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Ct-37

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In the High Court at Calcutta
Civil Appellate Jurisdiction
Commercial Division

FAT 440 of 2023

**Jayshree Transport Pvt. Ltd.& Ors.
Vs.
Hriday Narayan Singh & Ors.**

Mr. Sakya Sen, Sr. Adv
Mr. Meghnad Dutta
Mr. Abhishek Shaw
... For the Appellants

Mr. Saptangsu Basu, Sr. Adv
Mr. Ayan Banerjee
Ms. Debasree Dhamali
Ms. Riya Ghosh
... For the Respondent no. 1

Mr. Arijit Bhowmick
Mr. Soumyadeep Dasgupta
... For the Respondent nos. 2 to 10

1. The appeal is arising out of an order dated 23rd November, 2023 in a commercial suit in which the maintainability of the said suit in the Commercial Division was raised and decided against the plaintiff.
2. Briefly stated, on the basis of the representation made by the defendant No.1 that he had vast experience in real estate and he had connections with owners of immovable properties in and around Calcutta, the defendant No.1 was inducted as one of the directors of the plaintiff No.1. The defendant

No.1

was authorized to negotiate with the owners of the properties for development thereof by entering into suitable development agreements for the benefit of the plaintiff No.1 company. It was mutually agreed that the plaintiff No.1 company would be developer and would be represented by the defendant No.1 and he would also act as the constituted attorney of the plaintiff No.1 company in aid of the said development project. It was on the basis of such representation a registered development agreement and a registered power of attorney was executed in favour of the defendant No.1. The defendant Nos.2 to 10 were introduced by the defendant No.1 and on the basis of the representation that the said defendants are ready and willing to develop the properties mentioned in the schedule-A, a development agreement was executed.

3. However, it later on transpired that the defendant No.1 had acted in the breach of its fiduciary duty and misappropriated huge sums without discharging the liability or the purpose for which such money was paid to the defendant No.1. In view of such conduct the defendant No.1 was removed from the Board of Directors of the plaintiff No.1 on 15th March, 2019. The

plaintiff No.1 company has been able to ascertain that the defendant No.1 had withdrawn a total sum of Rs.77,50,500/- during the period from January, 2019 to November, 2019 and the entire amount had been transferred to the personal bank account to the defendant No.1. It was in such circumstances the plaintiff filed a suit for recovery of money unauthorisedly withdrawn by the defendant No.1 on behalf of the plaintiff No.1.

4. Mr. Sakya Sen, learned senior counsel appearing for the appellants, submits that under the Commercial Courts Act the dispute comes within the purview of Section 2(1)(c)(xi) of the Commercial Courts Act and the learned Judge, Commercial Court has failed to exercise its jurisdiction without a meaningful reading of the plaint. Mr. Sen has emphasized that the commercial dispute under Section 2(1)(c)(xi) is comprehensive enough to include all disputes arising out of joint venture agreement as the expression “a dispute arising out of” would indicate and is comprehensive enough to include the dispute forming the subject matter of the suit and is irrespective of the fact whether the dispute is between the Company and the Directors inter se. The real flavor of the dispute

has remained as a dispute arising out of the joint venture agreement.

5. We have carefully read the plaint and the judgment of the learned Judge, Commercial Court. The dispute is essentially between the plaintiffs and the defendant no. 1. In the plaint it has been admitted that the defendant no. 1 was inducted by the plaintiff company on the basis of certain assurances and he acted in breach thereof. It is not a dispute arising out of joint venture agreement per se as the reference to the joint venture agreement would only show that the defendant no. 1 realised certain amounts in terms of the joint venture agreement and had misappropriated the said amount for his personal gain. This dispute is not a dispute contemplated under Section 2(1)(c)(xi) of the Commercial Courts Act. Hence, we are of the view that the learned Trial Court was justified in directing the withdrawal of the suit and file it before the appropriate forum. In view of the pendency of the appeal we extend the time to withdraw and file the plaint and other pleadings before the appropriate forum by three weeks.
6. We request the transferee Court to expedite the process of hearing of the suit and frame time-

line with regard to the procedural matters in order to make the said suit ready for hearing.

7. In view of the above, FAT 440 of 2023 stands disposed of.

8. Urgent Photostat copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)