

RAMESH KUMAR SEHGAL
VS.
PARNAV KAUSHAL
(DIRECTOR) PACTUS NETWORKS P. LTD.

CS DJ 249/20
RAMESH KUMAR SEHGAL
VS.
PARNAV KAUSHAL
(DIRECTOR) PACTUS NETWORKS P. LTD

12.09.2022

Present: Sh. Gaurav Gupta, learned counsel for the plaintiff.

Learned counsel for the plaintiff has filed proof of deposit of costs which were imposed upon the plaintiff on 21.05.2022. Same is taken on record.

Perusal of the record reveals that this suit was initially filed in non-commercial court and was pending disposal before the Ld. ADJ-04, North District, Rohini Courts, Delhi. It was transferred to this court vide order dated 27.01.2022 passed by the Ld. Principal District & Sessions Judge, North District, Rohini Courts, Delhi as it was found involving the dispute of commercial in nature.

In CS (DJ) Number 452/2018, titled as Rekha Bhayana V. Virender Kumar, this court had vide order dated 19.07.2022 held the transfer of a suit involving commercial dispute from non-commercial court to this court is permissible in view of Section 15(2) of the Commercial Courts Act, 2015 and various circulars passed by Hon'ble High Court on its administrative side in this regard. However, the Hon'ble High Court vide order dated 25.08.2022 passed in CM(M) Number 842/2022, titled as Virender Kumar V. Rekha Bhayana has, while

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setting aside the above order dated 19.07.2022 of this court, held that any commercial dispute pending disposal before a non commercial court cannot be transferred to a commercial court and the appropriate course of action for the non commercial court in that case would be to reject the plaint so that the plaintiff files a fresh suit before the commercial court.

It is apposite to reproduce here the relevant paragraphs of the said order of the Hon'ble High Court:-

9. The implication of the words “pending”, as used in this section is readily understood by referring not only to sub-section (2) of Section 15 but also to the other sub-sections of the said Section. Seen in conjunction with the expression “has been constituted”, as employed in Section 15(2), it is clear that the intent of the legislature, in enacting the said provision is to cover all commercial suits, filed as non-commercial suits before the Civil Court in any district or area in respect of which a Commercial Court “has been constituted” on the date when the Commercial Courts Act came into force and was, therefore, “pending” on the said date.

10. It cannot be treated as a provision which can apply in futuro for all times to come, so as

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*to permit litigants to file commercial suits
before the Civil Court and have the suit
transferred to the Commercial Court.*

*11. There is a clear difference in protocol
between commercial suits and non-
commercial suits. Commercial suits follow
their own distinct procedure, and are
subjected to much greater rigour than non-
commercial suits. A commercial suit has its
own distinct format, which involves, inter alia,
the requirement of filing a Statement of Truth
both with the plaint as well as with the written
statement.*

*14. Commercial Courts are different from non-
Commercial Courts. If a commercial suit is
instituted before a Civil Court, it is, clearly,
instituted before a Court other than the Court
before which it should have been instituted.
Order VII Rule 10 (1), in such circumstances,
directly comes into play and requires the suit
to be returned to the plaintiff to be instituted*

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before the appropriate Court, i.e., the
Commercial Court.

19. Insofar as the administrative circulars on which the learned Commercial Court has placed reliance are concerned, they cannot, quite obviously, cannot claim precedence over either the provision of the CPC or the judgment of the Supreme Court in Ambalal Sarabhai Enterprises.

21. In view of the aforesaid, the impugned order dated 19th July 2022, passed by the learned Commercial Court in CS DJ 452/2018 (Rekha Bhayana v. Virender Kumar) is quashed and set aside.

(emphasis supplied)

Accordingly, relying upon the above order of Hon'ble High Court, this court cannot proceed further with this suit. The same needs to be transferred back to the court of Ld. ADJ-04 for

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further orders as per the ratio of the above order dated 25.08.2022 of the Hon'ble High Court.

Hence, the Ahlmad is hereby directed to send the file complete in all respects to the Ld. Principal District & Sessions Judge North District, Rohini Courts, Delhi for onward transmission to the court of Ld. ADJ-04, North District, Rohini Courts, Delhi.

The parties shall appear before the Ld. Principal District & Sessions Judge North District, Rohini Courts, Delhi on **16.09.2022.**

(VIRENDER BHAT)

District Judge (Commercial Court)

North:Rohini:Delhi/12.09.2022