



\$~102

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **TR.P.(C.) 181/2024**

SAURABH PRAKASH

.....Petitioner

Through: Mr. Utsav Jain, Advocate.

versus

DELTA GLOBAL ALLIED LIMITED FORMERLY DELTA
MECHONS INDIA LTD.

.....Respondent

Through: Mr. Shlok Chandra, Mr. Sushant
Pandey and Mr. Sankalp Sharma,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

%

22.10.2024

CM APPL. 62114/2024 (for exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

TR.P.(C.) 181/2024

3. Heard.
4. Issue notice.
5. Learned counsel appearing on behalf of the respondent accepts notice.
6. With the consent of the parties, the matter is heard finally.
7. The petitioner has filed the instant writ petition for transfer on the ground that earlier, civil suit was instituted before the Court of Additional



District Judge, which however was transferred to the Commercial Court in view of the provisions of Section 2(1)(c)(xviii) of the Commercial Courts Act, 2015 (*hereinafter referred to as the Act of 2015*).

8. Learned counsel appearing on behalf of the petitioner points out that this Court in C.R.P.53/2024 *vide* order dated 02.07.2024 held that the matter relating to recovery of ‘Professional Fees’ would not fall within the definition of the professional services and therefore, could not be tried by the Commercial Court in terms of the provisions of the Act of 2015.

9. The Court has perused the decision passed by the Court in ***Atmastco Ltd. v. Mandeep Kalra***¹, which has dealt with the aforesaid aspect and in paragraph number 21 to 23, has held as under:-

“21. In view of the foregoing discussion, reverting back to the instant matter, the dispute between a lawyer and his client where the former is seeking recovery of professional fees, cannot be held to be a „commercial dispute“. Lawyers are not “tradesmen” or “businessmen” as held in the case of Bar of Indian Lawyers through its President (supra). Lawyers and advocates are supposed to be professional legal experts and major stakeholders in the “adversarial justice delivery system” who render legal advice & services to their clients but have larger duties as officers of the Court whenever they are engaged for providing legal representation to their clients in the Courts of law.

22. The agreement between an advocate and his/her client envisaging provisions of legal advice and services cannot be in the nature of a “commercial dispute” since such agreement cannot even be specifically enforced. The Legal Profession is sui generis i.e. unique in nature and cannot be compared with any other profession. It would be relevant to refer to the observations of the Supreme Court in the matter of Bar of Indian Lawyer through its President (supra), with regard to the nature of duties performed by the advocates, which go as under:

“21. When we examine the relationship between an Advocate and his Client from this point of view, the following unique attributes become clear:

¹ 2024 SCC OnLine Del 4467



- 1) *Advocates are generally perceived to be their client's agents and owe fiduciary duties to their clients.*
- 2) *Advocates are fastened with all the traditional duties that agents owe to their principals. For example, Advocates have to respect the client's autonomy to make decisions at a minimum, as to the objectives of the representation.*
- 3) *Advocates are not entitled to make concessions or give any undertaking to the Court without express instructions from the Client.*
- 4) *It is the solemn duty of an Advocate not to transgress the authority conferred on him by his Client.*
- 5) *An Advocate is bound to seek appropriate instructions from the Client or his authorized agent before taking any action or making any statement or concession which may, directly or remotely, affect the legal rights of the Client.*
- 6) *The Advocate represents the client before the Court and conducts proceedings on behalf of the client. He is the only link between the court and the client. Therefore, his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment.*

22. *Thus, a considerable amount of direct control is exercised by the Client over the manner in which an Advocate renders his services during the course of his employment. All of these attributes strengthen our opinion that the services hired or availed of an Advocate would be that of a contract „of personal service and would therefore stand excluded from the definition of “service” contained in the section 2(42) of the CP Act, 2019. As a necessary corollary, a complaint alleging “deficiency in service” against Advocates practising Legal Profession would not be maintainable under the CP Act, 2019.”*

23. *All said and done, evidently the CC Act has been enacted for the purpose of providing an efficacious remedy for speedy disposal of high valued commercial disputes, and its provisions should be strictly construed. In an earlier judgment passed by this Court in M/s. Ekanek Networks Private Limited v. Aditya Mertia¹¹, wherein a contract of service between an employer and employee came up for consideration so as to decide whether such agreement of personal service would be a “commercial dispute” within the scope and ambit of section 2(1)(c)(xviii) of the CC Act, a note of caution was addressed by this Court to the effect that if the provisions of the CC Act are given a liberal interpretation, the object behind the constitution of the Commercial Division of Courts to fast-track the resolution of commercial disputes would be defeated. Thus, every other suit, which may or may not be filed before a Commercial Court, need not be*



levelled as a “commercial dispute” and recourse has to be found in accordance with the purport and object of the statute besides the substratum of the matter.”

10. In view of the aforesaid, the instant dispute, which admittedly relates to the recovery of Professional Fees of a lawyer, needs to be tried by the Court of competent jurisdiction.
11. Therefore, CS DJ 07/2019 stands transferred from the Commercial Court, PHC, New Delhi to the Court of District Judge, PHC, New Delhi.
12. Ordered accordingly.

PURUSHAINDR KUMAR KAURAV, J

OCTOBER 22, 2024

Nc/sp