
(2021) 08 UK CK 0027

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 961 Of 2021

Shashi Agarwal

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 03-08-2021

Acts Referred:

Arbitration & Conciliation Act, 1996 — Section 34
Commercial Courts Act, 2015 — Section 2(c), 15

Citation : (2021) 08 UK CK 0027

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : T.A. Khan, Vinay Bhatt, I.P. Kohli, Pradeep Hariya

Final Decision : Allowed

Judgement

Manoj Kumar Tiwari, J

1. A lease of land for agricultural purpose was granted to petitioner's father-in-law in the year 1933. The said lease was for 99 years. In the said

lease deed (Annexure No. 1 to the writ petition), there was an Arbitration clause contained in Clause No.17, which is reproduced below:

17. All disputes between the lessor and the lessee relating to or concerning the lease or any term covenant thereof shall be referred to the

Commissioner of the Division in which the demised land is situated and the decision of the said Commissioner thereon shall be final.

2. Since a dispute arose between petitioner and the lessor regarding the amount payable as lease rent, therefore, the dispute was referred to

Commissioner as Arbitrator. The Commissioner gave his award on 10.08.2005. Petitioner challenged the said award by filing an application under

Section 34 of Arbitration & Conciliation Act, 1996 before the District Judge,

Udham Singh Nagar, which was registered as Arbitration Case No. 04 of 2006. Vide order dated 11.01.2021, learned District Judge, Udham Singh Nagar has transferred Arbitration Case No. 04 of 2006 to the Commercial Court, Dehradun. Feeling aggrieved by the transfer order dated 11.01.2021, petitioner has approached this Court.

3. The impugned transfer order passed by learned District Judge, Udham Singh Nagar is on record as Annexure No. 1. Perusal of the said order

reveals that learned District Judge has not applied his judicial mind while transferring petitioner's Arbitration Application to the Commercial Court,

Dehradun. Learned District Judge has merely relied upon an order passed by his office on 11.01.2021, which is numbered as Order No. 04.

4. The expression "commercial dispute" has been defined in Section 2 (c) of Commercial Courts Act, 2015 and Section 15 of the said Act

provides that all suits and applications relating to a commercial dispute of Specified Value pending in a Civil Court alone can be transferred to a

Commercial Court. Thus, before ordering for transfer of petitioner's application filed under Section 34 of Arbitration & Conciliation Act, 1996, it

was incumbent upon learned District Judge to record a finding that it is a commercial dispute of specified value which can be so transferred.

5. Since there is no discussion on this aspect and the impugned order is based only on an Office Order, which provides for transfer of the case to

Commercial Court, therefore, the impugned order cannot be sustained in the eyes of law.

6. Accordingly, the writ petition is allowed and the impugned order dated 11.01.2021 passed by District Judge, Udham Singh Nagar is quashed. The

matter is remitted back to learned District Judge, Udham Singh Nagar to re-consider the matter in the light of provisions contained in Commercial

Courts Act, 2015 and to pass appropriate order within a period of three months. The Commercial Court, Dehradun shall return the record of Case No.

25 of 2021 (earlier Arbitration Case No. 04 of 2006) to the Court of District Judge, Udham Singh Nagar within a period of two weeks from the

date of production of certified copy of this order.