

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction  
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya  
&  
The Hon'ble Mr. Justice Uday Kumar

FMAT No. 376 of 2024

Shree Vaishanavi Ispat Limited  
-vs-  
M/s. Sharp Ferro Alloys Limited

For the appellant : Mr. Arijit Bardhan,  
Ms. Satabdi Das

For the respondent : Mr. Rwitendra Banerjee,  
Mr. Ranabir Roy Chowdhury,  
Mr. Aritra Roy nChowdhury,  
Mr. Prasun Mukherjee,  
Mr. Subhamoy Dutta

Heard on : February 17, 2025.

Judgment on : February 17, 2025.

**Sabyasachi Bhattacharyya, J.:**

1. A preliminary objection is taken by the respondent as to whether the present appeal is maintainable before this Bench,

which has been conferred determination as an ordinary court of First and First Miscellaneous Appeals as per the roster of this Court, as opposed to the Commercial Appellate Division of this Court.

2. Learned counsel appearing for the respondent argues that the suit, as framed, is a commercial suit within the connotation of the Commercial Courts Act, 2015 (in short “ the 2015 Act”).
3. Learned counsel relies on the caption of the suit as a commercial suit and also attracts the attention of the court to Paragraph 17 of the plaint, where it has been specifically stated that the present case falls within the category of a commercial dispute under Section 2 of the 2015 Act and that a pre-institution mediation application under Section 12(A) of the said Act has been filed by the respondent before the District Legal Services Authority.
4. Also, it is pointed out that the value of the suit and the relief sought in the suit come within the ambit of “specified value” as referred to in the 2015 Act and the transaction between the parties, which is the genesis of the legal action, is also a commercial transaction within the contemplation of the 2015 Act.

5. As such, the present appeal has to be filed before the Commercial Appellate Division of this Court in terms of Section 13(1A) of the 2015 Act.
6. Learned counsel for the respondent also relies on several Notifications pertaining to the City Civil Court at Calcutta. By a Notification dated March 20, 2020 issued by the Judicial Department of the Government of West Bengal, power was conferred by the Governor, in consultation with this court, on the City Civil Court at Calcutta to take up commercial disputes, not less than Rs.3,00,000/- and not more than Rs.10,00,000/- exclusively, and exceeding Rs.10,00,000/- but not exceeding Rs.1,00,00,000/- concurrently with the Commercial Division of this Court.
7. In case of Commercial Division of the High Court at Calcutta, the jurisdiction would lie of an amount exceeding Rs.10,00,000/-. Thus, if the specified value of the of the dispute is between Rs.10,00,000/- and Rs.1,00,00,000/-, the Commercial Division of this Court and the Commercial Courts of the City Civil Court at Calcutta would have concurrent jurisdiction.

8. Learned counsel also places reliance on a further Notification of the self-same date where it was mentioned that in exercise of the power conferred by sub-section (1) of Section 3 of the 2015 Act, the Governor, after consultation with the High Court, Calcutta, was pleased to constitute with immediate effect two Commercial Courts at Calcutta, for the purpose of exercising the jurisdiction and powers conferred on those Courts under the said Act.
9. It is submitted that, however, since no such Commercial Court has been specifically designated by name till date, all the Benches of the City Civil Court at Calcutta are being deemed to be conferred with the power to deal with commercial disputes and are being allocated commercial suits.
10. Learned counsel appearing for the appellant categorically controverts such contentions.
11. Learned counsel places reliance on the amendment to Order VI Rule 15-A of the Code of Civil Procedure brought by virtue of the 2015 Act.
12. It is argued that in terms of the said amendment, a “statement of truth” has to accompany the affidavit in support of the plaint in a commercial suit, the format of which has been

given as Appendix 1 of the Schedule to the 2015 Act. It is pointed out that the affidavit accompanying the plaint in the present suit does not at all adhere to the requirements of the said format and as such it cannot be deemed that the suit was intended to be a commercial suit.

13. It is further argued that in view of the valuation of the suit as disclosed in the plaint being Rs. 79,93,083.11 p., the same comes within the concurrent jurisdiction of the Commercial Division of this Court and the Commercial Courts in the City Civil Court at Calcutta.

14. Hence, in the absence of any specific designation of any particular court as a Commercial Court in the City Civil Court at Calcutta, it was open to the plaintiff/respondent to approach the Commercial Division of this Court to file the suit. Having had such option but deliberately chosen not to avail of the same and filed the suit in the City Civil Court at Calcutta, where no specific court has yet been designated as a Commercial Court, it should be construed that the suit was filed as an ordinary suit not coming within ambit of a commercial suit under the 2015 Act and as such, this Division

Bench has determination to take up the appeal in connection with any appellable order passed therein.

15. Heard learned counsel on the issue of maintainability of the appeal before this Bench.
16. A peculiar conundrum has been brought to light before us in the present case. Although in exercise of the power conferred under Section 3(1) of the 2015 Act, the Government of West Bengal, in consultation with this Court, had constituted with immediate effect, vide Notification dated March 20, 2020, two commercial courts at Calcutta for the purpose of exercising jurisdiction and powers conferred on those courts under the 2015 Act, fact remains that no specific Commercial Court has been constituted till date in pursuance of such Notification.
17. We further take judicial note of the fact that there has not yet been any specific Notification designating any two particular Benches of the City Civil Court at Calcutta as commercial courts in pursuance to Notification No. 156 JL dated March 20, 2020 referred to above.
18. Thus, the position remains that as of today, there is no specific court or Bench in the City Civil Court at Calcutta,

which has been particularly designated by name as Commercial Courts within the contemplation of the 2015 Act.

19. The larger issue which falls for consideration, thus, is whether the operation of the 2015 Act would remain in limbo merely because there is an administrative void in specifically designating two courts as commercial courts in the City Civil Court at Calcutta.

20. A composite reading of all the provisions of the 2015 Act clearly indicates that the said Act came into the force with effect from October 23, 2015.

21. Thus, on and from October 24, 2015, if the valuation of the dispute comes within the definition of “specified value” under Section 2(1)(i) of the 2015 Act and if the matter pertains to a “commercial dispute” within the meaning of Section 2(1)(c) of the 2015 Act, there is no option left open to the parties to approach an ordinary civil court with the said dispute and it is the Commercial Court or the Commercial Division of this Court (depending on territorial jurisdiction) which and only which has the exclusive jurisdiction to take up such suits.

22. In such a situation, there is no other option for this Court but to judicially interpret the predicament which we are in by

construing all the Benches of the City Civil Court at Calcutta, till the formation of two specifically designated commercial courts in terms of the Notification dated March 20, 2020, to be deemed to function as commercial courts within the contemplation of the 2015 Act for the Calcutta jurisdiction at the district level.

23. Otherwise, the effect would be disastrous, since all the suits which have been filed in the interregnum after the enactment of the 2015 Act before the City Civil Court at Calcutta, by treating those to be commercial suits within the contemplation of the 2015 Act, would be rendered bad and/or not maintainable, for no fault of the litigants.

24. As such, the only way we can harmonize between the gap in actual administrative action in constituting the two notified commercial courts in the City Civil Court at Calcutta and the purpose and intention of the 2015 Act is to bridge the breach between the two by construing all the Benches of the City Civil Court at Calcutta, which are functioning at present, to be empowered to entertain commercial suits/commercial disputes within the contemplation of the 2015 Act till two specifically designated commercial courts come up in the City Civil Court

at Calcutta in pursuance of the Notification bearing no. 156 JL dated March 20, 2020.

25. Hence, if a suit of 'specified value' is instituted in respect of a 'commercial dispute' within the contemplation of the 2015 Act in the City Civil Court at Calcutta, whichever Bench of the said court is allocated the suit has to be construed to be a 'Commercial Court' within the definition of the 2015 Act, till the two notified commercial courts actually see the light of day and/or any two particular Benches of the City Civil Court are designated, pursuant to the Notification dated March 20, 2020, to function as 'Commercial Courts'.
26. Seen from such perspective, we find that on a plain reading of the plaint in the instant suit, which is the genesis of the present matter, the same was for a dispute of specified value coming within the contemplation of the 2015 Act and relates to a commercial dispute between the parties. Thus, it is to be deemed that the same is a commercial suit filed in a Commercial Court under the 2015 Act.
27. Also, in paragraph 17, the plaintiff made its intention very clear to treat the suit as a commercial suit by taking resort to Section 12(A) of the 2015 Act and asserting that the dispute

between the parties is a commercial dispute. The valuation of the dispute as disclosed in the plaint also takes it within the domain of 'specified value' under the 2015 Act, thus lending it the colour of a commercial suit under the said Act.

28. With regard to the discrepancy and/or error in the affidavit in support of the plaint, which might not be in proper format, it is always open to the defendant to take such objection before the trial court and/or for the concerned court to grant, in its discretion, leave to the plaintiff to file a proper affidavit in consonance with Appendix I to the Schedule of the 2015 Act. However, such defect *per se* does not render an otherwise commercial suit a non-commercial suit only for such reason.

29. The appellant, otherwise, is justified in submitting that the caption "Commercial Suit" of the plaint does not *ipso facto* render it to be a commercial suit under the 2015 Act, since even before the promulgation of the said Act, "commercial suits", being captioned as such, were being filed in the City Civil Court at Calcutta. However, even without taking into account the caption of the plaint, for the reasons as indicated above, we find that the court concerned in the present case, that is, the Sixth Bench of the City Civil Court at Calcutta,

acted as a Commercial Court within the definition of the 2015 Act and as such an appeal against an order passed by the said Court, under Section 13(2) of the 2015 Act, lies before the Commercial Appellate Division of this Court and not before this Bench, which is exercising determination as an ordinary appellate Civil Bench.

30. Accordingly, we hold the present appeal to be not maintainable in its present form and the same is, accordingly, dismissed on such ground. The connected application also stands disposed of accordingly.
31. Leave, however, is granted to the appellant to present the appeal in appropriate format before the Commercial Appellate Division of this Court within a fortnight from date.
32. It is made clear that in view of the *bona fide* error and misconception of law under which the appellant was labouring, in view of the legal void in the field, we are of the opinion that the benefit of Section 14 of the Limitation Act is required to be extended to the appellant for the period during which the appeal was pending before this Court and the further time of a fortnight which we have granted for presentation of a properly

constituted appeal before the Commercial Appellate Division of this Court.

33. In view of the above, the interim order granted earlier stands vacated, with liberty to the appellant to renew such prayer before the Commercial Appellate Division in connection with the proposed appeal as and when the same is presented before the said Court.

34. It is further clarified that we have not gone into the merits of the respective contentions of the parties at all.

35. There will be no order as to costs.

I agree.

**(Uday Kumar, J.)**

**(Sabyasachi Bhattacharyya, J.)**