

(2018) 01 CHH CK 0006
In the Chhattisgarh High Court
Case No : 4 of 2018

South Eastern Coal Fields Ltd

APPELLANT

Vs

M/s Tirupati Construction District Burhar

RESPONDENT

Date of Decision : 10-01-2018

Acts Referred:

[Arbitration and Conciliation Act, 1996](#), [Section 36](#) -
Commercial Courts, Commercial Division And Commercial Appellate Division Of High Courts Act, 2015, Section 15(2), Section 2(1)(c), Section 15(5)

Citation : (2018) 01 CHH CK 0006

Hon'ble Judges : Prashant Kumar Mishra, Ram Prasanna Sharma

Bench : Division Bench

Advocate : Vivek Chopda

Final Decision : Dismissed

Judgement

1. This is an application for transfer of pending execution application before the Civil Court to the Commercial Court under Section 15 (5) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (for short the Act, 2015) 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) should be transferred to the Commercial Court.

2. 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 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 subsection (1) and sub-section (2).

3. In the case at hand, the award was passed on 26.09.2003 and thereafter appeal against the said award preferred by the present applicant has also been dismissed. At present, execution case NO. 7A of 2015 is pending before the District Court in the form of an application under Section 36 of the Act, 1996. 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.

4. It is not disputed before us that, at present, after dismissal of the applicant's appeal against the award, no further proceedings are pending before any Court. However, learned counsel would inform that the process of preferring a SLP before the Supreme Court is under way.

5. Be that as it may, once the award has been rendered, the proceedings, at this stage, has become final and an application under Section 36 of the Act, 1996 for execution of award cannot be treated as an original or independent application de hors the main Arbitration proceedings in which final award has already been rendered.

6. In our considered opinion, in view of the proviso, to subsection (2) of Section 15, the execution application cannot be transferred to Commercial Court. The District Judge has not committed any illegality while rejecting the applicant's application for transfer of the execution case to the Commercial Court.

7. Accordingly, application is dismissed.