(2022) 02 CAL CK 0049

In the Calcutta High Court

Case No : APOT No. 164 Of 2021, CS No. 190 Of 2017

India Media Services Private Limited APPELLANT

Vs

Indian Express Newspapers [Bombay] Limited And Anr. RESPONDENT

Date of Decision : 15-02-2022

Acts Referred:

Commercial Courts Act, 2015 — Section 2(1)(c), 2(1)(c)(i), 2(1)(c)(xviii), 2(1)(c)(xxii), 2(2), 15(1), 15(5)

Citation : (2022) 02 CAL CK 0049

Hon'ble Judges : T. S. Sivagnanam, J;Hiranmay Bhattacharyya, J

Bench : Division Bench

Advocate : Domingo Gomes, Pradeep Sancheti, Nairita Datta Chowdhury, Sumon Dutta, Rajarshi Dutta, Anand Agarwal

Final Decision : Dismissed

Judgement

Hiranmay Bhattacharyya, J

1. The instant appeal is at the instance of the plaintiff and is directed against the judgment and order dated September 13, 2021 passed by a learned

Single Judge in CS/190/2017.

2. By the order impugned the prayer made on behalf of the plaintiff for transfer of the suit to the Commercial Division was rejected.

3. The plaint case is summarised hereunder as follows:

4. The second defendant purchased diverse quantities of newsprint from Newsprint Trading and Sales Corporation (for short â??NTSCâ?) and Price

and Pierce (Asia Pacific) Private Limited (for short â??P&P). Second defendant entered into an agreement dated September 7, 2000 with NTSC

and P&P for settlement of the outstanding dues amounting to Rs. 21.10 crores by way of sale of a property situated at Hyderabad. NTSC and P&P

also assigned their right, title and interest in their claims against the second defendant in favour of the plaintiff/ appellant by an agreement dated June

12, 2002. Since the second defendant failed and neglected to execute the deed of conveyance in terms of the said agreements, the appellant filed a

suit before the Honâ??ble High Court at Calcutta being CS 486 of 2002 (hereinafter referred to as â??the earlier suitâ?) for recovering all

outstanding monies toward payment for supply of newsprint. The parties settled a portion of the claims by filing a terms of settlement in the earlier suit

incorporating the agreements dated September 7, 2000 and June 12, 2002 which formed part of the Compromise Decree dated March 17, 2004. The

said compromise decree was put into execution and a deed of conveyance was executed on July 8, 2010 and possession of the property was handed

over to the appellant. However, the appellant discovered that the possession of the entire property conveyed to the appellant was not handed over and

the appellant claims to be entitled to the value of the balance portion of the land and filed the instant suit.

5. No formal application for transfer of the instant suit to the Commercial Division was filed. However, on an oral prayer of the appellant, the learned

Single Judge passed the impugned order. Being aggrieved, the plaintiff preferred the instant appeal.

6. Mr. Gomes, the learned advocate for the appellant drew the attention of the Court to various clauses of the agreements dated September 7, 2000

and June 12, 2002 which formed part of the consent decree and strenuously contended that since possession of a smaller area was handed over than

that conveyed by the deed of conveyance, the debt due and payable by the defendants to the appellant stood revived. He, thus, contended that since

the said debt relate to agreements for sale of goods, the dispute involved in the instant suit is a â??commercial disputeâ?? as defined under Section 2(1)

(c)(xviii) of the Commercial Courts Act, 2015 (for short â??the 2015 Actâ??). By referring to a decision of the Honâ??ble Supreme Court of India

in the case of M/s. Doypack Systems Pvt. Ltd. vs. Union of India and others reported at (1988)2 SCC 299, Mr. Gomes submitted that the expression

â??arising out of â?? appearing in Clause (c) of Section 2(1) of the 2015 Act shall be given as found in the standard dictionaries and the same has to

be given a expanded meaning. By drawing inspiration from the said reported decision he referred to the meaning of the word â??ariseâ? given in

Concise Oxford Thesaurus and contended that the dispute involved in the instant suit originated and emanated from the agreement for sale of goods.

He further, contended that such dispute shall not cease to be a commercial dispute merely because of the fact that it involves realization of monies out

of immovable property in view of Explanation (a) to Section 2(1)(c). In support of such submission he placed reliance upon a judgment of a learned

Single Judge passed on March 1, 2021 in GA no. 2 of 2021, CS 160 of 2020 (Swastik Project Private Limited vs. City Enclave Private Limited and

ors). He further contended that after the consent decree was executed the appellants realised that the respondents failed to convey 19601 square

meters of land as recorded in the agreements dated 7th September 2000 and June 12, 2002 which gave rise to the cause of action for filing the instant

suit. The said learned advocate laid special stress on the meaning of the expression â??disputeâ? and â??cause of actionâ? by referring to the

decisions of the Honâ??ble Supreme Court of India in the case of Prabhakar vs. Joint Director, Sericulture Department and Anr. reported at

(2015)15 SCC 1 and in the case of Bloom Dekor Limited vs. Subhash Himatlal Desai and Ors. reported at (1994)6 SCC 322 and tried to make a

distinction between the aforesaid expressions. He also placed reliance upon the provisions of Section 15(1) of the 2015 Act and contended that the

statute mandates the High Court to transfer the suit involving a commercial dispute to the Commercial Division and the statute does not require an

application to be filed therefor.

7. Mr. Dutt, learned advocate appearing for the respondents seriously disputed the contentions of the learned advocate for the appellant. He

contended that the dispute involved in the instant suit arises out of a part decree and the same is filed for realization of money on account of balance

portion of land, the possession of which could not be taken. He contended that the appellant is trying to enforce a consent decree by filing the instant

suit and the same cannot be said to fall within the definition of commercial dispute defined under the 2015 Act. By referring to the decision of the

Honâ??ble Supreme Court in the case of Ambalal Sarabhai Enterprises Limited vs. K.S. Infraspace LLP and another reported at (2020) 15 SCC

585, Mr. Dutt submitted that the expression â??commercial disputeâ? should be strictly construed and that if the dispute is not a commercial dispute, the suit should not be transferred to the Commercial Division as the same would defeat the very object and purpose of the 2015 Act. He further

contended that the appellant ought to file an application for transfer invoking subsection 5 of Section 15 of the 2015 Act.

8. Heard the learned advocates for the parties and perused the materials placed. From the statements in the plaint this Court finds that disputes arose

earlier between the second defendant and the NTSC and P&P being assignors of the appellant regarding payment for supply of goods. Since NTSC

and P&P assigned their rights in respect of their claims against the second defendant by virtue of the agreement dated June 12, 2002 appellant filed

the earlier suit for adjudication of the aforesaid dispute wherein the second defendant was a party.

9. In an adversarial litigation it is open to the parties to settle their disputes and differences by mutual consent. In the instant case the parties on mutual

consent settled a portion of their claims by filing a Terms of Settlement in the earlier suit incorporating the terms of the agreements dated September

7, 2000 and June 12, 2002. A compromise decree was passed by the Court on March 17, 2004 in the earlier suit.

10. It is well settled that a compromise decree is nothing but a contract between the parties superimposed with the seal of approval of the Court. The

Court recording a compromise passes a decree only after being satisfied that the terms of compromise is valid and lawful. The compromise decree

has the effect of determining the rights of the parties conclusively with regard to such matters in controversy and thus, it conforms to the definition of

â??decreeâ? under Section 2(2) of the Code of Civil Procedure. The rights of the litigating parties get crystalised by the compromise decree and it

puts an end to the disputes between such parties once for all.

11. In the instant case rights of the parties got crystalised by the compromise decree thereby discharging the liability of the second defendant to the

extent of Rs. 21.10 crores and the mode of discharge of such liability was also provided in such decree.

12. Though, a case has been made out in the plaint that the second defendant suppressed certain material facts relating to the immovable property

from the appellant, yet the compromise decree has been duly accepted by the appellant and the same was also put into execution for the purpose of enjoying the fruits of such decree and a deed of conveyance in respect of the immovable property was also executed through the execution

proceeding.

13. The main thrust of the argument of the appellant was that upon the failure on the part of the defendants to deliver vacant and peaceful possession

of a portion of the Hyderabad property, the aforesaid debt stood revived and since the said debt originated and emanated from the agreement for sale,

the dispute involved in the instant suit is a commercial dispute as defined under the 2015 Act.

14. In support of such argument, he drew the attention of the Court to the agreement dated September 7, 2000 and laid special emphasis on the

following portion of the said agreement appearing at page 73 of the paper book which runs thus-

â??The VENDOR agrees that in the event, that after taking possession of the said property, the CREDITOR discovers that the VENDOR did

not have the right to transfer the said property then the said debt due and payable by the VENDOR to the CREDITOR amounting to Rs.

21.10 Crores (Rupees Twenty one Crores and ten lakhs only) will stand revived and become due and payable by the VENDOR to the

CREDITOR which the CREDITOR will be entitled to recover provided the PURCHASER is ready and willing to return the possession of the

said property to the VENDOR.â??

15. By reading the said agreement dated 7th September 2000 as a whole and more particularly the portion of the said agreement as quoted

hereinabove, this Court is of the view that the said debt amounting to Rs. 21.10 crores in its entirety and not a portion thereof will stand revived only if

the vendor did not have the right to transfer the said property and the creditor will be entitled to recover the said amount only if the purchaser is ready

and willing to return possession of the said property to the vendor. Furthermore, there is no statement in the plaint to the effect that the plaintiff/

appellant is ready and willing to return possession of the said property to the vendor. The case made out in the plaint for revival of the debt as well as

the claim for compensation do not satisfy the conditions agreed upon by the parties which form part of the consent decree for revival of the debt and

for recovery of the said amount. Thus, this Court is unable to accept the contention of the appellant that the said debt stood revived in the instant case.

16. On a query of this court as to the basis of the plaintiffs claim for revival of the proportionate debt due and payable, as argued by the appellant, the

learned advocate for the appellant placed reliance on paragraph 36 of the plaint and contended that the terms and conditions of the deed of

conveyance provides for such proportionate revival of debt due and payable. Paragraph 36 of the plaint reads as follows:-

â??36. The plaintiff treats the terms and conditions of the said Conveyance as part of the plaint which inter alia provided that

â??That in the event, that after taking possession of the said property, the Newsprint Trading & Sales Corporation and the PRICE &

PIERCE (ASIA-PACIFIC) PTE LTD. that the VENDORS did not have the right to transfer the said property then the proportionate debt due

and payable by the VENDORS to the NEWSPRINT TRADING & SALES CORPORATION and the PRICE & PIERCE (ASIA-PACIFIC) PTE

LTD. amounting to Rs. 21.10 crores (Rupees Twenty One Crores Ten Lacs only) will stand revived and become due and payable by the

VENDOR No. 2 to the NEWSPRINT TRADING & SALES CORPORATION and the PRICE & PIERCE (ASIA-PACIFIC) PTE LTD.â??â??

17. After going through the statements in the plaint and more particularly the aforesaid paragraph on which reliance has been placed by the learned

advocate for the appellant, this court is of the considered view that the dispute in the instant suit arises, originates, emanates out of the deed of

conveyance, the terms and conditions of which has been extracted hereinbefore.

18. It is admitted in the plaint that the appellant has filed an application for execution in CS No. 486 of 2002 for bringing on record the fact that the

plaintiff/ appellant has not been handed over possession of the entire land conveyed to the appellant. An appeal arising out of the execution proceeding

is also pending. However, the reason for filing the instant suit is that the first defendant is not a party in the earlier suit. However, the plaint is silent as

to any existence of a commercial dispute between the plaintiff and the first defendant.

19. The disputes that arose out of non-payment for supply of goods in between the assignors of the plaintiff and the second defendant and which was

the subject matter of the earlier suit wherein the plaintiff and the second defendant were parties got settled by the consent decree and such disputes

have lost their existence in the eye of law with the passing of the decree.

20. The disputes which were settled with the passing of the compromise decree cannot revive once again merely on the allegation of the plaintiff that

they have not got possession of the entire property conveyed in its favour. Moreover, incorporation of terms and conditions in the deed of conveyance

which is different from the terms and conditions agreed upon by the parties and forming part of the compromise decree, in our considered opinion

cannot revive a non-existent dispute. Thus, this Court is unable to accept the submission of the appellant that the dispute in the instant suit originated

and emanated out of agreements for sale of goods.

21. In Prabhakar (supra) the Honâ??ble Supreme Court of India while dealing with the issue as to whether the worker can raise dispute after a

number of years of the cause of action under the Industrial Disputes Act, 1947, after taking into consideration the definition of â??disputeâ? as given

in the Blackâ??s Law Dictionary held that a dispute or difference arises when demand is made by one side and rejected by the other side and vice

versa. After taking into consideration the aforesaid definition of â??disputeâ? and after perusing the statements made in the plaint this court finds that

the dispute involved in the instant suit is that the defendants have handed over possession of a relatively smaller area of an immovable property than

the area conveyed in its favour by the deed of conveyance. The appellant filed the instant suit claiming the proportionate value of the consideration

money for transfer of the immovable property in favour of the appellant as well as proportionate amount of stamp duty relatable to the balance portion

of land together with other consequential relief. The subject of the instant litigation is the deed of conveyance. Thus, this Court is of the considered

view that the dispute in the instant suit arises out of deed of conveyance in respect of an immovable property. The said dispute does not fall within any

of the sub-clauses (i) to (xxii) of Section 2(1)(c) of the 2015 Act and the same accordingly cannot be said to be a commercial dispute.

22. There may be cases where commercial disputes may also involve action for recovery of immovable property or for realization of monies out of

immovable property given as security or involve any other relief pertaining to immovable property. The Explanation to Section 2(1)(c) purports to explain that a dispute which is otherwise a commercial dispute as defined under Section 2(1)(c) shall not cease to be a commercial dispute merely

because it involves a relief pertaining to immovable property. The said explanation can apply only if there exists a commercial dispute and not

otherwise.

23. This Court, however, does not find any substance in the submission of the learned advocate for the respondent that a suit may be transferred to

the Commercial Division only upon an application to such effect being filed. Section 15(1) of the 2015 Act casts an obligation upon the High Court to

transfer all pending suits and applications relating to a commercial dispute of a specified value to a Commercial Division. Filing of an application is not

a precondition for such transfer. It would suffice only if the attention of the Court, before whom a suit is pending, is drawn to the fact that the dispute

involved therein is a commercial dispute and the Court upon being satisfied as to the existence of such dispute of a specified value has no other option

but to transfer the same to the Commercial Court. Subsection (5) of Section 15 only comes into play in the event such suit or application is not

transferred to the Commercial Division. Thus, the appellants could not be faulted for not filing any application for transfer.

24. Section 15(1) of the 2015 Act provides for transfer of a suit relating to a commercial dispute of a specified value pending in a high Court to the

Commercial Division. The Honâ??ble Supreme Court in Ambalal Sarabhai (supra) after considering the Statements of Objects and Reasons of the

2015 Act and the various amendments of the Code of Civil Procedure held that 2015 Act has been enacted for the purpose of providing an early

disposal of high value commercial disputes. It has been further held therein that if suits which are not actually relating to commercial dispute but being

filed before the Commercial Court merely because of the high value and with the intention of seeking early disposal would only clog the system and

block the way for the genuine commercial disputes which may have to be entertained by the commercial courts as intended by the law makers.

Transfer of a suit involving a dispute which is other than a commercial dispute to the Commercial Division would frustrate the object and purpose of

setting up of commercial courts under 2015 Act as observed by the Honâ??ble Supreme Court in Ambalal Sarabhai (supra). Since this Court has already held that the dispute involved in the instant suit is not a commercial dispute, the same cannot be transferred merely on the ground that the

earlier suit which is still pending has been transferred to the Commercial Division.

25. The learned advocate for the appellant placed reliance on the decision of the Honâ??ble Supreme Court of India in the case of Bloom Dekor

(supra) in order to emphasize the meaning of the expression â??cause of actionâ?. Since in the instant appeal we are to decide as to whether the

dispute involved is a commercial dispute or not, the said judgment is of no assistance to the appellant.

26. The Honâ??ble Supreme court of India in Doypack Systems (supra) held that the expression â??arising out of â? are used in the expansive

sense. By applying the said legal proposition this Court is of the considered view that the dispute involved in the instant suit arises, originates and

emanates out of the failure on the part of the defendants to deliver possession of the entire property conveyed through the deed of conveyance and as

observed hereinbefore the dispute in the case on hand arises out of the deed of conveyance.

27. In Swastik Projects (supra) the plaintiff sought to enforce its rights emanating out of and in relation to the development agreement and accordingly

the learned Single Judge held that such dispute is a commercial dispute. The facts of the said decision are clearly distinguishable and as such the same

do not have any manner of application in the case on hand.

28. For the reasons as aforesaid this Court holds that the learned Single Judge was justified in rejecting the appellantâ??s prayer for transfer of the

suit to the Commercial Division. The instant appeal accordingly stands dismissed. The order dated September 13, 2021 passed by the learned Single

Judge is affirmed. There shall be, however, no order as to costs. It is, however, made clear that the observations rendered in this judgment would

cause no prejudice to the appellant in the suit as the observations are made only for the purpose of deciding as to whether the dispute is a commercial

dispute or not.

29. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

