil Suit in respect of a dispute which is indisputably a commercial dispute. The moot question is whether the Civil Suit so filed before the learned ADJ could have been transferred to the Commercial Court. A reverse situation came up for consideration in the case of Ambalal Sarabhai Enterprises vs. K.S. Infraspace LLP (2020) 15 SCC 585 wherein a non-commercial suit was filed before a Commercial Court. The High Court of Gujarat returned the suit of the plaintiff under Order VII Rule 10 CPC to be presented before the Civil Court. The Apex Court affirmed and approved this course of action thereby implying that a suit of particular nature has to be tried by the competent court. The similar Rule applies in the present case. It was a commercial suit which was filed before the Civil Court which had no jurisdiction to deal with the commercial matters. It is significant to refer to the Notification dated 07.07.2018 vide Order No. 58/DHC/Gaz./G-



1/VI.E.2(a)/2018 issued by Delhi High Court notifying all the District Judges of Delhi as Commercial Court Judges. The unique feature was that all the District Judges were working in a dual capacity, both as commercial as well as non-commercial courts. Subsequently, *vide* Order No. 60/DHC/Gaz./G-1/VI.E.2(a)/2019 dated 05.12.2019, the specific District Judges were notified as Commercial Court Judges which means that the District Judge were classified as ADJ (Non-Commercial) and ADJ (Commercial).

14. In the present case, the suit was filed on 16.03.2019 before the Court of learned ADJ and even if it is held that the learned ADJ by virtue of Notification dated 07.07.2018 was also working in the capacity of a Commercial Judge, but the suit was filed as a regular Civil Suit as it is evident from its case number. The perusal of the plaint would also show that it did not meet the parameters of a commercial suit and was not supported with a Statement of Truth. Moreover, Section 12A of the CCA, 2015 provides for the Pre-Institution Mediation which was introduced with effect from 03.05.2018. The present suit has not complied with Section 12A CCA, 2015 requirement which was mandatory in nature. The Civil Suit though pertaining to a commercial dispute had thus, been filed as a Civil Suit and did not meet the requisite parameters.

15. The purpose for instituting the CCA, 2015 was to expedite the commercial cases of a high pecuniary value and to create confidence in the commercial circles within India and outside by ensuring that our courts were fast, if not faster than the courts elsewhere. If a commercial suit is permitted to be tried as a Civil Suit, it is counter productive and defeats the very object of CCA, 2015 as observed by the Co-ordinate Bench in the case of



Satyanarain Khandelwal vs. Prem Arora 2022 SCC OnLine Del 2142.

16. Order VII Rule 10 CPC, 1908 envisages Return of a Plaint instituted before a court other than the court before it should be instituted. In Ambalal Sarabhai Enterprises (supra) it had been held that where a court case is filed before a Court which is not the appropriate Court, the suit may be returned to be presented before the Court of competent jurisdiction.

17. Similar facts as in hand came for consideration before the co-ordinate Bench of this Court in Virender Kumar vs Rekha Bhayana 2022 SCC OnLine Del 2678 wherein also it was observed that a Commercial Suit filed before the Court of learned ADJ has to be returned under Order VII Rule 10 CPC for presentation before the Commercial Courts.

18. In the present case, though the case had been transferred from the Court of learned ADJ to the Court of Commercial Judge, but that procedure was incorrect as the suit did not meet the requirements of a Commercial Suit. The learned Judge Commercial Court has therefore, rightly returned the suit to be filed in the appropriate format before the competent Commercial Court.

19. Accordingly, we find no merit in the present Appeal against the impugned Order dated 20.03.2023, and the same is hereby dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 28, 2023/AT