

(2018) 03 BOM CK 0166

In the Bombay High Court

Case No : Writ Petition No.4129 Of 2018

M/s. Kandla Cargo Handlers

APPELLANT

Vs

M/s Container Corporation of India Ltd And Another

RESPONDENT

Date of Decision : 01-03-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 24
Arbitration and Conciliation Act, 1996 — Section 2(1)(c), 2(1)(e), 34, 36
Commercial Courts, Commercial Division And Commercial Appellate Division Of High
Courts Act, 2015 — Section 2(c)(v), 10(3)
Constitution of India, — Article 227

Citation : (2018) 03 BOM CK 0166

Hon'ble Judges : S.B. SHUKRE, J

Bench : Single Bench

Advocate : Shyam Dewani, Anil Mardikar

Judgement

1. Heard. Rule.Â Rule made returnable forthwith.
2. Heard finally by consent.
3. This petition challenges the order dated 27.6.2018 passed below application filed under Section 24 of the Code of Civil Procedure for transferring the appliction filed under Section 34 of the Arbitration and Conciliation Act, 1996 (in short, â??Arbitration Actâ?) and proceedings initiated under Section 36 of the Arbitration Act for execution of the arbitral award to one and the same Court.Â This order has been passed by the learned Principal District Judge exparte granting stay to the execution proceedings till next date.
4. The next date was of 3rd July, 2018 on which the petitioner filed an application for vacating the stay as the proceedings intiatiated for execution of what was basically a money decree were stayed by the learned Principal District

Judge without imposing any condition of depositing of any amount by respondents.Â However, this application was also rejected by the learned Principal District Judge.Â Aggrieved by these orders that the petitioner is now before this Court in the present petition.

5. After hearing Shri Shyam Dewani, learned counsel for the petitioner and Shri Anil Mardikar, learned Senior Counsel for the respondents what has been found is that the issue involved in this petition can also be resolved by considering the Pursis filed by both the sides being Stamp No.9309/2018 dated 26.7.2018 and also the nature of dispute involved in the proceedings pending before the Courts below.

6. By the Pursis dated 26.7.2018, the rival parties have stated that they would have no objection if both the matters being Special Darkhast

No.1262/2015 and M.C.A. No.593/2015 are transferred to the Court of Principal District Judge, Nagpur for a decision on merits of the case.Â It is

also stated in the Pursis that the rival parties would not raise any objection based on the provisions of the Arbitration Act and the Commercial Courts,

Commercial Division and commercial Appellate Division of High Courts Ordinance, 2015 (in short, â??Commercial Courts, 2015â??)

7. While there can be no dispute about the fact that the execution proceedings initiated under Section 36 of the Arbitration Act can be instituted before

any Court of the District Judge including that of the Principal District Judge, the position is quite different when it comes to filing of an application

under Section 34 of the Arbitration Act.Â In terms of Section 2(1)(e) of the Arbitration Act, such an application has necessarily to be filed before the

principal Civil Court of original jurisdiction which has been held to be the Court of Principal District Judge.Â However, such an application, by virtue

of Section 10(3) of the Commercial Courts, 2015, on and from the date on which this Act came into being, would now lie before the Commercial

Court.Â But, it has to be borne in mind that such application would be maintainable before the Commercial Court constituted under the Commercial

Courts Act only if the dispute in respect of which arbitral award has been passed is strictly a commercial dispute as defined under Section 2(1)(c) of

the Arbitration Act.Â There can also be a case when the dispute is partly a commercial and partly a non-commercial in terms of this definition.Â In

such a case, in my considered opinion it would be doubtful if it could only be

tried by a commercial Court, rather, it would not rule out the possibility of the dispute being capable of being tried even by the Court of Principal District Judge.Â But, this would of course would depend on facts of each case.Â This would make it necessary for us to consider the nature of the dispute involved in the instant arbitration award.

8. It is seen from the arbitration award that the basic contract which gave rise to arbitrable dispute between the parties was of performing tasks of handling, transporting and packaging as an agent of the respondents.Â This contract was not of carriage of goods simplicitor as contemplated under Section 2(c)(v) of the Commercial Courts, 2015. Basically the contract was for the tasks to be performed by the petitioner as an agent of the respondents, which arose from out of handling and packaging works performed for the purpose of transporting, and it was not fundamentally for transport simplicitor.Â Such being the nature of the contract, one has to say that at least part of the contract, which was it's main part, was out of the purview of Section 2(c)(v) of the Commercial Courts, 2015 which defines the commercial dispute.Â It would then follow that Section 34 application filed by the respondents not being strictly based upon a commercial dispute as contemplated under the Commercial Courts, 2015, would also be triable by the Court of Principal District Judge, Nagpur.Â Therefore, I am of the view that the agreement between the parties as evidenced in the joint pursis requires consideration by this Court in exercise of its extraordinary jurisdiction under Article 227 of the Constitution of India.

9. This pursis shows willingness of parties to go before the Court of Principal District Judge.Â I have already expressed my opinion on the nature of dispute.Â So, the cumulative effect of the agreement of parties and my opinion would be that I must express my inclination to accept the joint Pursis filed by the parties and it is so accepted.

10. Misc. Civil Application No.593/2015 and the Special Darkhast No.1262/2015 shall stand transferred to the Court of Principal District Judge, Nagpur who shall deal with them and dispose of them on merits after giving an opportunity of hearing to both sides.Â As the respondents have already shown their willingness to deposit the award amount, this is also necessary for proving the bona fides of the respondents, it is directed that the respondents shall deposit award amount in the Court of Principal District Judge

within one month from the date of order.Â

11. The proceedings initiated on the application filed under Section 24 of the Code of Civil Procedure are disposed of as expeditiously as possible and preferably within three months from the date of appearance of the parties before him.

12. Parties to appear before him on 6th August, 2018.

13. Rule is made absolute in the above terms.Â No costs.

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