

OD-10 & 11

IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE

IA No. GA/5/2023

In CS/213/2016

J. K. ENGINEERING PRIVATE LIMITED

Vs.

ANE INDUSTRIES PRIVATE LIMITED

With

IA No. GA/4/2022

In CS/213/2016

J. K. ENGINEERING PRIVATE LIMITED

Vs.

ANE INDUSTRIES PRIVATE LIMITED

BEFORE :

The Hon'ble JUSTICE KRISHNA RAO

Heard On : 27.02.2023

Order On : 02.03.2023

Appearance

Mr. Jishnu Saha, Sr. Adv.

Mr. Ishaan Saha, Adv.

Mr. S. R. Kakrania, Adv.

Mr. T. Kakrania, Adv.

Mr. K. Sharma, Adv.

...for the plaintiff/petitioner.

Mr. Tilak Kumar Bose, Sr. Adv.
Mr. Jishnu Choudhury, Adv.
Mr. Arjun Mookherjee, Adv.
Mr. Sourjya Roy, Adv.
...for the defendant/respondent.

ORDER

The defendant has filed an application being G.A. No. 4 of 2022 praying for rejection of plaint and for dismissal of suit.

The plaintiff has filed an application being G.A 5 of 2023 for transfer of C.S. No. 213 of 2016 from this Court to the Commercial Division of this Court under Section 15 of the Commercial Courts, Act, 2015.

Plaintiff has filed Civil Suit No. 213 of 2016 against the defendant for recovery of money of Rs. 16,51,85,702/- and other allied prayers. In the suit, the plaintiff has also filed an application being G.A No. 2522 of 2016 for Judgment on admission. By an order dt. 7th February, 2019, this Court had disposed of the said application by passing the following order :

“12. *In the present facts, having regard to the discussions under the individual heads of the documents relied upon by counsel for the plaintiff for a judgment on admissions, it cannot be said that either the TDS certificates or the e-mail dated 19th February, 2016 or even the working notes constitute admissions which are clear, unambiguous and free from giving any scope to the defendant to explain or account for the same. It cannot be said that the documents relied upon by counsel clearly and unequivocally demonstrate that the defendant had admitted (by such documents) that it was ready to agree on a commission of 5% for the entire transaction or had agreed to alter the 12.50% commission in clauses (f) and*

(g) of the MOU dated 26th March, 2013, in respect of the entire transaction between the plaintiff and the defendant. At this point in time, this court cannot place any weightage on the significance of a possible counter claim to be filed by the defendant or of the alleged breaches on the part of the plaintiff.

13. *It must however be pointed out that since the e-mail dated 19th February, 2016 and the working notes show that the defendant had indeed agreed on 95% of the bill amount from the plaintiff and had therefore admitted to 5% commission in relation to the RA bills enumerated in the e-mail, the plaintiff would be entitled to claim 95% of the bill amount in respect of the RA bills disclosed by the parties being series 32-39 and be entitled to a decree of the total of these RA bills keeping aside 5% of the amount raised in each of these bills as the defendant's commission.*

14. *There will accordingly be a decree in favour of the plaintiff to the extent of the total amount of the RA bills as indicated above less 5% on each of the bills.*

15. *GA No. 2522 of 2016 is partly allowed, as indicated above. There shall be no order as to costs."*

The defendant had preferred an appeal against the order dt. 7th February, 2019 being APD No. 42 of 2019 but subsequently the appeal preferred by the defendant was disposed of on 14th January, 2020 and the part decree passed by this Court attained finality.

The defendant has filed the instant application for dismissal of the suit for the following reasons :

"A) In terms of Order VI Rule 3 A of the Code of Civil Procedure, 1908, the forms of the plaint ought to have been according to Chapter XII of Calcutta High Court Rules (Original Side) for Commercial suits but the same had not been followed in this case.

- B) *In terms of Order VI Rule 15 A, the suit being arising out of Commercial Dispute ought to have been verified by an affidavit in the manner and forms prescribed in the Appendix to the schedule. But the plaint filed in this case was not so verified.*
- C) *The plaint being not verified in terms of Order VI Rule 15A the plaintiff is not entitled to rely on such plaint.*
- D) *The Plaint being not verified as per Order VI Rule 15(A) the plaint should be struck out as it has not been verified by the statement of truth as prescribed by law.”*

Mr. Tilak Kumar Bose, Learned Senior Counsel for the defendant submits that the dispute between the plaintiff and the defendant are commercial disputes, since, the same are arising out of joint venture agreement out of a commercial transaction and thus the nature of the suit is Commercial Dispute within the meaning of Commercial Courts Act, 2015.

Mr. Bose submits that the suit filed by the plaintiff is not maintainable before this Court and the suit is required to be dismissed.

Mr. Jishnu Saha, Learned Senior Counsel representing the plaintiff submits that the dispute in the present suit constitutes a commercial dispute within the meaning of Commercial Courts Act, 2015.

Mr. Saha submits that the plaintiff has filed the instant suit on August 18, 2016 i.e. prior to establishment of Commercial Courts at Calcutta. He submits that commercial Court at Calcutta was established on March 20, 2020 and thus the plaintiff had no other alternative but to file the instant suit before this Court.

Learned Senior Counsel for the plaintiff relied upon Section 15 of the Commercial Courts Act, 2015 and submits that all suits and applications relating to Commercial Dispute of a specified value pending in a High Court where a Commercial Division has been constituted, shall be transferred to Commercial Division.

Learned Senior Counsel for the plaintiff further submits that as the suit is to be transferred to the Commercial Division as such the plaint is also required to be amended in terms of the Commercial Courts Act, 2015. He submits that the plaintiff had also annexed the proposed amended plaint along with this application being Annexure X and X -1.

Learned Senior Counsel for the plaintiff submits that the proposed amendment will not change the nature and character of the suit and the said amendment in the plaint is required in terms of the Commercial Courts Act, 2015.

Heard the learned Counsel for the respective parties, perused the applications and the materials on record.

It is admitted that the suit filed by the plaintiff is commercial in nature and the suit is required to be decided by the Commercial Court. As per record, the plaintiff has filed the suit on August 18, 2016. The Commercial Courts Act, 2015 came into force with effect from 31st December, 2015 but the Commercial Courts were established at Calcutta only on 20th March, 2020 and thus in

terms Section 15 of the Commercial Courts Act, 2015, the suit filed by the plaintiff is required to be transferred to the Commercial Division.

In view of the above, the application filed by the plaintiff being **G.A No. 5 of 2023 is allowed** in terms of prayers (a) to (d) of the Master's Summons. As regard the application filed by the defendant being **G.A No. 4 of 2022 is dismissed.**

(KRISHNA RAO, J.)