

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 7TH DAY OF MARCH 2023 / 16TH PHALGUNA, 1944

OP(C) NO. 2400 OF 2022

AGAINST THE ORDER IN E.P.926/2020 OF PRINCIPAL SUB COURT / COMMERCIAL COURT, ERNAKULAM

PETITIONER/JUDGMENT DEBTOR/RESPONDENT:

M/S. BETA EXIM LOGISTICS (P) LTD.
AGED 55 YEARS
NO.66/1201, KALABHAVAN CROSS ROAD, COCHIN, PIN – 682018
REPRESENTED BY ITS MANAGING DIRECTOR.

BY ADVS.
MANU VYASAN PETER
P.B.KRISHNAN
K.T.SHYAMKUMAR
HARISH R. MENON
OASHIN LALAN
ALEENA SEBASTIAN

RESPONDENT/DECREE HOLDER/PETITIONER:

M/S. CENTRAL RAILSIDE WAREHOUSE CO., LTD.
(A GOVT. OF INDIA UNDERTAKING) HAVING OFFICE AT GROUND FLOOR, PRAGATI MAIDAN METRO STATION BUILDING NEW DELHI, PIN – 110001 REPRESENTED BY ITS DEPUTY GENERAL MANAGER (COMMERCIAL) YATIN K.PATEL.

BY ADV K.T.BOSCO(K/562/2008) (b/o)

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 01.3.2023, THE COURT ON 7.3.2023 DELIVERED THE FOLLOWING:

“C.R”

C.S DIAS,J.

OP(C) No.2400 of 2022

Dated this the 7th day of March, 2023.

JUDGMENT

The original petition is filed assailing the order passed in E.P No.926/2020 by the Commercial Court, Ernakulam. The petitioner is the judgment debtor, and the respondent is the decree holder.

2. The relevant facts leading to the impugned order, in a narrow compass, are:

(i). A sole Arbitrator passed an award directing the petitioner to pay the respondent an amount of Rs.2,46,23,101/- with interest. The interest quotient of the award was modified by a Division Bench of the Delhi High Court in FAO (OS) COMM. 317/2019.

(ii). The respondent laid the award to execution by filing EP No.387/2020 before the Court of the District Judge, Ernakulam, on 23.6.2020.

(iii). By an administrative order dated 25.9.2020, the learned District Judge transferred the execution petition to the Commercial

Court, Ernakulam, and the execution petition was renumbered as EP No.926/2020.

(iv). The petitioner questioned the jurisdiction of the Commercial Court to entertain the execution petition in view of Section 15(2) of the Commercial Courts Act, 2015 (in short, 'C.C. Act') and Sections 36 and 42 of the Arbitration and Conciliation Act, 1996 (in short, 'A&C. Act').

(v). The Commercial Court, by the impugned order, has held that it has the jurisdiction to entertain the execution petition.

(vi). The impugned order is illegal, irregular and improper. Hence, the original petition.

3. The respondent has filed a statement through its Counsel, refuting the contentions in the original petition and defending the impugned order.

4. Heard; Sri.P.B Krishnan, the learned Counsel appearing for the petitioner and Sri. K.T Bosco, the learned Counsel appearing for the respondent.

5. The question is whether the Commercial Court has the jurisdiction to entertain the execution petition.

6. The respondent has laid the award passed by the Sole Arbitrator to execution by filing EP No.387/2020 before the Court of the District Judge, Ernakulam, on 23.6.2020.

7. By G.O.(Ms). No.51/20202/Home dated 24.02.2020, fourteen Commercial Courts were established in the State of Kerala by designating one Court of the Subordinate Judge in each District as a Commercial Court. Subsequently, this Court by O.M No.A1-22133/2015/D1/D7(B)(1) dated 12.3.2020 directed the District Judges to take necessary steps to transfer the cases falling within the purview of the C.C. Act from the Civil Courts to the Commercial Courts. Later, by notification dated 18.03.2022, all the Courts of the Subordinate Judges in the State were notified as Commercial Courts.

8. The learned District Judge, Ernakulam, on the strength of the official memorandum issued by this Court and invoking the power under Section 15 of the C.C. Act, transferred the execution petition in question from its file to the Commercial Court, Ernakulam.

9. It is apposite to extract Sub-Sections (1) to (3) of Section 15 of the Commercial Courts Act, which reads as follows:

“15. Transfer of pending cases. — (1) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996),

relating to a commercial dispute of a Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division.

(2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 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, shall be transferred to such Commercial Court:

Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).

(3) Where any suit or application, including an application under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of Specified Value shall stand transferred to the Commercial Division or Commercial Court under sub-section (1) or sub-section (2), the provisions of this Act shall apply to those procedures that were not complete at the time of transfer.”

10. The above provision mandates that on the establishment of the Commercial Courts, all suits and applications, including applications under the Arbitration and Conciliation Act, 1996, relating to a commercial dispute of a specified value, pending in the Civil Courts be transferred to the Commercial Courts. However, those suits and applications reserved for final judgment by the Civil Court prior to the establishment of the Commercial Courts are excluded from the purview of transfer.

11. To put it pithily, other than those suits and applications which are reserved for judgment by the Civil Courts, falling within the sweep of the C.C. Act, have to be mandatorily transferred to the Commercial Courts. In such matters, the provisions of the C.C. Act

would apply to those procedures that were not complete at the time of transfer.

12. In the case on hand, EP No.387/2020 was filed on 23.06.2020 before the District Court, Ernakulam, after the establishment of the Commercial Courts in the State. Therefore, the execution petition was not a pending matter to attract Section 15 of the C.C. Act. Instead, it was a freshly filed execution petition. Therefore, undoubtedly, the transfer of EP No.387/2020 by the District Court, on the administrative side, invoking Section 15 of the C.C. Act, is in egregious violation of the provisions of the C.C. Act.

13. In an illuminating judgment rendered in **Shaji Augustine v. M/s. Chithra Woods Manors Welfare Association** [2021 SCC Online Ker. 9840] this Court has held as follows:

“27. As observed earlier, the procedure for execution is not mentioned anywhere in the Commercial Courts Act and there is nothing to indicate that the jurisdiction of other courts with respect to pending execution matters stands excluded. The absence of provision regarding execution or specific exclusion of jurisdiction of other courts with respect to execution procedures and the conscious omission to amend Order XXI CPC for hastening the process of execution can only lead to the conclusion that the word “application” in Section 15(1) does not include an 'execution application/petition' and the words, 'those procedures that are not complete at the time of transfer' in Section 15(3) of the Commercial Courts Act does not take in procedure relating to execution of decrees/awards. For the aforementioned reasons, I respectfully disagree with the dictum laid down by the Gujarat High Court in Jagmohan Bel (supra), insofar as it holds that the commercial court at the District level constituted under sub section (1) of Section 3 of the Commercial Courts Act would be the court competent to execute awards declared under Section 34 of the Arbitration Act. “

14. Going by the scheme of the C.C. Act, the express exclusion of suits and applications reserved for judgment from the purview of transfer and the conscious omission of the provisions relating to execution proceedings under the Code of Civil Procedure in the schedule to the C.C. Act, urges me to agree and endorse the ratio decidendi in **Shaji Augustine** (supra), that applications mentioned in Section 15 of the C.C. Act do not include execution applications.

15. I disagree with the observations of the Commercial Court and the learned Counsel for the respondents that the decree holder has a vested right to execute an award passed under the A & C. Act before the Commercial Court in view of the law laid down in **OCI Corporation v. Kandla Export Corporation** [2016 SCC Online Guj.5981] because that was a case wherein an international award passed by a Commercial Court was laid to execution before the Commercial Court, which is inapplicable to the facts of the case on hand.

16. I reminisce the observations of the Honourable Supreme Court in **Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP** [(2020) 15 SCC 585], while dealing with the C.C Act, wherein it held thus:

“36. A perusal of the Statement of Objects and Reasons of the Commercial Courts Act, 2015 and the various amendments to the Civil Procedure Code and insertion of new rules to the Code applicable to suits of commercial disputes show that it has been enacted for the purpose of providing an early disposal of high value commercial disputes. A purposive interpretation of the Statement of Objects and Reasons and various amendments to the Civil Procedure Code leaves no room for doubt that the provisions of the Act require to be strictly construed. If the provisions are given a liberal interpretation, the object behind constitution of Commercial Division of Courts viz. putting the matter on fast track and speedy resolution of commercial disputes, will be defeated. If we take a closer look at the Statement of Objects and Reasons, words such as “early” and “speedy” have been incorporated and reiterated. The object shall be fulfilled only if the provisions of the Act are interpreted in a narrow sense and not hampered by the usual procedural delays plaguing our traditional legal system”.

17. Thus, if a more expansive interpretation is given to the word application falling under Section 15 of the C.C. Act, to include execution petitions also, then necessarily all the execution petitions pending before all the civil courts falling within the ken of the C.C. Act will have to be transferred to the Commercial Courts, which in turn will clog the special courts with such matters. Moreover, no practical purpose will be served by such transfer because the Special Courts are not conferred with any additional power than that of the Civil Courts, to speed track execution proceedings, as execution proceedings have been omitted in the schedule attached to the C.C. Act. Without a faster timeline provided under the C.C. Act, to enforce an award, it is immaterial whether the award is executed by the Civil Court or the Commercial Court.

18. Be that as it may, the A & C Act also envisages the speedy disposal of arbitration matters. The principal Civil Court of original

jurisdiction, which is the District Court, is conferred with the jurisdiction to execute a domestic award.

19. In **Sundaram Finance Ltd v. Abdul Samad and others** [2018 (3) SCC 622], the Honourable Supreme Court has held that an arbitration award can be executed anywhere in India.

20. Therefore, the Court of the District Judge Ernakulam, had gone wrong in transferring the execution petition which was not a pending matter at the time of notifying the C.C. Act. Furthermore, the District Court has the jurisdiction to entertain the execution petition because the petitioner resides within the jurisdiction of the said Court and is a Court superior to the Commercial Court. Hence, no prejudice is caused to the respondent in the execution petition being decided by the District Court.

21. It would be contextually relevant to extract the observations of the Honourable Supreme Court in **Kandla Export Corpn. v. OCI Corporation** [(2018) 14 SCC 715], which reads as follows:

“27. The matter can be looked at from a slightly different angle. Given the objects of both the statutes, it is clear that arbitration itself is meant to be a speedy resolution of disputes between parties. Equally, enforcement of foreign awards should take place as soon as possible if India is to remain as an equal partner, commercially speaking, in the international community. In point of fact, the *raison d'être* for the enactment of the Commercial Courts Act is that commercial disputes involving high amounts of money should be speedily decided. Given the objects of both the enactments, if we were to provide an additional appeal, when Section 50 does away with an appeal so as to speedily enforce foreign awards, we would be turning the Arbitration Act and the Commercial Courts Act on their heads. Admittedly, if the amount contained in a foreign award to be enforced in India were less than Rs 1 crore, and a Single

Judge of a High Court were to enforce such award, no appeal would lie, in keeping with the object of speedy enforcement of foreign awards. However, if, in the same fact circumstance, a foreign award were to be for Rs 1 crore or more, if the appellants are correct, enforcement of such award would be further delayed by providing an appeal under Section 13(1) of the Commercial Courts Act. Any such interpretation would lead to absurdity, and would be directly contrary to the object sought to be achieved by the Commercial Courts Act viz. speedy resolution of disputes of a commercial nature involving a sum of Rs 1 crore and over. For this reason also, we feel that Section 13(1) of the Commercial Courts Act must be construed in accordance with the object sought to be achieved by the Act. Any construction of Section 13 of the Commercial Courts Act, which would lead to further delay, instead of an expeditious enforcement of a foreign award must, therefore, be eschewed. **Even on applying the doctrine of harmonious construction of both statutes, it is clear that they are best harmonised by giving effect to the special statute i.e. the Arbitration Act, vis-à-vis the more general statute, namely, the Commercial Courts Act, being left to operate in spheres other than arbitration”.**

22. On a conspectus of the pleadings and materials on record, the law on the point and the findings rendered above, this Court is of the definite view that the impugned order is erroneous and is liable to be interfered with by this Court under Article 227 of the Constitution of India, which I do.

Resultantly, I allow the original petition as follows:

(i) Ext P7 order passed in EP No.926/2020 by the Commercial Court, Ernakulam, is set aside.

(ii) E.P No.926/2020 of the Commercial Court, Ernakulam, is transferred back to the District Court, Ernakulam.

(iii) The parties are directed to appear before the District Court, Ernakulam on 21.03.2023.

(iv) The District Court, Ernakulam, is directed to consider and dispose of the execution petition in accordance with law and as expeditiously as possible.

sks/2.3.2023

Sd/- **C.S.DIAS, JUDGE**

APPENDIX OF OP(C) 2400/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE AWARD DATED 11.03.2019 IN CASE REF. NO. DAC/1408/11-16 PASSED BY THE ARBITRAL TRIBUNAL OF MR. JUSTICE E. PADMANABHAN (RETD.)
- Exhibit P2 TRUE COPY OF THE ORDER DATED 11.09.2019 IN O.M.P. (COMM) 366/2019
- Exhibit P3 TRUE COPY OF THE SAID ORDER DATED 08.11.2019 PASSED BY THE DIVISION BENCH OF THE DELHI HIGH COURT IN FAO (OS) COMM 317/2019
- Exhibit P4 TRUE COPY OF E.P. NO.387 OF 2020 ON THE FILE OF THE DISTRICT COURT, ERNAKULAM RENUMBERED AS E.P. NO.926 OF 2020 ON THE FILE OF THE COMMERCIAL COURT, ERNAKULAM
- Exhibit P5 TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE COMMERCIAL COURT, DATED 20.08.2022
- Exhibit P6 TRUE COPY OF THE REPLY DATED 27.09.2022
- Exhibit P7 TRUE COPY OF THE ORDER DATED 15.11.2022 IN E.P. NO.926 OF 2020 PASSED BY THE COURT OF THE JUDGE, COMMERCIAL COURT (PRINCIPAL SUB JUDGE), ERNAKULAM