

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side

Present :
The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 1759 of 2024

**M/s. Soumita Realty and
Infrastructure Pvt. Ltd.
-Versus-
Atanu Mondal & Ors.**

For the petitioner : Mr. Arijit Bardhan
Ms. Soumyajit Mishra
Ms. Gourab Mondal

For the Opposite parties : Mr. Partha Pratim Roy
Mr. Nemai Chandra Betal

Heard On: : 02.08.2025

Judgment On: : 02.08.2025.

Hiranmay Bhattacharyya, J.

1. Affidavit of service filed in Court today is taken on record.

2. This application under Article 227 of the Constitution of India is at the instance of an applicant under Section 34 of the Arbitration and Conciliation Act, 1996 and is directed against an order dated June 13, 2023 passed by the learned Additional District Judge, Fast Track, 5th Court, Barasat, North 24 Parganas in Miscellaneous Case No. 24 of 2022 (Arb).

3. By the order impugned the said miscellaneous case was held to be not maintainable before that court and it was further held that the same ought to have been filed before the learned Commercial Court.

4. The petitioner and the opposite parties herein entered into a development agreement for the purpose of developing several plots of land which have been specifically described in the first schedule of the development agreement dated 2nd May, 2016. A dispute cropped up between the parties with regard to the development agreement and such dispute was referred to arbitration before the sole arbitrator nominated by the opposite parties. The sole arbitrator passed an award dated 11th March, 2022. Being aggrieved by such award the petitioner filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 being Miscellaneous Case No. 24 of 2022 (Arb) before the learned District Judge, North 24 Parganas at Barasat. The said miscellaneous case was thereafter transferred to the court of the Additional District Judge, Fast Track, 5th Court at Barasat. The opposite parties filed an application raising an objection as to the maintainability of the said miscellaneous case before that court. The learned Additional District Judge, by the order impugned, observed that the arbitration arose out of a subject matter which by the nature of the agreement is a commercial dispute and held that the same ought to have been filed before the learned commercial court and was not maintainable before that court.

5. Mr. Bardhan, learned advocate appearing for the petitioner draws the attention of the Court to several clauses of the development agreement in support of his contention that the same cannot be construed as a joint venture agreement. As to what is the difference between a joint venture agreement and a development agreement, Mr. Bardhan, learned advocate places reliance upon a decision of the Hon'ble Supreme Court in the case

Faqir Chand Gulati Vs. Uppal Agencies Private Limited and another
reported at **(2008) 10 SCC 345**.

6. Mr. Bardhan, learned advocate submits that the learned Additional District Judge was swayed by the averments made in the maintainability application that the agreement in question was a joint venture agreement and held that the dispute between the parties before the arbitral tribunal is a commercial dispute. He further submits that the agreement in question relates to an immovable property which is not exclusively used for the purpose of trade or commerce and, therefore, the same cannot come within the scope of sub-clause (vii) of Clause (c) of sub-section (1) of Section 2 of the Commercial Courts Act, 2015. He submits that the agreement in question was styled as a development agreement and not as a joint venture agreement and, therefore, the same would not fall within sub-clause (xi) of Section 2(1)(c) of the 2015 Act. He concludes by submitting that the learned Additional District Judge without considering the nature and scope of the agreement in question held that the dispute between the parties is a “commercial dispute” within the meaning of Section 2(1)(c) of the 2015 Act.

7. Per contra, Mr. Roy, learned advocate appearing for the opposite parties submits that the agreement in question relates to construction and, therefore, the same squarely falls within sub-clause (vi) of Clause (c) of sub-section (1) of Section 2 of the 2015 Act. He further submits that the agreement constitutes a commercial transaction as the nature of the work to be executed under the agreement involves an element of profit accruing to a party to the agreement. He, therefore, submits that the learned Additional District Judge was right in holding that the dispute between the parties is a

commercial dispute and the application under Section 34 of the Arbitration and Conciliation Act, 1996 was rightly held to be not maintainable before that court.

8. Heard the learned advocates for the respective parties and perused the materials placed.

9. Before entering into the factual dispute it would be beneficial to take note of the decision of the Hon'ble Supreme Court wherein the Supreme Court considered the nature of three agreements namely "joint venture agreements", development agreements and collaboration agreements between a land holder and a builder.

10. The Hon'ble Supreme Court observed that in an agreement of joint-venture there has to be a relationship of principal and agent between the parties. As to would what is the nature and ingredients of a joint-venture agreement was stated in paragraph 21 to 25 of **Faqir Chand Gulati** (supra) which is extracted hereinafter:-

"21. This Court had occasion to consider the nature of "joint-venture" in New Horizons Ltd. v. Union of India [(1995) 1 SCC 478] . This Court held: (SCC pp. 493-94, para 24)

"24. The expression 'joint venture' is more frequently used in the United States. It connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject-matter, a right to direct and govern the policy in connection therewith, and duty, which may be altered by agreement, to share both in profit and losses. (Black's Law Dictionary, 6th Edn., p. 839.) According to Words and Phrases, Permanent Edn., a joint venture is an

association of two or more persons to carry out a single business enterprise for profit (p. 117, Vol. 23)."

22. *The following definition of "joint venture" occurring in American Jurisprudence (2nd Edn., Vol. 46, pp. 19, 22 and 23) is relevant:*

"A joint venture is frequently defined as an association of two or more persons formed to carry out a single business enterprise for profit. More specifically, it is in association of persons with intent, by way of contract, express or implied, to engage in and carry out a single business venture for joint profit, for which purpose such persons combine their property, money, effects, skill, and knowledge, without creating a partnership, a corporation or other business entity, pursuant to an agreement that there shall be a community of interest among the parties as to the purpose of the undertaking, and that each joint venturer must stand in the relation of principal, as well as agent, as to each of the other coventurers within the general scope of the enterprise.

Joint ventures are, in general, governed by the same rules as partnerships. The relations of the parties to a joint venture and the nature of their association are so similar and closely akin to a partnership that their rights, duties, and liabilities are generally tested by rules which are closely analogous to and substantially the same, if not exactly the same as those which govern partnerships. Since the legal consequences of a joint venture are equivalent to those of a partnership, the courts freely apply partnership law to joint ventures when appropriate. In fact, it has been said that the trend in the law has been to blur the distinctions between a partnership and a joint venture, very little law being found applicable to one that does not apply to the other. Thus, the liability for torts of parties to a joint venture agreement is governed by the law applicable to partnerships.

A joint venture is to be distinguished from a relationship of independent contractor, the latter being one who, exercising an independent employment, contracts to do work according to his own methods and without being subject to the control of his employer except as to the result of the work, while a joint venture is a special combination of two or more persons where, in some

specific venture, a profit is jointly sought without any actual partnership or corporate designation.”

23. To the same effect is the definition in *Corpus Juris Secundum* (Vol. 48-A, pp. 314-15):

“ ‘Joint venture’, a term used interchangeably and synonymous with ‘joint adventure’, or coventure, has been defined as a special combination of two or more persons wherein some specific venture for profit is jointly sought without any actual partnership or corporate designation, or as an association of two or more persons to carry out a single business enterprise for profit or a special combination of persons undertaking jointly some specific adventure for profit, for which purpose they combine their property, money, effects, skill, and knowledge... Among the acts or conduct which are indicative of a joint venture, no single one of which is controlling in determining whether a joint venture exists, are: (1) joint ownership and control of property; (2) sharing of expenses, profits and losses, and having and exercising some voice in determining division of net earnings; (3) community of control over, and active participation in, management and direction of business enterprise; (4) intention of parties, express or implied; and (5) fixing of salaries by joint agreement.”

24. *Black's Law Dictionary* (7th Edn., p. 843) defines “joint venture” thus:

“Joint venture.—A business undertaking by two or more persons engaged in a single defined project. The necessary elements are: (1) an express or implied agreement; (2) a common purpose that the group intends to carry out; (3) shared profits and losses; and (4) each member's equal voice in controlling the project.”

25. An illustration of joint venture may be of some assistance. An agreement between the owner of a land and a builder, for construction of apartments and sale of those apartments so as to share the profits in a particular ratio may be a joint venture, if the agreement discloses an intent that both parties shall exercise joint control over the construction/development and

be accountable to each other for their respective acts with reference to the project.” (emphasis supplied)

11. The Hon’ble Supreme Court further held that whether an agreement is a joint-venture agreement or a collaboration agreement or a development agreement has to be decided on the basis of the nature and substance of the said agreement without going by the nomenclature of the same.
12. It was further held that the contract for construction of an apartment or house for the landowner in accordance with the specifications and in terms of a contract cannot be termed as a joint venture agreement even if there is a consideration for such construction flowing from the landowner to the builder in the form of sale of undivided share in the land and permission to construct and own certain portion.
13. After going through the impugned order, this Court finds that the learned Additional District Judge without taking into consideration whether the agreement in question satisfies the tests of a joint-venture agreement held that the dispute is a “commercial dispute”.
14. The learned Additional District Judge also did not return any finding as to the applicability or otherwise of the decision in Faqir Chand Gulati’s case.
15. Before arriving at a finding as to whether a dispute involved between the parties is “commercial” or not, the Court is required to consider the terms of the said agreement and then decide as

to whether the dispute arising out of the same falls within the definition of “commercial dispute” as defined under Section 2(1)(c) of the 2015 Act. Whether the agreement in question falls within sub-clause (VI), (VII) or (XI) under any of the other subclauses of Section 2 (1) (c) of the 2015 Act, also has to be considered before arriving at a final conclusion as to whether the dispute is “commercial” in nature. Such an exercise was not undertaken by the learned Additional District Judge while holding that the application under Section 34 of the Arbitration and Conciliation Act was not maintainable before that Court.

16. In view thereof, this Court is inclined to remand the matter before the learned Additional District Judge.

17. With the above observation, CO 1759 of 2024 stands allowed.

The impugned order stands set aside and the application under Section 34 of the Arbitration and Conciliation Act being Miscellaneous Case No.24 of 2022 (Arb.) is remanded to the learned Additional District Judge, Fast Track, 5th Court at Barasat for deciding the issue of maintainability of the said miscellaneous case afresh after giving opportunity of hearing to the respective parties and by passing a reasoned order in the light of the observation made hereinbefore. The learned Additional District Judge shall proceed thereafter in accordance with law depending upon the fate of the maintainability application.

18. Parties will be at liberty to approach the learned Additional District Judge, Fast Track, 5th Court at Barasat for fixing an early date of hearing of such application on the issue of maintainability. If such an approach is made the learned Additional District Judge shall fix an early date of hearing and shall make an endeavour to dispose of the same as expeditiously as possible but preferably within a period of 4 weeks from the date of communication of a server copy of this order.

19. There shall be, however, no order as to costs.

20. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)

B.P./Aritra Ghosh
A.R. Court