

11.12.2024
S.L. 25
Ct. No.655
SC

C.O. 3412 of 2023

**M/s. Rudrapriya Traders Private Ltd. & Ors
-Versus-
Shyamal Roy & Ors.**

Mr. Chayan Gupta,
Mr. Paurush Bandyopadhyay,
Mr. Shoham Sanyal,
Mr. Uday Sharma.
...for the Petitioners.

Mr Sabir Ahmed,
Mr. Shraman Sarkar,
Mr. Tasnim Ahmed,
Mr. Dhiman Banerjee,
Mr. Ezaz Ahmed.
...for the Opposite Party Nos. 2 & 3.

1. The order passed by the learned Trial Court dated 30th August, 2023 in connection with Title Suit No. 204 of 2015 is assailed in this revisional application filed by the petitioners under Article 227 of the Constitution of India.

2. By passing the impugned order learned Trial Court observed that the application filed under Section 15 of the Commercial Courts Act, 2015 could not be disposed of and/or proceeded with till the report of the collector was brought on record. Being aggrieved and dissatisfied with the said impugned order these petitioners have preferred this revisional application.

3. The plaintiffs/petitioners instituted a suit against the defendants for a decree for specific performance of the contract and/or decree for loss and damages suffered by the

plaintiffs against the defendants along with other reliefs. An agreement for sale was entered in between the petitioners and the respondent no. 1 in respect of an immovable property used exclusively in trade and commerce being a hotel. As the cause of action of the suit was based on the said unregistered agreement for sale, the petitioners had made prayer before the Trial Court to have the instrument impounded and to pay requisite stamp duty and /or registration fees. Learned Trial Court by passing its order dated 17th January, 2017 had issued a direction for the said agreement for sale dated 20th February, 2015 to be impounded and sent the document before the concerned Collector for evaluation of the stamp duty and registration cost of the document. It is said by the plaintiffs that the agreement in respect of the property squarely fell within the definition of “commercial dispute” as defined in the Commercial Courts Act, 2015. It is further averred by the plaintiffs that when the suit was instituted the Commercial Court at Asansol had not been established and as such, they are constrained to file the suit before the learned Trial Court. Now, a Commercial Court at Asansol is running and, as such, an application was taken out at the behest of the petitioners under Section 15 of the Commercial Courts Act, 2015 before the learned Trial Court stating that the Trial Court lacks jurisdiction to try the suit pending before it. It is the specific contention of the plaintiffs that since the

immovable property in question was intended to be used for commercial purpose and the dispute between the parties is commercial disputes, the suit pending before the learned Trial Court should be transferred before the Commercial Court. It is said by the plaintiffs that the claim in the suit has arisen out of commercial transaction between the parties.

4. Learned advocate for the respondent no. 1 submits that as the document has already been impounded and sent to the collector so, it is not possible for the learned Trial Court to pass any appropriate order regarding the petition filed under Section 15 of the Commercial Courts Act. It is said by the learned counsel that as the document has already been sent to the Collector for assessing impounding fee and unless and until the said document is returned by the Collector, the petition filed under Section 15 of the Commercial Courts Act cannot be adjudicated.

5. Sub-section 1 of Section 15 of the Commercial Courts Act, 2015 entails that 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 a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division. So, when an application was filed under the Commercial Courts Act stating that the subject property fell within the definition of commercial dispute as

defined in the Commercial Courts Act it is to be disposed of at the first instance. Learned court below without disposing of the application filed by the plaintiff/petitioners hold that the petition could not be disposed of or proceeded with till the report of the collector was brought on record at the instance of the petitioners in the form of an affidavit.

6. Before filing this revisional application another application was filed before this Court being C.O. No. 1883 of 2003 by the present petitioners wherein specific direction was given upon the Trial Court to decide the matter in a time framed manner. Despite that the petition filed by the plaintiffs under Section 15 of the Commercial Courts- has not yet been disposed of and the learned Trial Court is still waiting for the report from the concerned Collector.

7. Learned advocate for the defendant is only concerned with the impounding of the document. As per his submission unless and until the impounding fees are assessed and paid by the plaintiff the said agreement is deemed to be not in existence in the eye of law. Moreover, the evidence taking process of the Trial Court has already been commenced.

8. There are two criteria as laid down under Section 15 of the Commercial Courts Act, 2015 for transfer of the suit to the commercial division and those criteria if specified it must be transferred to the Commercial Court. The disposal of the petition filed under Section 15 of the Commercial Courts Act is not related to the order being made over to the collector for

assessing the impounding fees in respect of the agreement entered between the parties. The Trial Court shall dispose of the application filed by the petitioner which contains a prayer for transferring the suit before the Commercial Court. Without disposing the application learned Trial Court observed that it could not be disposed of and/or proceeded with till the report of the collector was brought on record but the disposal of the application filed under Section 15 is not related to the order of levying the stamp duty and penalty.

9. Accordingly, the learned Trial Court is directed to dispose of the said application in accordance with law without waiting for the report from the collector. The issue of impounding the document is to be kept open and will be decided at the appropriate stage of the proceeding in accordance with law.

10. In view of the above facts and circumstances the impugned order passed by the learned Trial Court dated 30th August, 2023 passed in connection with Title Suit No. 204 of 2015 is hereby set aside. The issue of impounding the document will be kept open and it will be decided by the Court at the appropriate stage of the proceeding.

11. The application filed by the petitioners/plaintiffs shall be decided by the learned Trial Court within one month from the date of communication of this order.

12. The revisional application being C.O. 3412 of 2023 is hereby allowed.

13. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)