

Court No. - 38

Case :- ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 126 of 2020

Applicant :- M/S Adinath Builders

Opposite Party :- Chairman / Executive Officer, Nagar Palika Parishad

Counsel for Applicant :- Aklank Kumar Jain

Counsel for Opposite Party :- Ashish Mishra, Kuldeep Singh Chauhan

Hon'ble Saumitra Dayal Singh, J.

1. Sri Aklank Kumar Jain, learned counsel for the applicant, Sri Kuldeep Singh Chauhan, learned counsel for the Nagar Palika Parishad, Sri Ashish Mishra, learned counsel for the High Court and Sri Manish Goyal, learned Additional Advocate General. Sri Ashish Mishra and Sri Manish Goyal have offered valuable assistance on the request made by the Court.

2. The present application is filed under Section 36 of The Arbitration and Conciliation Act, 1996 (hereinafter referred as to the 'Act') read with provisions of The Commercial Courts Act, 2015 (hereinafter referred as to the 'CC Act'), seeking execution of an award dated 13.03.2018 drawn by Sri S.P. Banwait. By that award the sole arbitrator issued a direction to judgment debtor to pay Rs 2,50,33,316/- to the claimant-decree holder.

3. At first, the applicant filed an Execution Petition No.95 of 2018 (M/S Adinath Builders vs. Chairman/ Executive Officer, Nagar Palika Parishad, Etah) before the learned District Judge Etah. By his order dated 03.01.2020, the learned District Judge, Etah has returned the said execution case to the applicant to file the same before the proper Court. While doing so, the learned District Judge has taken note of Government notification dated 03.05.2019 amending the C.C. Act and letter dated 05.03.2019

issued by the High Court of Judicature at Allahabad in that regard.

4. Faced with such an order, the present application has been filed before the Commercial Division of the High Court at Allahabad. At the outset, an objection has arisen as to the maintainability of the present application before the Commercial Division. It has thus been submitted that the pecuniary as also the territorial jurisdiction of the Commercial Division has not yet been notified as may allow the present application to be entertained. Also, in view of the provision of section 10 (3) of the Act, it has been submitted that if such jurisdiction exists, execution application would lie only before the competent Commercial Court, which in this case would be the Commercial Court at Aligarh, in view of State Government notification dated 31.10.2017 issued under Section 3 (1) of the Act.

5. Relevant to the objections as have arisen the provisions of Section 3, 4, 7 and 10 of the C.C. Act read as below:

"3. Constitution of Commercial Courts:

(1) The State Government, may after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Act:

Provided that with respect to the High Courts having ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, constitute Commercial Courts at the District Judge level:

Provided further that with respect to a territory over which the High Courts have ordinary original civil jurisdiction, the State Government may, by notification, specify such pecuniary value which shall not be less than three lakh rupees and not more than the pecuniary jurisdiction exercisable by the District Courts, as it may consider necessary.]

(1A) Notwithstanding anything contained in this Act, the State Government may, after consultation with the concerned High

Court, by notification, specify such pecuniary value which shall not be less than three lakh rupees or such higher value, for whole or part of the State, as it may consider necessary.];

(2) The State Government shall, after consultation with the concerned High Court specify, by notification, the local limits of the area to which the jurisdiction of a Commercial Court shall extend and may, from time to time, increase, reduce or alter such limits.

(3) The 4[State Government may], with the concurrence of the Chief Justice of the High Court appoint one or more persons having experience in dealing with commercial disputes to be the Judge or Judges, of a 5[Commercial Court either at the level of District Judge or a court below the level of a District Judge].

3A. Designation of Commercial Appellate Courts.—Except the territories over which the High Courts have ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, designate such number of Commercial Appellate Courts at District Judge level, as it may deem necessary, for the purposes of exercising the jurisdiction and powers conferred on those Courts under this Act.]

4. Constitution of Commercial Division of High Court:

(1) In all High Courts, having [ordinary original civil jurisdiction], the Chief Justice of the High Court may, by order, constitute Commercial Division having one or more Benches consisting of a single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Act.

(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Division.

7. Jurisdiction of Commercial Divisions of High Courts: All suits and application relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court:

Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed or pending on the original side of the high court, shall be heard ad disposed of by the Commercial Division of the High court:

Provided further that all suits and applications transferred to the High court by virtue of Sub-section (4) of Section 22 of the Design Act, 2000 (16 of 2000) or Section 104 of the Patents Act, 1970 (39 of 1970) shall be heard and disposed of by the Commercial Division of the High Court in all the areas over which the High Court exercises ordinary original civil jurisdiction.

10. Jurisdiction in respect of arbitration matters:Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and–

(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted."

6. Also the provision of Section 36 of the Act are also relevant.

They read as below:

"36. Enforcement:-

(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application

for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908)."

7. Thus, in the first place by virtue of Section 3 (1) of the C.C. Act, the State Government in consultation with the High Court was required to notify and constitute such number of Commercial Courts at district level as may be necessary, for the purpose of exercising jurisdiction conferred on those courts. Undisputedly, the Government of Uttar Pradesh has, by notification dated 31.10.2017 notified 13 Commercial Courts for the entire state of Uttar Pradesh. The Commercial Court notified at serial number 5 of that notification-the Commercial Court at Aligarh has been granted territorial jurisdiction over the districts Aligarh, Etah, Hathras and Kashganj. Thus, there is no doubt as to the territorial jurisdiction of the Commercial Court, Aligarh over the cause of action inherent in the present execution application, being execution of an award drawn at Etah.

8. Then, in view of assistance offered by Sri Manish Goyal, the learned Additional Advocate General and Sri Ashish Mishra, learned counsel for the High Court, it is clear that as yet no notification has been issued by the State Government as may fulfil the requirements either of the second proviso to Section 3 (1) or Section 3 (1-A) of the C.C. Act.

9. It is also not in dispute that in the state of Uttar Pradesh, pecuniary jurisdiction of Civil Courts is unlimited. That being the position, at present, the pecuniary jurisdiction of the 13 Commercial Courts constituted by State Government notification dated 31.10.2017 would necessarily arise with the minimum pecuniary jurisdiction of Rs. 3,00,000/- as determined under section 2 (1) (i). It reads as below:

"2 (1) (i) "Specified Value" in relation to a commercial dispute, shall mean the value of the subject-matter in respect of a suit as determined in accordance with section 12 which shall not be less than one crore rupees or such higher value, as may be notified by the Central Government."

10. Thus the C.C. Act has fixed the minimum value of any commercial litigation that may be required to be adjudicated by a Commercial Court, at Rs. 3,00,000/. Then in the first place, the Central Government has been given the power to fix a higher pecuniary value, under Section 2 (1) (i). At present, no higher value has been notified by the Central Government. Then, by virtue of the second proviso to Section 3 (1) the State Government has also been given the power to notify a higher minimum pecuniary value for exercise of jurisdiction by the Commercial Courts created by it under Section 3 (1) of the C.C. Act. Also, by virtue of Section 3 (1-A) of the C.C. Act, the State Government has been given an overriding power to notify different higher values of pecuniary jurisdiction (above to 3 lacs) for different Commercial Courts in different parts of the State. That power has to be exercised by State Government in consultation with the High Court.

11. In absence of any further notification having been issued by either by the Central Government or the State Government as to pecuniary jurisdictions, though the Commercial Division has been created yet it may not derive any jurisdiction to itself to entertain any original commercial dispute in the nature of a regular suit proceeding, as on date. The entire pecuniary jurisdiction vests in the Commercial Courts exclusively. In that regard section 7 of the C.C. Act insofar as it relates to this Court has only been activated with respect to the proceedings arising under the Special Acts.

12. Insofar as the present application is concerned though filed under a Special Act yet clearly the same may never lie before

this Court, even if this Court would have pecuniary jurisdiction viz-a-viz a pure commercial dispute espoused by filing a civil suit. Section 10 (3) of the C.C. Act would prevent any such application to be filed before this Court. The award being not an international award, the same would remain executable by the Commercial Court and not by the Commercial Division.

13. The present application is accordingly, dismissed as withdrawn. The applicant is granted permission to file a fresh Execution Application before the Commercial Court at Aligarh.

14. In view of the above, the question, whether this Court has the character of a Court with ordinary original civil jurisdiction, as observed in ***Jyoti Bhushan Gupta and others vs. Banars Bank Ltd. AIR 1962 C 403*** is not required to be gone into, at present.

Order Date :- 1.2.2021

Pr/-