

13.03.2024
Item No. 25
PG
Ct. No.7

C.O. 3419 of 2023
Smt. Nabanita Ganguly & Anr.
Vs.
Shyam Karmakar

Mr. Chayan Gupta
Mr. Shoham Sanyal.....for the petitioners

Mr. Goutam Dinda
Mr. Sandip Roy
Mr. Hiranmoy Debnath.....for the opposite party

1. This application under Article 227 of the Constitution of India is at the instance of the defendants and is directed against an Order being no. 10 dated 17th August, 2023 passed by the learned Civil Judge (Senior Division), Ranaghat, District-Nadia. By the order impugned, the application under Order 7 Rule 10 of the Code of Civil Procedure filed by the defendants stood rejected.
2. Mr. Gupta, learned advocate appearing for the petitioners submits that the instant suit has been filed for recovery of money arising out of an agreement relating to an immovable property, which was exclusively used in trade or commerce.
3. By referring to the schedule of property mentioned in the Power of Attorney, Mr. Gupta submits that the suit property is a brick field carrying on business under the brand name of 'G.B. Bricks.' He thus, submits that the

dispute involved in this suit is a commercial dispute within the meaning of section 2 sub-section (c) (vii) of Commercial Courts Act, 2015 (for short '2015 Act').

4. He submits that since the suit has been filed for realisation of money in a commercial dispute over the threshold limit of Rs. 30 lakhs, the learned Civil Judge (Senior Division), Ranaghat, District-Nadia lacks jurisdiction to decide the instant suit. In support of such contention, he places reliance upon a decision of the Hon'ble Supreme Court in the case of **Ambalal Sarabhai Enterprises Limited vs. K.S. Infraspace LLP & Anr.** reported at **(2020) 15 SCC 585**.
5. *Per contra*: Learned advocate appearing for the opposite party submits that there is no existence of any agreement between the parties to this suit relating to an immovable property, which is used for the purpose of trade or commerce and therefore, the dispute do not fall within the definition of 'commercial dispute' under section 2(c)(vii) of the 2015 Act. He submits that the plaintiff was appointed as an agent by the defendants for the purpose of negotiating with the prospective buyers and therefore, the dispute involved in this suit cannot be said to be a commercial dispute.
6. Heard the learned advocates for the parties and perused the materials placed.
7. The opposite party herein filed a suit for realisation of money amounting to Rs. 32 lakhs 80 thousand along

with interest from the defendants and for permanent injunction restraining the defendants/petitioners herein from transferring the A scheduled property to any third party. In connection with the said suit, the petitioners herein filed an application under Order 7 Rule 10 read with section 151 of the Code of Civil Procedure praying for return of the plaint, which stood rejected by the impugned order.

8. After going through the plaint, this Court finds that the opposite party claims to have paid certain sum of money to the petitioner no. 1, who, upon receipt of the same, executed a money receipt on 30th December, 2020.
9. It has been further alleged in the plaint that the defendants/petitioners herein upon receipt of such amount have cancelled the Power of Attorney, which was executed in favour of the plaintiff/opposite party herein with a *mala fide* intention to grab the substantial sum of money. It was further alleged that the defendants are trying to sale A scheduled property to the third parties.
10. Upon reading the plaint as a whole, it does not appear to this Court that there exists any agreement relating to immovable property used exclusively in trade or commerce between the parties to the suit. The cause of action for filing the instant suit, as it appears from the plaint is that pursuant to the Power of Attorney

being executed by the defendants in favour of the plaintiff, certain sum of money was paid by the plaintiff to the defendants and thereafter the defendants have cancelled the Power of Attorney.

11. It has been stated in the Power of Attorney that the same was granted in favour of the Attorney without any consideration and no interest or right is created on the property, which is the subject matter of the Power of Attorney. Therefore, merely because the subject matter of the Power of Attorney is a brickfield, the dispute raised in the suit cannot be said to be a commercial dispute within the meaning of section 2(c)(vii) of the 2015 Act.
12. It has been rightly observed by the learned trial Judge that the defendants have appointed the plaintiff as an attorney by execution of a general Power of Attorney to do execute and perform any act or acts, deed or deeds, matter or matters or things whatsoever which in the opinion of the attorney ought to be done, executed and performed in relation to the property in question.
13. The learned trial Judge, in the considered view of this Court was right in holding that the dispute involved in the instant suit cannot be said to fall within the ambit of 'commercial dispute' as defined under section 2(c)(vii) of the 2015 Act.

14. There is no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in *Ambalal Sarabhai Enterprises (supra)* that a dispute relating to immovable property *per se*, may not be commercial dispute. It becomes a commercial dispute only if it falls under sub-clause (vii) of section 2(1)(c) of the 2015 Act. The said decision being distinguishable on facts, do not come to the aid of the petitioners in the case on hand.
15. For the reasons as aforesaid, this Court is not inclined to interfere with the order impugned. C.O. 3419 of 2023, accordingly, stands dismissed.
16. There shall be, however, no order as to costs.
17. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)