

HIGH COURT OF CHHATTISGARH, BILASPUR**TPC No. 59 of 2017**

1. South Eastern Coalfields Limited (SECL) Through The Chief General Manager, SECL, Sohagpur Area, District Shahdol Madhya Pradesh.

---- Applicant

Versus

1. Padam Kumar Singhaniya, S/o S.K. Singhaniya, R/o P. O. Burhar, District Shahdol Madhya Pradesh.

---- Respondent

For Applicant

Shri B.P. Sharma, Advocate with Shri Vivek Chopda, Advocate

For Respondent

Shri A.K. Prasad, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

By

Prashant Kumar Mishra, J.

22/01/2018

1. This is an application under Section 15 (5) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (for short 'the Act, 2015') for transfer of pending execution application before the Principal Civil Court of original jurisdiction to the Commercial Court, Raipur, on the ground that under Section 15 (2) of the Act, 2015 all suits and applications, including applications under the Arbitration and Conciliation Act,

1996, relating to a Commercial dispute of a Specified Value pending in any Civil Court in any District or Area in respect of which a Commercial Court has been constituted is required to be transferred to such Commercial Court, therefore, the present proceedings which is an application under Section 36 of the Arbitration and Conciliation Act, 1996 (for short 'the Act, 1996') is required to be transferred to the Commercial Court.

2. Admittedly, similar application preferred by the applicant in another matter bearing TPC No.4 of 2018 (**South Eastern Coal Fields Ltd. v M/s Tirupati Construction**) has already been dismissed by us vide order dated 10.01.2018.

3. Shri B.P. Sharma, learned counsel appearing for the applicant, would submit that despite the order passed by this Court in **M/s Tirupati Construction** (supra) this application deserves to be admitted. Shri Sharma would urge that the execution application pending before the Civil Court is continuation of the suit, therefore, a suit being required to be transferred to Commercial Court, the subject execution proceeding should also be transferred to the Commercial Court. Learned counsel would next submit that the object of enacting Commercial Court is to provide speedy adjudication of commercial litigation, therefore, the provisions of the Act, 2015 is required to be given precedence. He would also submit that the previous order passed in **M/s Tirupati Construction** (supra) is in conflict with the judgment of the Supreme Court rendered in **Punjab National Bank,**

Dasuya vs Chajju Ram and others¹. Learned counsel would also refer to the decisions rendered by the Supreme Court in **Dokku Bhushayya v. Katragadda Ramakrishnayya and Others**², **Hotel Balaji and others, etc v State of Andhra Pradesh and others, etc.**³, **Narmada Bachao Andolan v State of Madhya Pradesh & Anr.**⁴, **Allahabad Bank v Canara Bank and Another**⁵ and **Indian Bank v Manilal Govindji Khona**⁶.

4. Having heard learned counsel for the applicant, it is to be seen that the word “commercial dispute” has been defined under Section 2 (1) (c) of the Act, 2015 within which the present dispute between the parties is covered. However, even if it is a commercial dispute, by virtue of proviso to sub-section (2) of Section 15 no suit or application where the final judgment has been reserved by the Court prior to the constitution of Commercial Division or the Commercial Court shall be transferred either under sub-section (1) and sub-section (2).
5. In the case at hand, the award was passed on 7.7.2004 and thereafter application against the said award under Section 34 of the Act, 1996 preferred by the present applicant has also been dismissed on 01.12.2005. The execution application preferred on 26.12.2005 under Section 36 of the Act, 1996 bearing execution

1 (2006) 6 SCC 655

2 AIR 1962 SC 1886

3 AIR 1993 SC 1048

4 2011 AIR SCW 3337

5 (2000) 4 SCC 406

6 (2015) 3 SCC 712

case No. 111/04 is pending before the said Court. Even if the word 'application' is mentioned in sub-section (2) of Section 15, it would mean an original application and not an application for execution of the award which is preferred after the award has been delivered.

6. While so construing the provision contained in sub-section (2) of Section 15 of the Act, 2015, we draw support from the proviso to sub-section (2), which says that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2). Thus, any suit or arbitration application which has been heard finally by the Court under the Act, 1996 is not to be transferred to the Commercial Court.

7. In **Chajju Ram** (supra) the Supreme Court was dealing with the provisions contained in Section 31 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short 'the Act', 1993) wherein Section 31 (1) provides for transfer of suit or **other proceeding** whereas in the Act, 2015 there is no such expression like 'other proceeding' used by the legislature under sub-section(1) or sub-section (2) of Section 15. We may also draw support from the subsequently introduced amendment in the Act, 1993 inserting Section 31A by way of Recovery of Debts due to Banks and Financial Institutions (Amendment) Act, 2000 specifically entitling the

decree holder to apply for execution of the decree passed by the Civil Court before the Debts Recovery Tribunal.

8. In view of the aforesaid, the language contained in sub-section (2) of Section 15 of the Act, 2015 being clear, we are not inclined to take any different view of the matter, therefore, the present transfer petition, being bereft of merit, is also dismissed.

Sd/-

Sd/-

Judge
Prashant Kumar Mishra

Judge
Ram Prasanna Sharma

Gowri

