D/L.35.
December 16, 2024.
MNS.

FMAT No. 392 of 2024
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CAN 1 of 2024

Nibedita Das
Vs.
G.B.M. Private Limited Manufacturing

Mr. Sarosij Dasgupta,
Mr. Samrat Mukherji,
Ms. Dakshayani Basu,
Mr. Rik Mukherji

… for the appellant/plaintiff.

Mr. Soumabho Ghose,
Mr. Soumalya Ganguli,
Ms. Tiana Bhattacharya

…for the respondent/defendant.

1. In view of several questions of law and fact being involved, we admit the appeal and the appeal shall be heard on the grounds taken in the Memorandum of Appeal on consent of the parties.

2. Now, we take up the appeal itself for hearing on consent of parties.

3. The short ambit of the appeal is that the learned trial Judge, by the impugned order, disposed of an application under Order VII Rule 11 of the Code of Civil Procedure (in short "the Code") filed by the defendant/respondent by treating the same to be one under Order VII Rule 10 of the Code.

4. The learned trial Judge returned the plaint of the plaintiff/appellant on the ground that the suit should have been presented before the appropriate

Commercial Court/Commercial Division of this Court and not before the regular Civil Court having jurisdiction.

5. Learned counsel for the appellant argues that there was no agreement as such between the parties to attract the provisions of the Commercial Courts Act, 2015 (hereinafter referred to as the “Act of 2015”).

6. However, upon hearing learned counsel for the parties, we find that the claim of the plaintiff/appellant in the suit is premised on alleged mutual obligations between the parties flowing from a *jural* relationship, on the premise that the appellant supplied goods to the respondent, for which allegedly the defendant/respondent did not make full payment.

7. The learned trial Judge found that although there is no written agreement, there was an implied contract for sale, which the plaintiff/appellant seeks to enforce. We find that the said view of the learned trial Judge was one of the plausible views which could be taken by preponderance of probabilities on the facts of the case and, as such, we do not intend to interfere with the same sitting in appeal, merely to substitute our own views for that of the learned Trial Judge on the same set of facts.

8. Also, the value of the claim is above the specified value in terms of the Act of 2015, which all the more entails that the matter should have been presented before the Commercial Division of this Court, which

has pecuniary and territorial jurisdiction to entertain the matter.

9. At this juncture, it transpires from the arguments of both sides that this Court may invoke the jurisdiction under Order 7 Rule 10B of the Code in order to obviate the unnecessary delay involved in remanding the matter to the trial court for framing a timeline in terms of Rule 10A of Order VII.

10. As such, we invoke the provisions of Rule 10B of Order VII of the Code.

11. Accordingly, FMAT 392 of 2024 is disposed of by modifying the impugned order to the extent that, subject to filing of a formal application before this Court by December 18, 2024 under Order VII Rule 10B (1) of the Code, the plaintiff/appellant is directed to file the plaint before the appropriate court, that is, the Commercial Division of this Court in its Original Side, subject to the provision of the Limitation Act, 1963, by December 24, 2024. Thereafter, the parties shall appear before the said Court where the plaint is presented on January 6, 2025.

12. In such view of the matter, the Court where the plaint is presented shall not be required to serve the defendants a summons unless that court, for reasons to be recorded, deems it fit to do so.

13. Needless to say, in terms of Order VII Rule 10B (2) of the Code, the above direction shall be without any prejudice to the rights of the parties to

question the jurisdiction of the Court, in which the plaint is filed, to try the suit.

14. It is to be noted further that the plaintiff/appellant takes a stand that a similar suit was filed previously by the defendant/respondent with regard to the same transaction, which is controverted by learned counsel for the respondent by contending that the said suit was for damages and as such is not governed by the Act of 2015.

15. We feel that, in view of the above, there was scope of a *bona fide* doubt on the part of the plaintiff/appellant as to whether the suit should have been presented in a regular Civil Court, as done by the respondent, instead of filing it before the Commercial Division of this Court.

16. Hence, it will be open to the plaintiff/appellant to invoke the benefit of Section 14 of the Limitation Act, 1963 before the Commercial Division of this Court in connection with the suit.

17. The matter shall be listed next on December 19, 2024 before this Court under the heading "To be mentioned" for accepting the application filed by the plaintiff/appellant in terms of the direction given above.

(Sabyasachi Bhattacharyya, J.)

(Partha Sarathi Sen, J.)