

(2020) 06 JH CK 0024

In the Jharkhand High Court

Case No : Writ Petition (C). No. 3941 Of 2019

Daimler Financial Services India Pvt. Limited.

APPELLANT

Vs

Vikash Kumar And Ors

RESPONDENT

Date of Decision : 24-06-2020

Acts Referred:

Commercial Courts Act, 2015 — Section 2(1)(i), 3(1A), 12
Commercial Courts, Commercial Division and Commercial Appellate Division of High Court Act, 2015 — Section 3(1)
Code of Civil Procedure, 1908 — Section 39
Arbitration and Conciliation Act, 1996 — Section 2(1)(e), 34
Constitution Of India 1950 — Article 227

Citation : (2020) 06 JH CK 0024

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : Bharat Kumar, Mitul Kumar

Judgement

1. Heard the learned counsel for the petitioner through video conferencing.
2. This writ petition has been filed by the petitioner invoking the jurisdiction of this Court under Article 227 of the Constitution of India with the prayer for quashing and setting aside the Order dated 27.04.2019 passed by the Presiding Officer, Commercial Court, Dhanbad in Execution Case No. 29 of 2019 whereby and where under the case filed for Execution of Award dated 26.04.2018 in A.C.P. (Daimler) no. 9 of 2018 arising out of Loan Agreement No. 20109101 dated 28.07.2014 before the sole arbitrator, was dismissed by the said Commercial Court on the ground that there is no notification of the State Government with respect to "specified value" in the light of the amendment of The commercial Courts Act, 2015 as amended by the 'The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018 (28 of 2018) (Here in after referred to as the amendment Act of 28 of 2018).
3. It is submitted by Mr. Bharat Kumar, the learned counsel for the petitioner that

the petitioner is a non-banking finance company. The opposite parties obtained loan which they failed to repay. As per the agreement, the matter was referred to the sole arbitrator. The sole arbitrator passed the award. The petitioner filed the petition for execution of the said award which was numbered as Execution Case No. 29 of 2019 in the Commercial Court, Dhanbad.

4. Referring to Section 3 (1-A) of the Commercial Courts Act, 2015 as amended by the amendment Act of 28 of 2018, which became retrospectively effective from 03.05.2018 which reads as under:-

"3. [(1-A) 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.]"(Emphasis Supplied) The learned Court below observed that the said Court below is at present having pecuniary jurisdiction of one crore rupees or such higher value as may be notified by the Central Government as there is no notification of the State in compliance of Section 3 (1-A) of the Commercial Courts Act, 2015 as amended by the amendment Act of 28 of 2018, and came to a conclusion that the Court below has no jurisdiction to decide the execution petition and dismissed the same for being non-maintainable.

5. Mr. Kumar, the learned counsel for the petitioner drawing attention of the Court to Section 2(1) (i) of the Commercial Courts Act, 2015 as amended by the said amendment Act of 28 of 2018 which reads as under:-

'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 three lakh rupees] or such higher value, as may be notified by the Central Government' (Emphasis Supplied) Submitted that therein the words "which shall not be less than three lakh rupees", before 03.05.2018, that before being amended by amendment Act of 28 of 2018 used to be "which shall not be less than one crore rupees."

6. Drawing attention of this Court to annexure-4 of the brief which is the notification regarding establishment of the Commercial Court inter alia at Dhanbad which reads as under:-

NOTIFICATION The 24th may, 2016 S.O. 24 - dated 27th may, 2016 In exercise of the powers conferred by Section 3(1) of The Commercial Courts, Commercial Division and Commercial Appellate Division of High Court Act, 2015, the State Government in consultation with the Hon'ble High Court of Jharkhand, Ranchi, is pleased to establish one Commercial Court each at Ranchi, Dhanbad & East Singhbhum (Jamshedpur) District. The jurisdiction of above mentioned Commercial Courts at Ranchi, Dhanbad and East Singhbhum (Jamshedpur) shall be the local limits of Ranchi, Dhanbad and East Singhbhum (Jamshedpur) District respectively.

2. This notification shall come into force with effect from the date of notification.

(File No. -B/Vidhi-Court Gathan-Ka-02/2016-1220/J) By the order of the Governor of Jharkhand, Dinesh Kumar Singh Principal Secretary-cum-L.R.

Law Department Govt. of Jharkhand, Ranchi.

And also drawing attention of this Court to annexure-5 of the brief by which the local limits of jurisdiction has been vested upon the said three commercial Courts established by the said notification at annexure-4 of the brief which reads as under:-

NOTIFICATION S.O. 28 - In exercise of powers conferred by Section 3(1) of The Commercial Courts, Commercial Division and Commercial Appellate Division of High Court Act, 2015, the State Government in consultation with the Hon'ble High Court of Jharkhand, Ranchi has constituted one Commercial Court each in the District of Ranchi, Dhanbad & East Singhbhum (Jamshedpur) by the Law Department's Notification No-1220/J, dated 24.05.2016. After due consideration the State Government in consultation with the Hon'ble High Court of Jharkhand, Ranchi has decided and extended the jurisdiction of local limits of above mentioned Commercial Courts as mentioned below:-

S. No.

Commercial Court

Jurisdiction (Local Limits) notified by Law Department vide Notification No. 1220/J dated 24.05.2016

Extended Jurisdiction (Local Limits)

1-

Ranchi

Ranchi

South Chotanagpur Division and Palamau Division

2-

Dhanbad

Dhanbad

North Chotanagpur Division and Santhal Pargana Division

3-

East Singhbhum (Jamshedpur)

East Singhbhum (Jamshedpur)

Kolhan Division

2. This Notification shall come into force with effect from the date of notification.

3. The earlier Notification no.-1220/J dated 24.05.2016 issued by Law Department is hereby amended to that extent.

(File No. -B/Vidhi-Court Gathan-Ka-02/2016-1476/J) By the order of the Governor of Jharkhand, Dinesh Kumar Singh Principal Secretary-cum-L.R. Law Department Govt. of Jharkhand, Ranchi.

It is submitted by Mr. Kumar, the learned counsel for the petitioner that the said Amendment Act, 28 of 2018 has received Presidential assent on 20.08.2018 though inadvertently due to a printing error, in paragraph no.15 of this instant writ application, the said date has wrongly been mentioned as 20.08.2019 and the said Act has been published in Gazette on 21.08.2018 but the same has been applicable with retrospective effect from 03.05.2018.

7. Mr. Kumar, the learned counsel for the petitioner also drew the attention of this Court to the statement of objects and reasons of the said amendment Act of 28 of 2018 and submits that conjoint reading of section 2(1)(i) and section 3(1-A) of the Commercial Courts Act, 2015 as amended by the amendment Act of 28 of 2018, implies that the Central Government is empowered to notify the "specified value" as defined under section 2(1)(i) of the Commercial Courts Act and the notification of the said amendment by way of publishing the same in the official Gazette dated 21.08.2018, in effect has fixed the "specified value" for all purposes as not less than rupees three lakhs or in other words an amount of three lakhs rupees or more. It is then submitted that unless and until the State Government after consultation with the High Court, by notification, specify such pecuniary value not less than rupees three lakhs or any higher value for whole or part of the State, the "Specified Value" for the Commercial Court established at Dhanbad by the said notification will be not less than rupees three lakhs or in other words an amount of three lakhs rupees or more. It is further submitted by the learned counsel for the petitioner that section 3(1-A) of the Commercial Courts Act, 2015 as amended by the amendment Act of 28 of 2018, confers a discretion with the state government that it may after consultation with the concerned High Court, by notification, specify such " Specified 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 which means that the state government may not specify any "Specified value" other than "not less than three lakh rupees" as fixed by section 2(1)(i) of the Commercial Courts Act, 2015 as amended by the amendment Act of 28 of 2018 and as yet no notification has been published by the State Government by specifying any pecuniary value other than the one of amount not less than rupees three lakhs as mentioned in Section 2(1)(i) of the Commercial Courts Act, 2015 as amended by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018 (28 of 2018). Hence, it is submitted that in view of the said amended Section 2(1)(i) of the Commercial Courts Act, 2015 as amended by the Act 28 of 2018, for the Commercial Court at Dhanbad, the "specified

value" to be determined in accordance with Section 12 of the Commercial Courts Act, 2015 is "not less than three lakhs rupees", hence the said execution petition filed is maintainable in the Commercial Court at Dhanbad.

8. In support of his contention, Mr. Bharat Kumar, the learned counsel for the petitioner relied upon the Judgment of Hon'ble Gujarat High Court, in the case of Vijay Cotton And Fiber Company vs. Agarwal Cotton Spinning Pvt. Ltd. dated 11.02.2019, paragraph no.16 of which reads as under:-

"16. The sum and substance of the above discussion is that in State of Gujarat where the commercial Courts are constituted at District level, the execution petition would be maintainable in that Court; as contemplated in the notification referred herein above irrespective of its Judge being lower in hierarchy than the District Judge. Since the commercial Court lower in hierarchy than the district level is not contemplated under subsection (1) of Section 3, there would be no question of institution of the execution petition with the District Judge and transfer by him under Section 39 of CPC to the Court lower in hierarchy than the such District Judge. The Principal Civil Court in the District Court as defined in Section 2 (1) (e) of the Arbitration and Conciliation Act read with Section 3 of the Commercial Courts Act, in respect of the commercial disputes, would be the Commercial Court at the district level as constituted under subsection (1) of Section 3 of the later Act and would be the Court competent to execute awards declared under Section 34 of the Arbitration Act other than those relating to international arbitration. By virtue of the notification above referred, as also by C/AO/216/2018 ORDER virtue of the provisions referred to herein above, the Court contemplated in the notification, irrespective of the designation of the Judge would be the commercial Court at district level; and in absence of contemplation of Commercial Court of the lower hierarchy than the District level, in the Commercial Court Act, it would execute the decree without transferring it under Section 39 CPC."

9. Mr. Bharat Kumar also relied upon the Judgment of Hon'ble Supreme Court of India in the case of Radhey Shyam & Anr. vs. Chhabi Nath & Ors. reported in (2015) 5 SCC 423, in support of its contention that challenges to judicial order can lie by way of a petition under Article 227 of the Constitution of India.

10. Hence, it is submitted by Mr. Kumar that the said impugned order dated 27.04.2019 passed by the District Judge-XIV- cum-Presiding Officer, Commercial Court, Dhanbad in Execution Case No. 29 of 2019 be quashed and set aside and the Commercial Court at Dhanbad be directed to proceed ahead with the said Execution Case no. 29 of 2019 as per law.

11. Learned counsel for the opposite parties- respondents, Mr. Mitul Kumar, submits that there is no infirmity or illegality in the impugned order, hence, the impugned order does not attract indulgence of this Court. It is further submitted by Mr. Mitul Kumar, that conduct of the petitioner is not fair and the vehicle has forcibly been repossessed by the goons of the petitioner company in Bihar and

after repossession, the petitioner company is still running the said vehicle standing in the name of respondent no. 1, hence it is submitted that there is no merit in this Writ Petition nor there is any merit in the execution petition which has rightly been dismissed by the learned court below. It is then submitted that this Writ Petition being without any merit, be dismissed.

12. Having heard the submissions made by the learned counsel for the petitioner and after going through the materials in the record, this Court finds force in the submission of the learned counsel for the petitioner; as it is crystal clear that after amendment of Section 2(1)(i) of the Commercial Courts Act by the amendment Act 28 of 2018, the "Specified value" of the commercial Courts established under section 3(1) of The commercial Courts Act, 2015 to be determined in accordance with Section 12 of the said Act is "not less than three lakhs rupees"; which in other words means an amount of rupees three lakhs or more with effect from 03.05.2018. As rightly submitted by Mr. Kumar, in the absence of any notification under section 3 (1-A) of the said Commercial Courts Act, 2015 as amended by the said Act 28 of 2018, the commercial Court at Dhanbad having been established under section 3(1) of the Commercial Courts Act by the notification dated 24th May, 2016 will have its revised "Specified Value" of "not less than three lakhs rupees" w.r.e.f. 03.05.2018 instead of "not less than rupees one crore" as it stood fixed prior to 03.05.2018.

13. So far as the submission of Mr. Mitul Kumar, learned counsel for the opposite parties- respondents regarding merits of the case of the Execution petition is concerned, learned Commercial Court, Dhanbad has not applied its mind towards the merit of the case, hence, at this stage, this Court expresses no opinion regarding merits of the Execution Petition and the respondents are free to raise all their contentions made in the counter affidavit filed in this case; before Commercial Court, Dhanbad at the appropriate stage.

14. In view of the position of law as discussed above, this Court is of the considered view that the impugned order dated 27.04.2019 passed by the Presiding Officer, Commercial Court, Dhanbad in Execution Case No. 29 of 2019 by dismissing the said execution petition on the ground that the Commercial Court, Dhanbad has no pecuniary jurisdiction is not sustainable in law and is liable to be set aside.

15. Accordingly the impugned order dated 27.04.2019 passed by the District Judge-XIV-cum-Presiding Officer, Commercial Court, Dhanbad in Execution Case No. 29 of 2019 is quashed and set aside and this writ petition is disposed of with a direction to the commercial Court at Dhanbad to proceed with Execution Case No. 29 of 2019 in accordance with law, from the stage where it was, on the date said impugned order dismissing the said Execution Case No. 29 of 2019, was passed.

16. It is made clear that this Court has not expressed any opinion regarding contention raised by the respondents in their counter-affidavit in this case and

the Commercial Court, Dhanbad is free to make its own independent order in respect of the said grounds, without being prejudiced by this order of this Court, if and when, the said issues are agitated before it.