

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 367 of 2020

Smt. Reena Pal Educational Trust

Vs.

**Indian Centre for Advancement
of Research and Education**

For the petitioner :Mr. Shuvasish Sengupta, Adv.
Mr. Balarko Sen, Adv.
Mrs. Subhra Das, Adv.

For the Opposite Party :Mr. Sourav Kumar Mukherjee, Adv.
Mr. Kaushik Chowdhury, Adv.
Ms. Sahana Pal, Adv.
Mr. S.M. Hassan, Adv.

Heard On :02.07.2024, 06.08.2024,
19.08.2024, 02.09.2024
11.09.2024

Order On :01.10.2024

Bibhas Ranjan De, J. :

1. The instant Civil Revision Application has been generated under Article 227 of the Constitution of India challenging the

Order being no. 27 dated 04.01.2020 passed by Learned District Judge, Purba Medinipur in connection with J. Misc. Case No. 63 of 2015 wherein Ld. Judge refused the prayer of the petitioner for transfer of the Misc. Case to a competent Commercial Court constituted under the Commercial Courts Act, 2015.

Background:-

2. There was an agreement by and between the parties to the revision application dated 12.09.2012 wherein both the parties came to an amicable settlement that the opposite party herein/Indian Centre for Advancement of Research and Education (hereinafter referred to as ICARE) desired to hand over the management of affairs of ICARE Institute of Medical Science and Research & Dr. Bidhan Chandra Roy Hospital and Haldia Institute of Dental Science and Research to the petitioner herein/Reena Pal Educational Trust (hereinafter referred to as RPET) against substantial monetary consideration for a specific period of 30 years. However, soon after, dispute and difference cropped up between the parties and it was referred to the sole arbitrator namely Mr. Dharmeshwar Mishra for adjudication. The arbitral award was made on 15.09.2014. Thereafter, ICARE/opposite party herein

filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short Act of 1996) wherein they challenged the said arbitral award dated 15.09.2014. Amidst such circumstances, RPET filed an application with a prayer for transfer of the instant Misc. Case being no. 63 of 2015 to a Commercial Court having competent territorial and pecuniary jurisdiction. But through the order impugned in this revision application, Ld. Judge refused the prayer of the petitioner and being aggrieved by and dissatisfied with the said order, petitioner has preferred this revision application.

Argument Advanced:-

3. Ld. Counsel, Mr. Shuvasish Sengupta, appearing on behalf of the petitioner by referring to the affidavit in opposition filed by the opposite party herein has contended that the instant dispute by and between the parties is clearly commercial in nature and well beyond the 'specified value' as mentioned in Section 2 (i) of the Commercial Courts Act, 2015 and has submitted that the instant civil revision application should be allowed and the application made under Section 34 of the Act of 1996 filed by the opposite party herein should be transferred to the Commercial Division of the Ld. Court.

4. In support of his contention, Ld. Counsel, Mr. Sengupta relied on a following ratios:-

- ***Madan Mohan Choudhary vs. State of Bihar and others*** reported in ***(1999) 3 Supreme Court Cases 396***
- ***High Court of Judicature for Rajasthan vs. P.P. Singh and another*** reported in ***(2003) 4 Supreme Court 239***

5. Mr. Sengupta has specifically relied on paragraph no. 27 of case of ***Madan Mohan Choudhary*** (supra) wherein the Hon'ble Apex Court observed:-

“27. The word “consult” in its ordinary meaning means “to ask advice” or “to take counsel”. The Governor is thus a “consultor” and the High Court is the “consultee” which is treated as an expert body in all matters of service including appointments, disciplinary action, compulsory retirement etc. relating to State Judicial Services. Since the Governor cannot act on his own unless he has consulted the High Court, the Constitution has conferred upon the High Court a sacred and noble duty to give the best of advice or opinion to the Governor; an advice tendered after due deliberation and after taking into consideration all the relevant material and record relating to the problem on which consultation is made or advice is sought by the Governor. It is, therefore, essentially a matter of trust and confidence between the Governor and the High Court. The High Court cannot act arbitrarily in giving its opinion to the Governor or else it will be a betrayal of that trust. If the advice is not supportable by any

material on record and is arbitrary in character, it may not have any binding value.”

6. In the case of **P.P. Singh (supra)**, Ld. Counsel has relied on the paragraph no. 37 which runs as follows:-

“37. Furthermore, the terminology “consultation” used in Rule 15 having regard to the purport and object thereof must be given its ordinary meaning. In Words and Phrases (Permanent Edition, 1960, Vol. 9, p. 3) to “consult” is defined as “to discuss something together, to deliberate”. Corpus Juris Secundum (Vol. 16-A, 1956 Edn., p. 1242) also says that the word “consult” is frequently defined as meaning “to discuss something together, or to deliberate”. By giving an opportunity to consultation or deliberation the purpose thereof is to enable the Judges to make their respective points of view known to the others and discuss and examine the relative merits of their view. It is neither in doubt nor in dispute that the Judges present in the meeting of the Full Court were supplied with all the requisite documents and had full opportunity to deliberate upon the agenda in question.”

7. Per contra, Ld. Counsel, Mr. Sourav Kumar Mukherjee, appearing on behalf of the opposite party has argued that the parties to the revision application did not enter into any commercial transaction as none of the parties had any intention to make profit. The opposite party herein never sought to avail any management or consultancy service but only decided to handover the management simpliciter.

Accordingly, Mr. Mukherjee has suggested that the subject dispute cannot be said to be a commercial dispute in any manner whatsoever and therefore the provision of the Commercial Courts Act has no application in this case. Before parting with, Mr. Mukherjee has contended that no management or consultancy service was availed or sought to be availed by the parties and they never desired to get into any joint venture and as a sequel the impugned order of dismissal of the application for transfer suffers from no infirmity and therefore there is no requirement to interfere with the order impugned in this revision application.

Analysis:-

8. Before delving into the merit of the case at hand, I think it would be profitable to reproduce the specific provision of Section 2(1)(c) (x) of the Commercial Courts Act, 2015 which runs as follows:-

“2. Definitions.—(1) In this Act, unless the context otherwise requires,—

---xx---

(c) “commercial dispute” means a dispute arising out of—

---xx---

(x) management and consultancy agreements;

...”

- 9.** In my humble view, the main issue pertaining to this revision application revolves around the interpretation of the definition of commercial dispute under the Commercial Courts Act, specifically regarding agreements relating to management and consultancy agreement.
- 10.** Therefore, it is of paramount importance to carefully peruse the agreement dated 12.09.2012 executed by and between the parties. After careful scrutiny of the said agreement, it has come to the notice of this Court that the main purpose was to transfer the management of the affairs of the two institutions already mentioned above. In addition to that, there was clear averment in the agreement that the petitioner is to take over the management of the said institutions upon payment of the entire outstanding liabilities aggregating to a sum of Rs. 40 Crores which included the loan amount of the medical college, loan availed from SREI finance for the purchase of equipment of the medical college, outstanding dues of the building contractors, suppliers and service providers and payments of the outstanding salary amount to the teaching and the non-teaching staff till July, 2012 including their PF, ESI and TDS liability till July, 2012.
- 11.** The entire payment schedule as per the agreement dated 12th September, 2012 was also duly stated in paragraph no. 17 of the

said agreement. That apart, with effect from 01.08.2012 all the financial liabilities with respect to the running and management of the said two institutions was to be borne by the petitioner herein or its managing committee also.

12. Therefore, it can easily be assessed that the entire purpose of the agreement was to enable the petitioner to meet its financial burdens. Hence, I am sorry to subscribe to the view of Mr. Mukherjee, Ld. Counsel that the instant transaction by and between the parties is not commercial in nature as they had no intention to make profits and the petitioner was a charitable trust. But, the agreement executed, in my view, is in lieu of valuable monetary consideration.

13. It is settled proposition of law that the disputes arising from agreements that involve the management of business or properties will fall within the ambit of Section 2(1)(c) (x) of the Commercial Courts Act, 2015. Moreover, all agreements relating to immovable properties used exclusively in trade and commerce are also covered within the ambit of Section 2(1)(c) (vii) of the Commercial Courts Act, 2015.

14. In the light of the aforesaid discussion, the agreement in question between the petitioner and the opposite party, in my opinion will definitely come under the ambit of Commercial

Courts Act. Therefore, the impugned order passed by the Learned District Judge, Purba Medinipur in connection with J. Misc. Case No. 63 of 2015, being patently erroneous is liable to be set aside.

- 15.** As a sequel, the instant civil revision application being no. C.O. 367 of 2020, stands allowed.
- 16.** The Learned District Judge, Purba Medinipur is directed to transfer the record in connection with the application made under Section 34 of the Act of 1996 filed by the opposite party herein to the Commercial Division of Alipore within one week after vacation.
- 17.** Ld. Judge, Commercial Court upon receipt of the records, is further directed to dispose of the case strictly in accordance with law without getting influenced in any manner whatsoever by any observation made by this Court in connection with the instant revision application.
- 18.** Interim order, if there be any, stands vacated.
- 19.** Connected applications, if there be, also stand disposed of accordingly.
- 20.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

- 21.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]