



Tr.C.M.P.(MD)No.742 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2024

CORAM

**THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HON'BLE MS.JUSTICE R.POORNIMA**

**Tr.C.M.P.(MD)No.742 of 2024
and
C.M.P.(MD)No.17757 of 2024**

Amaravathi Sri Venkatesa Paper Mills Limited,
Represented by its Managing Director,
G.R.Vishnuvardhan.

... Petitioner

Vs.

- 1.Raju Thangavelu
- 2.G.R.Vishnuvardhan,
Managing Director,
Amaravathi Sri Venkatesa Paper Mills Limited,
Venkatanilayam, Venketasa Mills Post,
Udumalpet, Tirupur District.
- 3.Venkatesh Harinath Tayi,
Director,
Amaravathi Sri Venkatesa Paper Mills Limited,
H Block No.47, Anna Nagar East, Chennai.
- 4.Jabes Durairaj Johnson,
Director,
Amaravathi Sri Venkatesa Paper Mills Limited,
145/A, Saminathapuram, Pushpathur,
Dindigul District.
- 5.G.R.Harshavardhan



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6.The Sri Venkatesha Mills Limited,
Represented by its Managing Director,
1st Floor, No..132, Palani Road,
Udumalpet, Tirupur District.

7.Rajalakshmi Paper Mills Private Limited,
Represented by its Managing Director,
1st Floor, No.132, Palani Road,
Venkatesa Mills Post, Udumalpet,
Tirupur District.

8.Vishnuvardhan Paper Mills Private Limited,
Represented by its Managing Director,
1st Floor, No.132, Palani Road,
Venketasa Mills Post, Udumalpet,
Tirupur District.

9.Mandhirachalam

10.N.Bhaghyaraj

11.G.Prabu

12.Dr.S.Navina

13.M.Selvarajan

14.R.Subramanian

15.RG Matriculation Higher Secondary School,
Represented by its Correspondent,
Nandini Raveendran,
Palani Road, Venkatesa Mills,
Udumalpet, Tirupur.

... Respondents

PRAYER : Transfer Civil Miscellaneous Petition filed under Section 24 of Civil Procedure Code to withdraw the suit in O.S.No.470 of 2024, pending on the file of the Additional District Judge, Palani and transfer the same to the Commercial Court, Dindigul for trial.



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For Petitioner : Mr.Sivanantharaj, Senior Counsel,
for Mr.M.Mahaboob Athiff.

For Respondent No.1 : Mr.P.Sivakumar,
for Mr.C.Abul Kalam Azad

ORDER

(Order of the court was delivered by G.R.Swaminathan, J.)

Heard the learned Senior Counsel for the petitioner and learned counsel for the first respondent / plaintiff.

2.This petition has been filed under Section 24 of Civil Procedure Code for transferring O.S.No.470 of 2024 from the file of the Additional District Court, Palani to the file of Commercial Court, Dindigul. The first respondent has filed the said suit for specifically enforcing the suit agreement 26.10.2021. According to the plaintiff / first respondent herein, sale agreement was executed by the petitioner herein in his favour.

3.We questioned the petitioner as to why this transfer petition was straightaway filed before this Court under Section 24 of the Civil Procedure Code without moving the Principal District Judge, Dindigul in the first instance. In response to the aforesaid query, the learned Senior



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Counsel for the petitioner drew our attention to the decision reported in

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2024 SCC OnLine Del 143 (Namita Gupta Vs. Suraj Holdings

Limited). It was held therein that in cases involving commercial disputes under the Commercial Courts Act, 2015, the power under Section 24 of Civil Procedure Code to transfer suits is not available to the Principal District Judge. This proposition is not applicable to the case on hand. The suit was instituted before the Additional District Court, Palani. It was not a commercial court. Therefore, the petitioner could have very well moved the Principal District Judge, Dindigul. However, we do not propose to non-suit the petitioner on this ground. Section 24 of CPC confers the general power of transfer and withdrawal on the High Court as well as the District Court. The language used is “the High Court or the District Court”. Therefore, for transferring a case from any court subordinate to the District Court within the District concerned, one can move either the High Court or the District Court. Concurrent jurisdiction has been conferred on the High Court and the District Court under Section 24 of CPC. We are therefore satisfied that this petition is very much maintainable before us.

4.If the suit is commercial suit, it has to be instituted before the Commercial Court. Section 2(1)(c)(vii) of the Commercial Courts Act,



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2015 states that commercial dispute means a dispute arising out of agreements relating to immovable property used exclusively in a trade or commerce. The Hon'ble Supreme Court in the decision reported in **(2020) 15 SCC 585 (Ambala Sarabhai Enterprises Limited Vs. K.S.Infraspace LLP)** held that a dispute relating to immovable property becomes a commercial dispute, if it falls under Sub Clause (vii) of Section 2(1)(c) of the Commercial Courts Act, 2015. The word “used” denotes “actually used” and it cannot be either “ready for use” or “likely to be used” or “to be used”.

5.The learned Senior Counsel for the petitioner drew our attention to the plaint document No.18 enclosed at Page No.6. It reads as follows:-

“Received a sum of Rs.2 Lakhs (Rupees Two Lakhs only) in cash from Mr.T.Raju, S/o.Thangavelu, Velamarathottam, RKR School Backside, Chinnaveerampatti towards ASVP Mills, Swaminathapuram ETP land sales advance.”

The document relied on by the plaintiff itself refers to the suit property as ETP land.



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6.We must of course place on record the submission of the plaintiff / first respondent herein that the ground reality is otherwise. However, we have to go by description found in the document relied on by the plaintiff himself. In the plaint document, the property has been described as ETP land. It only means that the property is being used for ETP purpose. ETP means “effluent treatment plant”. Such use is obviously for trade/commerce. We are therefore satisfied that the aforesaid definitional clause is squarely applicable to the case on hand. Since we are satisfied that the case on hand pertains to a commercial dispute, it has to be tried only by a commercial court. Admittedly, the Additional District Court, Palani has not been designated as a commercial court. We, therefore, withdraw O.S.No.470 of 2024 from the file of the said Court and transfer it to the designated Commercial Court in Dindigul.

7.The learned counsel for the plaintiff submits that the defendants have breached the status quo order granted by the court and hence, contempt petition has been moved. We make it clear that the orders already passed by the court have not been touched. It is for the parties to work out their rights in the manner known to law. We however clarify that the defendants cannot invoke Section 12-A of the Commercial



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Courts Act, 2015 which provides for pre-litigation mediation and settlement. The said provision states that a suit which does not contemplate any urgent interim relief under the Act shall not be instituted unless the plaintiff exhausts the remedy of pre-litigation mediation. Suits have been dismissed for not complying with the said statutory requirement. Section 12-A will apply only if the suit is instituted in the commercial court in the first instance. In this case, the suit was filed before a non-commercial court and only pursuant to the order made in this Transfer CMP, the suit has been transferred to the Commercial Court. Therefore, Section 12-A cannot be invoked against the plaintiff. We are conscious that the Hon'ble Delhi High Court in ***Namita Gupta Vs. Suraj Holdings Limited (2024 SCC OnLine Del 143)*** has taken the view that as far as non-compliance with Section 12-A of the Act is concerned, the transferee court shall consider the said objection on merits upon the transfer of the suit. We respectfully differ from the said view. Section 12-A bars the plaintiff from instituting a commercial suit without exhausting the remedy of pre-litigation mediation when it does not contemplate any urgent interim relief under the Commercial Courts Act, 2015. The expressions “this Act” and “shall not be instituted” employed in Section 12-A are significant. A regular suit instituted in an ordinary civil court will not be governed by Section 12-A. Section 12-A



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will apply only in the case of a suit instituted in a commercial court. The mandatory import of Section 12-A of the Act will apply only to a suit which is instituted in a commercial court in the first instance and not to a suit instituted in an ordinary civil court which is transferred to a commercial court. The case on hand comes under the latter category.

8.Since the suit in question would not have complied with the special requirements of pleading contemplated by the Commercial Courts Act, 2015, the plaintiff is given liberty to make necessary amendments to his plaint in the form of necessary pleadings, attachment of statement of truth and affidavits.

9.This Transfer Miscellaneous petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

**(G.R.S. J.,) & (R.P. J.,)
09.12.2024**

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The Additional District Judge, Palani.
- 2.The Commercial Court Judge, Dindigul.



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G.R.SWAMINATHAN, J.
and
R.POORNIMA, J.

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