

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APD/9/2024
WITH
CS/69/2017

SUBRATA KUMAR GHOSE
VS
RITES LIMITED AND ANOTHER

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE OM NARAYAN RAI
Date : April 28, 2025.

Appearance:

Mr. Arijit Bose, Adv.
Mr. Jit Roy, Adv.
Ms. Atreyee Senapati, Adv.
...for the appellant.

Mr. Dwip Raj Basu, Adv.
Mr. Ritoban Sarkar, Adv.
...for the respondents.

The Court: This appeal is directed against a judgment and order dated January 25, 2023, whereby the appellant's suit was dismissed by a learned Judge of this court.

A contract was awarded to the appellant by the respondents. The contract was subsequently terminated by the respondents on the ground of poor progress of work. Earnest money deposit, performance guarantee and security deposit were forfeited by the respondents. Making a claim of Rs.2.89 crores approximately, the appellant filed CS No. 69 of 2017.

Although the learned Judge recorded evidence of the plaintiff and permitted the plaintiff to exhibit about 77 documents, the learned Judge did not address the merits of the case. This is because, the learned Judge found that the dispute involved is commercial in nature and going by the

provisions of the Commercial Courts Act, the suit should have been filed in the Commercial Division of this Court. Solely on that ground the learned Judge dismissed the suit.

We have heard the learned counsel for the parties. In our view, the proper course of action should have been to return the plaint for being presented before the Commercial Division of this Court.

Hence, we set aside the order under appeal. The plaint is returned to the plaintiff for being presented before the Commercial Division within four weeks from date. If that is done, the Department shall re-number the suit and the suit can be proceeded with in accordance with law.

Accordingly, APD No. 9 of 2024 is disposed of.

(ARIJIT BANERJEE, J.)

(OM NARAYAN RAI, J.)