

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:- Hon'ble Justice I. P. Mukerji
Hon'ble Justice Biswaroop Chowdhury

FMAT 390 of 2023
With
CAN 1 of 2023

Prasad Ecostructure L.L.P.
Vs.
City Devcon Private Ltd. & Ors.

For the Appellant : **Mr. Ashok Kumar Banerjee, Sr. Adv.**
Mr. Ashim Kumar Routh
Ms. Manishka Dhar
Ms. Ananya Mondal

For the Opposite Parties : **Mr. Saptangsu Basu, Sr. Adv.**
Mr. Ayan Banerjee
Mr. Rajesh Upadhyay
Ms. Debasree Dhamali
Ms. Riya Ghosh
Ms. Debjani Ghosh

Judgment on : **19.01.2024.**

I. P. MUKERJI, J.-

Section 15 of the Commercial Courts Act, 2015 deals with transfer of pending suits. Section 15(2) provides that all suits and applications including applications under the Arbitration and Conciliation Act, 1996 relating to a commercial dispute and pending in any civil court in an area where a commercial court has been constituted shall be transferred to the commercial court. Sub-Section 5 of that section is very important. It lays down that where such suit or application is not transferred, the Commercial Appellate Division of the High Court may be approached with an application. In such an application the Appellate Division of the High Court may order transfer.

The subject matter of this appeal is an order of transfer made by a learned Civil Court to the Commercial Court in a district.

This appeal was heard on a point of maintainability raised by Mr. Saptangsu Basu, learned senior advocate appearing for the respondent. His short and simple argument was that such an order of transfer was not appealable under Section 13 or 15 of the Commercial Courts Act, 2015. Only when the order of transfer was refused by the civil court an application lay under Section 15(5) of the said Act to the High Court. No appeal was contemplated either under Section 15 or under Section 13 from either of these orders.

Learned counsel cited a division bench judgment of this court in **FMAT 154 of 2023** with **CAN 1 of 2023 (Sarit Kumar Ghosh & Anr. vs. Biswanath Banik & Ors.)** decided on 20th April, 2023.

Mr. Ashok Kumar Banerjee, learned senior advocate appearing for the appellant contended that the impugned order of the learned civil judge was under Rule 10 of Order VII of the Code of Civil Procedure returning a plaint to be presented to the proper court and was appealable under Order XLIII Rule (1)(a) read with Section 104 of the Code.

At this point of time it is necessary to analyse the above judgment of the division bench. It was against an order of the learned civil court refusing to transfer a suit to the commercial court.

An appeal was sought to be filed in the High Court which was not entertained with the remark or observation that under Section 15(5) only an application lay to the division bench of this Court in case the civil court refused to transfer a proceeding to the Commercial Court. This is the ratio of that judgment.

We are in perfect agreement with their lordships that under the scheme provided by Section 15 of the Commercial Court Act, 2015 in the event a civil court does not transfer a matter to the commercial court, the Appellate Division of the commercial court would adjudicate on an application made

before it by a party whether the suit is commercial in nature and ought to be transferred to the commercial court.

To my mind, Section 15 has got two parts. Section 15(1) to 15(4) is an administrative and judicial function which a civil court performs to give effect to the Commercial Courts Act, 2015 by transferring pending commercial matters before it to the commercial court. When there is no dispute with regard to the nature of the suit that it is commercial and should be transferred to the commercial court, the court performs an administrative function. It is quite likely that there may be a dispute as to whether the matter is commercial or not. In that event the civil court is to take a decision. If it decides not to transfer the case holding that it is not commercial then the Commercial Appellate Division of the High Court can be moved with an application under Section 15(5) to adjudge whether the matter is commercial or not and take a decision.

There is another possibility which has arisen in this case. The civil court decides that the case is commercial and should be transferred. One of the parties thinks that it is not so and ought not to have been transferred.

When the court is exercising this function it is doing so as a civil court and not as a commercial court.

Now, let us consider the appealability of orders under Section 13 of the said Act.

“13. Appeals from decrees of Commercial Courts and Commercial Divisions.

(1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.”

A reading of section 13 makes it plain that it deals with appeals from orders passed by a commercial court or a Commercial Division of a High Court. An appeal lies to the commercial appellate Court in the district if an order is passed by a court below the level of a district judge and to the commercial appellate division of the High Court when it is passed by the district judge. To attract Section 13 the order has to be passed by the court exercising the jurisdiction of a commercial court as provided in the said Act.

Section 15 operates in an entirely different field. If a civil court before which a suit is pending decides that the matter is not commercial in nature, by an application the Appellate Commercial Division of the High Court may be approached by a party complaining of such refusal. Then, exercising jurisdiction as a commercial court under the said Act the Appellate Division proceeds to decide whether the dispute is commercial or not.

As opposed to this when the civil court under Section 15 decides that the dispute is commercial and should be transferred to the commercial court and a party is aggrieved by this decision, a similar provision is not provided in Section 15.

To my mind when an ordinary civil court exercising the powers vested in it under Section 15 of the Commercial Courts Act, 2015 adjudicates on whether the suit is to be transferred to the commercial court or not, it continues to function as an ordinary civil court and cannot be described as a commercial court under the said Act. Hence any order passed by it is not

appealable under Section 13 of the said Act. If the civil court rules that the suit is to be transferred to the commercial court the remedy under Section 15 is also not available.

In that case should an aggrieved party be confined to an application for revision under Section 115 of the Civil Procedure Code or a writ application under Section 226 or 227 of the Constitution of India?

The appealability of such an order has to be tested under Order 43 read with Section 104 of the Civil Procedure Code. Order 43(1)(a) provides that an appeal shall lie from an order under Rule 10 of Order VII of the Code returning a plaint to be presented to the proper court.

Every part of a statute has to be given a proper meaning. Order VII Rule 10 provides that when a court comes to a conclusion that it does not have jurisdiction to decide a particular suit it simply returns the plaint to the plaintiff to enable him to present it in the proper court.

An order of the court is also to be interpreted so as to give it a purposeful meaning. The impugned order of the civil court transferring the suit to the commercial court should only be viewed as an order returning the plaint to be presented before the proper court. An unnecessary interpretation of the word “transfer” should not be made so as to interpret the said order as not one under Order VII Rule 10 of the Code. In those circumstances the impugned order is appealable as an ordinary civil appeal under Order 43(1)(a) read with Section 104 of the Civil Procedure Code. The appeal is maintainable before this court.

However, this bench does not have jurisdiction to hear out such an appeal.

It has only exercised its inherent jurisdiction to determine its own jurisdiction.

The preliminary point raised by learned counsel for the respondent is decided by holding that this court has the jurisdiction to entertain an appeal from the impugned order under Order 43(1)(a) read with Section 104 of the Civil Procedure Code but refers the appeal to the bench having determination to hear first appeals from orders under the aforesaid provision of the Code passed by a regular court of civil jurisdiction and not by a special court or a commercial court.

The appeal is partly disposed of by this judgment, on the point of maintainability.

The existing interim order is extended till 29th February, 2024 or further order whichever is earlier.

Urgent certified photo copy of this judgment and order if applied for be furnished to the appearing parties on priority basis upon completion of necessary formalities.

I agree,

(Biswaroop Chowdhury, J.)

(I. P. Mukerji, J.)