

MHAH170046382023



Commercial Suit No. 2/2023

The Nisarga Consultancy Through
Nandkumar Subhash Kadam

Vs.

Nagar Parishad Rahata Through
Chief Officer

Order below Exh. 21

This is a suit filed under Section 2(1)(c)(x) of the Commercial Courts Act for recovery of amount. This defendant has filed written statement below Exh. 15. But the present suit does not fall under the definition of Commercial Courts Act. The tender is of the year 2010 on the basis of which the plaintiff is seeking relief under the Commercial Courts Act. But, that cannot be used for recovery of work done in the year 2017. There was no written contract between the plaintiff and defendant. Therefore, this defendant has made specific complaint in para 13 of its written statement about the jurisdiction. Thus, as the suit does not fall within the purview of Commercial Courts Act, necessary order be passed.

2. The plaintiff has filed say below Exh. 22 and denied all the contentions made in the application. The application is not maintainable and filed only to delay the proceedings. The relief sought squarely fits within the definition of Section 2(1)(c)(x) of the Commercial Courts Act. Though the tender floated during 2010, the defendant was time and again instructing the plaintiff to modify the report which can be seen by document filed below Exh. 7 with list Exh.3. The defendant has no base to say so. The object of the Act is to provide speedy disposal of high value commercial disputes as it

involves complex facts and question of law. Therefore, it needs independent mechanism for early resolution. Thus, the suit is within the four corners of the Commercial Courts Act. Therefore, application be dismissed with costs.

3. Heard both sides and gone through the record and proceedings. There is no dispute that the tender was issued in the year 2010 and accordingly, the work is continued. Also, the letter dated 30.11.2017 filed below Exh. 7 with list Exh. 3 at page 37 specifically shows that the tender and agreement was in existence. Even if the agreement executed between the plaintiff and defendant filed below list Exh. 3/5 is perused, it nowhere discloses that the agreement was for a specific period. The only condition precedent is to prepare and file report of the project in six months by the executor i.e. the plaintiff. Accordingly, further communication made between the plaintiff and defendant inter se and with the other government institutions show that the report was accepted by the Public Works Department to the tune of Rs. 2,26,09,000/- about which the parties have communicated inter se between them. Also, if the certificate Exh. 3/27 at page 67 is perused, the Chief Officer, Rahata Municipal Council with reference to the disputed communication below list Exh. 3/7 has given the report of compliance of work done by the present plaintiff within stipulated period. All these facts prima facie goes to show that though the fresh tender was not in existence but the agreement was. The basic requirement of the suit as per Section 2(c) is that there must be agreement. Also, the plaintiff and defendant are the bodies falling within commercial relations having commercial dispute. As such, I do not find any substance in the

alleged objection raised by the defendant. Therefore, in the light of all above discussion and provisions of the Commercial Courts Act, the application is not tenable and maintainable in the eyes of law and thereby stands rejected. The defendant shall conduct cross-examination of the plaintiff's witness on next date without fail and excuse.

Date : 22.10.2024
Rahata.

(Aditi R. Nagori)
Civil Judge, Senior Division, Rahata.