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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ FAO(OS) (COMM) 31/2020
YES BANK LTD Appellant

Through: Mr. Neeraj Yadav, Adv.

Versus

MODI RUBBER LTD & ANR Respondents

Through: Ms. Warisha Farasat & Mr. Aman
Naqvi, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

% **08.02.2024**

1. The principal question that arises for consideration at the threshold is whether the present appeal impugning an order dated 14.03.2019 (hereafter '**the impugned order**') allowing respondent no.1's application [being I.A. No.8381/2017 in CS(OS) No.2481/2014] under Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereafter '**the CPC**'), for amendment of the suit, is maintainable.

2. Undisputedly, an order passed under Order VI Rule 17 of the CPC is not one of the orders enumerated in Order XLIII Rule 1 of the CPC and therefore, by virtue of Section 13(1A) of the Commercial Courts Act, 2015, an appeal against the said order is maintainable. This question is no longer *res integra* in view of the decisions in *Kandla Export Corporation & Anr. v. OCI Corporation & Anr.: (2018) 14 SCC 715*; *Odeon Builders Pvt. Ltd. v. NBCC (India) Ltd.: 2021 SCC OnLine Del 4390* and *HP Cotton Textile Mills Limited. v. Oriental Insurance Company Limited.: (2023) SCC OnLine Del 511*.

3. Notwithstanding the above, it is the appellant's case that the present



appeal is maintainable as the suit was re-numbered as a commercial suit after the present appeal was filed.

4. Mr Yadav, learned counsel appearing for the appellant contends that the suit was filed prior to the Commercial Courts Act, 2015 coming into force and therefore, the appeal provisions, as applicable to orders prior to the Commercial Courts Act, 2015 coming into force, would be applicable. He relies on the decision of a Coordinate Bench of this Court in ***Brahmos Aerospace Pvt. Ltd. v. FIIT JEE Ltd. & Anr.: 2019 SCC OnLine Del 7282*** in support of his contention.

5. Ms Farasat, the learned counsel appearing for the respondents counters the aforesaid submissions. She refers to Section 15 of the Commercial Courts Act, 2015 and in particular to proviso to Sub-section (2) of Section 15 of the Commercial Courts Act, 2015. She submits that the date of re-numbering the suit as a commercial suit is not relevant in view of the proviso to Section 15(2) of the Commercial Courts Act, 2015. She also relies on the decision of a Coordinate Bench of this Court in ***Samsung Leasing Ltd. & Ors. v. Samsung Electronics Co. Ltd. & Anr.: (2017) 242 DLT 608*** in support of her contentions.

6. The contention that the provisions of Section 13 of the Commercial Courts Act, 2015 would not apply to suits that were instituted prior to the Commercial Courts Act, 2015 coming into force is *prima facie* unpersuasive. The express provision of Section 15 of the Commercial Courts Act, 2015 clearly imply that the provisions of Commercial Courts Act, 2015 would also cover certain pending suits. The contention that a Coordinate Bench of this Court in ***Brahmos Aerospace Pvt. Ltd. v. FIIT JEE Ltd. & Anr. (supra)*** has accepted a view to the contrary is also unmerited. A plain reading of



paragraphs 12 and 13 of the said judgment indicate that the Court had found that the date on which the suit was re-numbered as dispositive of the question whether the provisions of the Commercial Courts Act, 2015 would be applicable. Paragraphs 12 and 13 of the said decision are set out below:

“12. Coming to the facts of the present case, this appeal was instituted on 10.03.2017. The Commercial Courts Act, 2015 came into force on 23.10.2015, and the Commercial Division was notified in this Court by an order dated 17.11.2015. Section 15 of the Commercial Courts Act requires transfer of suits pending in a High Court to the Commercial Division if the suit relates to a “commercial dispute” of “specified value”, as defined in Sections 2(1)(c) and 2(1)(i) respectively. In the present case, the renumbering of the suit in the Commercial Division of this Court has occurred only on 16.02.2018 pursuant to an order of the Joint Registrar dated 06.02.2018.

13. It is evident from the above that, on the date when the present appeal was instituted by Brahmos, the suit had not been transferred to the Commercial Division and the provisions of Section 13 of the Commercial Courts Act were therefore, not attracted to these proceedings. In view of the clear pronouncement of the Supreme Court in *Videocon (supra)* to the effect that an appellate remedy becomes vested in a party on the date when the dispute/lis is instituted, and the consequent judgment of this Court in *Eros Resorts (supra)*, we, therefore, hold that the present appeal at the instance of Brahmos is maintainable.”

7. This appears to be contrary to an earlier view of another Coordinate Bench of this Court in *Samsung Leasing Ltd. & Ors. v. Samsung Electronics Co. Ltd. & Anr. (supra)* wherein, the Court had observed as under:

“16. The plaint raises a commercial dispute. This is undisputed. the application for amendment was decided by the Commercial Division of the High Court as notified. The error made by the Registry is not making necessary corrections and notifying the suit as a commercial dispute could not, therefore, be of any consequence. At least, it would be a technical objection. For the said lapse and failure of the Registry, we would not negate the effect and



consequence of the Commercial Courts Act.”

8. We have reservations as to the views expressed by the Coordinate Bench of this Court in *Brahmos Aerospace Pvt. Ltd. v. FIIT JEE Ltd. & Anr.* (*supra*). *Prima facie*, the ministerial act of re-numbering the suit cannot be determinative of the rights of the parties.

9. Considering that the questions raised by the parties is of some importance, and there appears to be a difference of opinion between the Coordinate Benches of this Court, we direct that the present appeal be placed before Hon’ble the Acting Chief Justice for considering referring the present appeal to a Larger Bench.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

FEBRUARY 08, 2024

‘gsr’

[Click here to check corrigendum, if any](#)