

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**RAMESHWAR
LAXMAN
DILWALE**

COMMERCIAL FIRST APPEAL NO.6 OF 2023

Digitally signed by
RAMESHWAR
LAXMAN
DILWALE

Date: 2024.07.17
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- | | | |
|----|---|--|
| 1. | Kaulgud Construction Pvt. Ltd.,
(for short "KCPL")
A company registered under
The Companies Act 1956,
having its registered office at, 3884,
Malekar Wada, Miraj-416 410
Dist, Sangli Maharashtra | }
}
}
}
}
}
} |
| 2. | Shri. Suhas Pandurang Kaulgud
Age : 73 yrs Occu: Contracting Business
R/o. "Rupa Apartments",
Near Town Hall, Miraj 416 410
Contact No.9422041010
Email-kcp1147@gmail.com | }
}
}
}
}
} |
| 3. | Shri. Sunil Pandurang Kaulgud
Age : 64 yrs Occu: Contracting Business
R/o. "Rupa Apartments",
Near Town Hall, Miraj 416 410
Contact No.9764995020
Email – kcp1147@gmail.com | }
}
}
}
}
}
} ..Appellants |

Versus

- | | | |
|----|--|---------------------------------|
| 1. | Union of India
Through its General Manager
Central Railway, CST Mumbai-1
Email – gm@cr.railnet.gov.in | }
}
}
} |
| 2. | Chief Engineer (C)/ South,
Central Railway,
New Administrative Building,
6 th Floor, CST. Mumbai-1.
Email-cecsouth.cr@gmail.com
Summons for Defendant No.1
be served on the General Manager, | }
}
}
}
}
}
} |

Central Railway CST Mumbai	}	
on its official email gm@cr.railnet.gov.in	}	
and the summons for Defendant No.2	}	
be served on its official	}	
email -cecsouth.cr@gmail.com	}	..Respondents

...

Mr. M. L. Patil, Advocate for the Appellants.
 Mr. T. J. Pandian, Advocate for the Respondents.

...

**CORAM : A.S. CHANDURKAR &
 RAJESH S. PATIL, JJ**

DATE : 16th JULY 2024.

JUDGMENT : (PER : A. S. CHANDURKAR, J)

1. Admit. Heard the learned counsel for the parties by consent.
2. The challenge raised in this appeal is to the order dated 03/02/2023 passed by the learned Additional District and Sessions Judge-2, Sangli below Exhibit-20 thereby allowing the application that was moved by the respondents-defendants under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short, 'the Code'). Consequently, the suit filed by the appellants was dismissed.
3. The appellants are the original plaintiffs who had filed suit for recovery of amounts that was claimed to be due and payable from the defendants on account of execution of works under the contract dated 28/03/2008. The defendants moved an application under Order VII Rule 11 of the Code on 15/09/2022 stating therein that the plaintiff had exhausted the remedy available by invoking the arbitration clause and

hence the suit was not maintainable. Another ground raised was based on the bar of limitation in filing the suit. By the impugned order, the trial Court proceeded to observe that since the plaintiff had invoked the arbitration clause, it was not permissible for it to re-agitate the same issue in the civil suit. On that basis, the application came to be allowed and the suit was dismissed under the provisions of Order VII Rule 11 (d) of the Code.

4. We have heard the learned counsel for the parties and we have perused the plaint, documents filed alongwith it and the impugned order. The learned counsel for the respondents while replying to the contention raised by the learned counsel for the appellants that the plaint could not have been rejected without considering the plaint averments, on instructions, submitted that the defendants be permitted to withdraw the application that was filed below Exhibit-20 with liberty to file a fresh application under the provisions of Order VII Rule 11 of the Code.

5. Having perused the impugned order, we are inclined to accept the request made on behalf of the defendants. Accordingly, the following order is passed:

- i) The application moved by the defendants below Exhibit-20 dated 15/09/2022 is permitted to be withdrawn. Consequently, the order passed below Exhibit-

20 dated 03/02/2023 would not survive. It is accordingly quashed and set aside.

ii) As a result, the proceedings in Commercial Suit No.1 of 2022 stand restored to the file of the trial Court for being decided on merits.

iii) It is open for the defendants to move a fresh application under the provisions of Order VII Rule 11 of the Code, if so advised. If such application is made, the same shall be considered in accordance with law. Keeping all aspects open, the Commercial First Appeal is allowed leaving the parties to bear their own costs.

6. The Commercial First Appeal is disposed of in aforesaid terms. Ordered accordingly

[RAJESH S. PATIL, J]

[A.S. CHANDURKAR, J.]