

Order Below Ex. 1

Read the pleadings and other case papers of record. Today the matter is kept for hearing.

Looking to the present case an important question has arise for consideration that is the question regarding adjudication of the court. The question for adjudication thus is whether the claim in the suit is a commercial dispute within the meaning of Section 2(1)(c) of the Commercial Courts Act. Section 2(1)(c) supra in Clauses (i) to (xxii) thereof lists the transactions dispute arising out of which qualify as a commercial dispute. Looking to the plaint and on perusal of the record of the case, I am of the opinion that the dispute between the parties is of the nature of the commercial dispute as defined under Section 2(1)(c) of the Commercial Courts, Commercial Division & Commercial Appellate Division of High Court Act, 2015 and the specified value of the commercial dispute is more than Rs. 3,00,000/-.

Moreover, The question for adjudication thus is whether the claim in the suit is a commercial dispute then the plaint should be returned as per O.7 R.10 of CPC in this plaint stating that the present suit is filed on 23/11/2019 whereas the amendment of The Commercial Courts, Commercial Division And Commercial Appellate Division Of High Courts (AMENDMENT) Act, 2018 came into force on 03/05/2018 vide Notification issued by the Ministry of Law and Justice (Legislative Department). where Section 2(c)states:

Section 2(c):

(c) “commercial dispute” means a dispute arising out of—

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents.

“In section 15 of the principal Act, in sub-section (4), for the words, figures and letter "with Order XIV-A", the words, figures and letter "with Order XV-A" shall be substituted.”

As it is specific that as the suit is filed after the amendment came into force on 3rd day of May, 2018 then it is to be returned to the competent court and not to be transferred as per Section 15. Further it is clear that the amendment of The Commercial Courts, Commercial Division And Commercial Appellate Division Of High Courts (AMENDMENT) Act, 2018 came into force on 03/05/2018 vide Notification issued by the Ministry of Law and Justice (Legislative Department) came into force on 3rd day of May 2018 and the suit is filed on 18th of March of 2019 and is of a nature of commercial dispute as the relation between the parties is of buyer & purchaser. The suit is for recovery of payment to the Defendants. The nature of transaction as mentioned in suit is commercial in nature and filed after the amendment came into force than it is crystal clear that the civil court has no jurisdiction in this matter and whenever, the Court finds that for want of jurisdiction it cannot finally determine the question at issue in the suit, it may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the question.

Moreover, it is specifically held that if the court has no pecuniary jurisdiction to deciding suit on merit than such court obliged to return the plaint as per O.7 R.10 of CPC to present the plaint before the where the plaint is to be filed. Hence, the suit is justifiable to be returned to be presented to a Court having jurisdiction to determine the question.

:: O R D E R ::

- :1: The plaint is hereby ordered to be returned to present before the appropriate authority / Court.
- :2: No order as to costs.

Pronounced today 20th day of September, 2021 in the open Court.

Date : 20/09/2021
Place : Gandhidham-Kachchh

sd/-
(Dr. A. K. Sharma)
3rd Addi. Sr. Civil Judge,
Gandhidham-Kachchh
Code : GJ 000634