

ODC-1

CS/142/2020

GA/5/2021

IN THE HIGH COURT AT CALCUTTA

Ordinary Original Civil Jurisdiction

ORIGINAL SIDE

[COMMERCIAL DIVISION]

ANUMATI CONSULTANCY AND SERVICES PVT. LTD.

Vs.

WELLSIDE GLOBAL PRIVATE LIMITED.

BEFORE :

The Hon'ble JUSTICE KRISHNA RAO

Heard On : 01.08.2022, 11.08.2022, 03.11.2022 & 07.11.2022

Order On : 24.11.2022

Appearance:

Mr. Ratnanko Banerjee, Sr. Adv.
...For the plaintiff.

Mr. S. N. Mitra, Sr. Adv.
Mr. Sankarsan Sarkar, Adv.
Mr. Shayak Mitra, Adv.
Mr. Mayank Kakrania, Adv.
...For the defendant.

ORDER

The plaintiff has filed the instant suit against the defendant praying for dispensation of the requirement for pre-institution mediation under Section

12A of the Commercial Courts Act, 2015 and prayed for a decree for a sum of Rs. 81,55,99,334/- along with interest at the rate of 18% per annum till the realization of the said amount.

The plaintiff while filing the suit had also filed an application for urgent relief and this Court has granted order of injunction restraining the defendant from creating any third party interest over and in respect of such units without the leave of the court.

The defendant has filed the instant application for rejection of plaint on the ground that the dispute between the parties to the instant suit do not fall within the definition of Commercial dispute as envisaged under Section 2(1)(c) of the Commercial Courts Act, 2015.

In support of the application, the Counsel for defendant submits as follows :-

In the year 2010, the plaintiff and the defendant have entered into an oral agreement to purchase of the commercial units being entire 5th, 6th and 7th floors of the proposed commercial building for a total sum of Rs. 15,75,00,000/-. It was also agreed between the parties that the said commercial units would be constructed and handed over to the plaintiff within a reasonable time. As per the oral agreement, the plaintiff has handed over three cheques of Rs. 50,00,000/- each to the defendant as an advance towards purchase of the said commercial units. The plaintiff has further paid an

amount of Rs. 12,00,00,000/- to the defendant between August, 2010 to December, 2010 by way of separate cheques.

Even after the considerable time was passed after receipt of the payment, the possession of the units were not handed over to the plaintiff and in the year 2015, the defendant had suddenly informed the plaintiff that proposed commercial project had not been sanctioned by the Municipal Authorities and instead a residential building was sanctioned.

The defendant had proposed the plaintiff, the plaintiff should purchase residential units in a proposed ground plus 20 storied luxury residential building by the name of "Wellside Camac" at 7, Ho-Chi-Minh Sarani, Kolkata-700 071. The plaintiff had initially refused to purchase the residential units as its requirement was commercial space and demanded refund of the investment along with interest but the defendant had refused to return the said amount accordingly the plaintiff had no other option to accept the proposal to purchase residential units at the proposed project namely "Wellside Comac".

The defendant also requested that the amount already paid by the plaintiff be treated as advance for purchase of residential units. On 12th November, 2015, three separate agreements were entered between the parties. Subsequent to the agreements entered between the parties, the defendant had again demanded an amount of Rs. 56.70,000/- towards the service tax and the plaintiff had also paid the same and thus the plaintiff has paid total amount of Rs. 14,06,70,000/- on account of purchase of the proposed residential project.

Counsel for the defendant submits that from the aforesaid averments, it is crystal clear that though initial the plaintiff intent to purchase commercial units but subsequently the defendant failed to deliver the commercial units and accordingly the plaintiff ready to purchase residential units and thus the suit is not covered under the Commercial Courts Act.

Counsel for the defendant relied upon the following judgments :

- i. *(2020) 15 SCC 585 (Ambalal Sarabhai Enterprises Limited - versus- K.S. Infraspace LLP and Anr.)*
- ii. *(2020) 7 SCC 366 (Dahiben -versus- Arvindhbai Kalyanji Bhanusali and Ors.)*
- iii. *AIR 1955 SC 340 (Kiran Singh and Others -versus- Chaman Paswan and Others).*
- iv. *2021 SCC Online Bom 5032 (Glasswood Realty Pvt. Ltd. & Others -versus- Chandravilas Kailashkumar Kothari)*
- v. *2021 SCC Online Cal 4240 (Ladymoon Towers Private Limited -versus- Mahendra Investment Advisors Private Limited)*
- vi. *2022 SCC Online Cal 2326 (Prime Hitech Textiles LLP -Versus- Manish Kumar).*
- vii. *(2004) 1 SCC 287 (Rafique Bibi -versus- Sayed Waliuddin and Others).*

Counsel for the plaintiff submits that:-

The defendant has filed the instant application only with the sole objective to delay the proceedings of the suit as the defendant does not have any defence on merits.

The disputes arise out of series of commercial transactions, arising out of financial agreement and relates to a mercantile transaction. The dispute between the parties falls within the purview of section 2(1)(c) of the Commercial Courts Act, 2015 and is covered under the clause (vii) of the said Section.

The agreements entered between the parties on 12th November, 2015 in which the for purchase of units from the defendant, the plaintiff intended to use the same for its own commercial purpose.

Since inception when the transaction were made for the purpose of the commercial units which establishes the commercial transactions and thus the suit cannot be said to be non-commercial suit.

The plaintiff has filed an interlocutory application for grant of interim order and the defendant has contested the said application on merit by filling affidavit-in-opposition but the defendant has not taken such plea in the said application and this Court has allowed the said application on merit and the defendant has not challenged the said order and thus the same has reached its finality.

In the same suit, the defendant has filed an application for extension of time to file written statement and this court had allowed the same by imposing cost upon the defendant and while disposing of the said application, this Court has categorically held that the “the defendant in a Commercial Suit seeks extension of time to file written statement.”

In compliance of the order of extension, the defendant has filed written statement and while accepting the written statement, this Court further held that “It is a suit relating to a commercial dispute within the meaning of the Commercial Courts Act, 2015.”

Counsel for the plaintiff submits that after reading of the entire plaint and the orders passed by this Court on various occasions, it is established that the suit filed by plaintiff is commercial in nature as the transaction between the parties are commercial in nature.

Counsel for the plaintiff relied upon the following judgments :

- i. *(2019) 8 SCC 416 (Pioneer Urban Land and Infrastructure Limited and Another –versus- Union of India & Others)*
- ii. *(1998) 9 SCC 138 (Authorised Officer (Land Reforms) -versus- M.M. Krishnamurthy Chetty).*

Heard the learned counsel for the respective parties, pursued the application and the documents and the judgments relied by the parties.

Admittedly, as per averments of plaint, the plaintiff company is engaged in the business of providing financial services and is non Banking Financial Company registered with the Reserved Bank of India. The negotiation between the plaintiff and the defendant were sale and purchase of commercial units being the 5th, 6th and 7th floors of the proposed commercial buildings and the plaintiff had paid an aggregating amount of Rs. 13.50 crores in total till December, 2010.

Paragraph 9, 10, 11 and 12 of the plaint, reads as follows:-

- “9. *The proposed commercial building project never took off even though considerable time passed after the date of payments. For reasons not known to Gangaur, the development plan changed and in 2015, Gangaur was suddenly informed by Wellside that the proposed commercial project had not been sanctioned by the municipal authorities and instead a residential building was sanctioned. In this context, it was proposed by Wellside that against the monies already paid to it by Gangaur, Gangaur should purchase residential units in a proposed ground plus 20 storied luxury residential building by the name of “Wellside Camac” at 7, Ho-Chi-Minh Sarani, Kolkata 700071.*
10. *Gangaur initially refused to purchase the residential units, as its requirement was of a commercial space and demanded refund of the investment along with interest, but the same was refused by Wellside. Having already paid considerable sums of money, Gangaur had no other alternative but to accept the proposal to purchase residential units at the proposes project called “Wellside Camac”.*
11. *In this regard, Gangaur had requested Wellside to treat the sum of Rs. 13,50,00,000/- already paid by Gangaur as advance for purchasing the residential units. A letter dated November 6, 2015, was issued by Gangaur at the instance of Wellside for mutual benefit and with the intention of facilitating the new agreement to purchase residential flats instead of the commercial units. A copy of the letter dated November 6, 2015 is annexed hereto and marked “K”.*
12. *In the circumstances, three separate written agreements all dated November 12, 2015 were entered into and executed by and between Vamscorp (India) Private Limited and Wellside Projects Private Limited i.e. the predecessors-in-interest of the defendant on the one hand and Gangaur, the predecessor-in-interest of the plaintiff, on the other hand. Under these agreements, Gangaur agreed to acquire on a 99 year lease from the predecessors-in-interest of the defendant, Unit Nos. 12W, 13W and 14W (for short collectively **“the said units”**) located on the 12th, 13th and 14th floors respectively of the proposed building **“Wellside Camac”** to be constructed by Wellside. Each of these agreements was executed in respect of a particular unit. The terms and conditions in all three agreements are nearly identical and the same, inter-alia, contemplate as follows:-*

- i) *Gangaur would be granted a lease of the said units for an initial term of 99 years with an option for Gangaur to renew the same for further ten terms of 99 years.*
- ii) *In consideration for the same, Gangaur would pay a sum of Rs. 13,75,53,030/- in aggregate for all the three units as lump sum premium for the lease together with further amounts as specified in the agreements for the right to use the vehicle parking spaces, if any. Gangaur had made payments to the tune of Rs. 13,50,00,000/- already as consideration.*
- iii) *Wellside would hand over to Gangaur the bare shell of the units within a period of 48 months from the date of the agreement with a maximum grace period of 6 months thereafter.*
- iv) *In the event the agreements were terminated by either party, a specified amount would stand forfeited in favour of Wellside as “mutually agreed pre-determined liquidated damages” from out of the sums paid and deposited by Gangaur and the balance amount was to be refunded by to Gangaur without any interest after Wellside entered into an agreement in respect of the concerned units with any other third party.*
- v) *The Hon’ble High Court at Calcutta was conferred sole and exclusive jurisdiction to determine all disputes arising out of and concerning the agreements.*

Copies of the three agreements all dated November 12, 2015, are annexed hereto and marked “L”, “M” and “N” respectively.”

In the judgment reported in the case of *Ambalal Sarabhai Enterprises Limited (Supra)*, the Hon’ble Supreme Court held that :

“6. At the outset, it is noticed that the consideration required in the instant case is as to whether the transaction between the parties herein which is the subject-matter of the suit could be considered as a “commercial dispute” so as to enable the Commercial Court to entertain the suit. In that regard, it is necessary to take note of Section 2(1)(c)(vii) of the CC Act, 2015. The said provision to the extent relevant is extracted here below for reference.

“2. Definition. - (1) In this Act, unless the context otherwise requires,-

- (a) – (b) * * *
- (c) **“commercial dispute”** means a dispute arising out of –
- (i) – (vi) * * *
- (vii) agreements relating to immovable property used exclusively in trade or commerce;
- (viii) – (xxii) * * *

From a perusal of the provision relied upon by the learned Senior Advocates it is noticed that the disputes arising out of agreements relating to immovable property used exclusively in trade or commerce will qualify to be a commercial dispute to be tried by Commercial Courts. The question therefore would be that, in the instant case though the parties have entered into a sale transaction of the immovable property and presently in the suit the registration of a mortgage deed pertaining to the immovable property is sought, whether the immovable property involved could be considered as being used exclusively in trade or commerce.”

In the judgment reported in the case of Dahiben (Supra), the Hon’ble Supreme Court held that :

“23.11. *The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I](#) which reads as :*

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

In the judgment reported in the case of Glasswood Realty Pvt. Ltd. (Supra), the Bombay High Court held that:

“11. *The moot question that arise for consideration is whether the singular transaction by way of ‘hand loan’ would fall within the meaning of ‘commercial dispute’, as the Act of 2015 intend to cover only ‘commercial dispute’; and not any other form of dispute, where the basis of disagreement between the parties has a non-commercial cause. Necessarily, the transaction involved must have a commercial flavour and its genesis lies in the body that the parties entered into the said transaction with a commercial purpose. Dispute arising out of the transaction between the persons who are classified in clause (i) of Section 2(c), only qualify to be covered by the definition of ‘commercial dispute’.*

15. *Mr. Ganesh Murthy, learned counsel is justified in placing reliance upon the decision of the Calcutta High Court in *Ladymoon Towers Pvt. Ltd. v. Mahendra Investment Advisors Pvt. Ltd.*, (IA No. GA/4/2021 in CS 99/2020 which involved identical facts and the observation of learned Single Judge of the Calcutta High Court are worth to be reproduced, as it aptly apply to the facts involved before me.*

*“The Delhi High Court in *Kailash Devi Khanna v. DD Global Capital Ltd.*; 2019 SCC OnLine Del 9954 held that all suits for recovery of monies cannot brought under Section 2(1)(c)(i) of the Act where the suit is not based on any transaction relating to mercantile documents. The Bombay High Court in *Bharat Huddanna Shetty v. Ahuja Properties & Developers*; (Interim Application (L) No. 14350 of 2021) rejected the contention that the suit should be treated as a commercial summary suit on the mandate that the transaction had occurred between merchants, bankers, financiers and traders and further clarified that transactions between individuals where the plaintiff gives a friendly loan to a needy friend will not be seen as a transaction in the course of ordinary business. The Madras High Court in *R. Kumar v. T.A.S. Jawahar Ayya* (C.S. No. 431 of 2019) was of the view that since the plaintiffs did not transact in the capacity of financiers, the dispute was not a “commercial dispute” and that an ordinary transaction of the four classes of persons mentioned in 2(1)(c)(i) arising out of mercantile documents alone would fall within the definition of a commercial dispute. The Calcutta High Court in *Associated Power Co. Ltd. v. Ram Taran Roy*; AIR 1970 Cal 75 focused its gaze on a “mercantile document” within the meaning of the First Schedule of the City Civil Court Act, 1953 as a document between merchants and traders where the construction, interpretation and meanings of words and clauses of the mercantile documents would assume significance.*

16. *The decision of this Court in *Manesh Rajkumar Kanhed v. Ramesh Bhagwansa Walale*, (Cr. Revision Application No. 143 of 2005, decided on 6.02.2007) also involve similar facts, the case being hand loan being advanced. The following observation is made as under in para 10:*

“10. Therefore, taking of hand-loan for whatever purposes, including starting a business of agency, cannot come within the four corners of definition of “commercial transaction” and, therefore, I hold that the finding recorded by both the Courts below that the transaction between the parties was a commercial transaction, is an error apparent from the record and especially, when, it is admitted position that it was a hand-loan between the relatives of each other”.”

In the judgment reported in the case of Ladymoon Towers Private Limited (Supra), the Coordinate Bench of this Court held that :

“The above discussion as to what would constitute a “commercial dispute” under the options contemplated in Section 2(1)(c) of the Act is important since courts generally tend to accept the listing of matters before the Commercial Division or the Commercial Appellate Division of a 10 High Court, as correct. The categorizations of matters before these Benches are usually done by the concerned Department or by the occasional assessment by the concerned court where a party takes objection to such classification. The two indices which form the basis of the decision as to the classification of a matter are (a) whether the dispute is a “commercial dispute”; and if held to be in the affirmative (b) whether the Specified Value of the subject-matter of the commercial dispute. Since the 2015 Act prescribes a different procedural regime for adjudication of commercial matters in line with the Statement of Objects and Reasons of the Act, it is only desirable that a court undertakes an enquiry in fit cases as to whether the matter should be listed before the Commercial Division before going into the merits of the case.”

The definition section of the 2015 Act only contemplates a “commercial dispute” and not any other form of dispute where the basis of disagreement between the parties has a non-commercial cause. The gradation of disputes in Section 2(1)(c) taking into account all possible forms of agreements from which a “commercial dispute” may arise, makes it clear that the framers of the statute gave emphasis on the commercial flavour of the transaction as opposed to agreements entered into between parties without a commercial purpose. The qualification of the person being a Merchant, Banker, Trader or Financier imparts an unimpeachable commercial flavour to the transaction and the resulting dispute. The Insolvency and Bankruptcy Code, 2016, for example, defines a dispute from a broader perspective as any suit or arbitration proceedings relating to an existing debt – Section 5(6)(a). The commercial purpose

would generally mean a transaction by which a person's commercial or economic interests may be advanced and would result in an economic benefit to that person. It would not include an agreement where profit-making is an incidental outcome of the transaction or may happen by accident. Although, a "hand loan", for example, is given by a person or entity to another with the expected outcome of the principal sum being returned with interest, the essential commercial flavour in such a loan may be lost by reason of the informal terms under which the money is lent and advanced and the consequent uncertainty which may result therefrom. The requirement of fixing the transaction within the ambit of Section 2(1)(c)(i), namely, between the named classes of persons can be construed being in aid of what the Act intends to cut down, namely, unnecessary wastage of time on ascertaining whether a dispute is a commercial dispute. The exhaustive categories of agreements in 2(1)(c)(i) – (xxii) leaves no doubt that the 2015 Act seeks to bring within its fold an inclusive range of disputes where the underlying purpose of the transaction is a commercial interest of the parties."

In the instant case admittedly, initially the transaction between the parties were for the commercial units but when the defendant failed to deliver the commercial units due to non-sanction of building plan for commercial purposes to the plaintiff, as per the request of the defendant, the plaintiff had agreed to purchase residential units and it was agreed between the parties that the amount paid by the plaintiff will be adjusted in the residential units and accordingly three separate agreements have been entered between the parties and to conclude the performance, as per demand of the defendant, the plaintiff has also paid further amount as service tax. This Court has considered the entire pleading of the plaint, specifically paragraph 9 to 12 and find that the case of the plaintiff is not covered under Section 2(1)(c)(vii) of the Commercial Courts Act, 2015. The Judgments referred by the defendant as mentioned above, the same are squarely applicable in the present case. The Judgment

referred by the plaintiff reported in the Case of Pioneer Urban Land and Infrastructure Limited and Another (Supra) is distinguishable.

As regard the submissions made by the plaintiff that the orders passed by this Court dated 26th February, 2021 and 19th March, 2021 reached its finality regarding the finding that this court that the suit relating to commercial dispute, the plaintiff has relied upon the judgment reported in the case of Authorized Officer (Land Reforms)(Supra):

“2. According to the appellant once the judgment on the basis of which the High Court had directed to dispose of the dispute relating to the excess land had been reversed by this Court, the Authorised Officer was justified in following the judgment of this Court instead of the judgment of the High Court. It need not be pointed out that the order passed by the High Court attained finality as it was not challenged before the Supreme Court. The order passed by the High Court directing the Authorised Officer to examine the dispute in the light of the judgment of the High Court in the case of Naganatha Ayyar v. Authorised Officer [84 LW 69] became final although the judgment on which the grievance had to be examined itself was reversed later by this Court. We find no fault with the reasoning of the High Court. It is well settled that even orders which may not be strictly legal become final and are binding between the parties if they are not challenged before the superior courts. In the result the appeal fails and it is dismissed. No costs.”

Learned Counsel for the defendant submits that at the time of passing an orders dt. 26th February, 2021 and 19th March, 2021, there was no adjudication regarding whether the suit is of commercial nature or not. This Court while passing introductory orders held that the suit is relating to commercial nature and thus the same cannot be taken into consideration as

final adjudication. Defendant has relied upon the judgment reported in the case of Rafique Bibi (Supra) :

“6. What is “void” has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based on want of jurisdiction, else the normal rule that an executing court cannot go behind the decree must prevail.

8. A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree. A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings.”

The defendant also relied upon the judgment reported in the case of Kiran Singh and Others (Supra) held that :

“6. The answer to these contentions must depend on what the position in law is when a court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of Section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non iudice, and that its judgment and decree

would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this position.”

The order passed by the Court on 26th February, 2021 is in connection with extension of time to file written statement and the order dated 19th March, 2021 with regard to acceptance of written statement in terms of Order dt. 26th February, 2021. In both the orders, there was no adjudication whether the suit is of commercial nature or not. As the suit was filed in the Commercial Court and dispute was raised, accordingly this Court held that the suit relates to commercial dispute.

Now, the defendant has raised an issue in the instant application with regard to jurisdiction of this Court as the suit filed by the plaintiff is not relates to commercial dispute and now this Court upon exchange of affidavits heard the matter on merit and thus it cannot be said that the defendant has waived his right to raised objection with regard to jurisdiction of this Court. The judgment passed by the Hon'ble Supreme in the case of Kiran Singh and Others (Supra) it was clarified that it is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured

even by consent of the parties. In view of the above the contention of the plaintiff is negated.

Now the question whether the suit is to be transferred to the Ordinary Original Civil Jurisdiction or the plaint is to be returned to the plaintiff, in this connection in the judgment reported in (2014) 1 SCC 648 (Oil and Natural Gas Corporation Ltd. -vs- Modern Construction and Company), the Hon'ble Supreme Court held that :-

“17. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order 7 Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of [Section 14](#) of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same.

21. Thus, the respondent cannot take the benefit of its own mistake. The respondent instituted the suit in the civil court at Mehsana which admittedly had no jurisdiction to entertain the suit. In spite of the fact that the civil suit stood decreed, the High Court directed the court at Mehsana to return the plaint in view of the provisions of Order 7 Rule 10 CPC. Thus, the respondent presented the plaint before the Civil Court at Surat on 3-2-1999.”

The above judgment is confirmed by the Hon'ble three Judge's Bench in the case reported in (2020) 12 SCC 667 (EXL Careers and Another -vs- Frankfinn Aviation Services Private Limited) and held that :-

“16. *We find no contradiction in the law as laid down in Modern Construction pronounced after consideration of the law and precedents requiring reconsideration in view of any conflict with Joginder Tuli. Modern Construction (supra) lays down the correct law. We answer the reference accordingly.*

20. *The statutory scheme now becomes clear. In cases dealing with transfer of proceedings from a Court having jurisdiction to another Court, the discretion vested in the Court by [Sections 24\(2\)](#) and [25\(3\)](#) either to retry the proceedings or proceed from the point at which such proceeding was transferred or withdrawn, is in marked contrast to the scheme under Order 7 Rule 10 read with Rule 10-A where no such discretion is given and the proceeding has to commence de novo.”*

Considering the settled position of law, the plaint of the instant suit is return to the plaintiff to present it before the Court having competent jurisdiction.

GA 5 of 2021 is accordingly disposed of.

(KRISHNA RAO, J.)

p.d/