

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6876 OF 2022

Jaycee Housing Pvt. Ltd. & Ors. ...Appellant(S)

Versus

Registrar (General), Orissa High Court, ...Respondent(S)
Cuttack & Ors.

With

CIVIL APPEAL NO. 6878 OF 2022

With

CIVIL APPEAL NO. 6877 OF 2022

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 12.04.2022 passed by the High Court of Orissa at Cuttack in respective writ petitions, by which, the Division Bench of the High Court has dismissed the respective writ petitions in which the appellants herein – original writ petitioners challenged a

notification dated 13.11.2020, issued by the State of Odisha through its Principal Secretary, Law Department in establishing the Court of the Civil Judge (Senior Division) as Commercial Courts for the purposes of exercising jurisdiction and powers under the Commercial Courts Act, 2015, the original writ petitioners have preferred the present appeals.

2. In exercise of powers conferred by Section 3 and subsection (1) of Section 9 read with Section 10 of the Odisha Civil Courts Act, 1984 and Section 30 of the Commercial Courts Act, 2015 (hereinafter referred to as the Act, 2015), the State Government on the recommendation of and after consultation with the High Court of Orissa has established the Courts of Civil Judge (Senior Division) as Commercial Courts for the purposes of exercising the jurisdiction and powers under the Act, 2015.

2.1 The original writ petitioners – appellants herein initially filed the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Arbitration Act, 1996) in the Court of learned District Judge. However, on establishment of the Commercial

Courts under the aforesaid notification, the said proceedings were transferred to the Commercial Court i.e., the Court of Civil Judge (Senior Division) [designated as Commercial Court]. Therefore, the appellants herein challenged the aforesaid notification and designating the Courts of Civil Judge (Senior Division) as Commercial Courts under the Act, 2015 before the High Court by way of present writ petitions. It was the case on behalf of the appellants – original writ petitioners that constituting and/or designating the Courts of Civil Judge (Senior Division) as Commercial Courts and to exercise the powers under the Commercial Courts Act would be in conflict with the provisions of Section 2(1)(e) of the Arbitration Act, 1996. It was the case on behalf of the appellants herein that under Section 2(1)(e) of the Arbitration Act, 1996, only the Principal Civil Court of original jurisdiction in a district (Court of Principal District Judge) shall be the “Court” for the purpose of deciding the disputes under the Arbitration Act, 1996 and in case of an arbitration it does not include any Civil Court of a grade inferior to such Principal District Judge. Therefore, it was the case on behalf of the

appellants that to confer the jurisdiction upon the Court of Civil Judge (Senior Division) to exercise the powers under the Commercial Courts Act including the proceedings under the Arbitration Act, 1996 would be contrary to Section 2(1)(e) of the Arbitration Act, 1996, which is the Special Act. By the impugned common judgment and order the High Court has dismissed the said writ petitions which has given rise to the present appeals.

3. Ms. Uttara Babbar, learned counsel has appeared on behalf of the respective appellants – original writ petitioners and Shri Gaurav Aggarwal, learned counsel has appeared as Amicus Curiae appointed by the Court.

3.1 Ms. Babbar, learned counsel appearing on behalf of the appellants has vehemently submitted that there is a conflict between Section 3 of the Act, 2015 and Section 2(1)(e) of the Arbitration Act, 1996. It is submitted that Section 2(1)(e) of the Arbitration Act, 1996 provides that the Principal Civil Court of original jurisdiction in a district shall be the “Court” in the case of an arbitration other than international commercial arbitration. It is submitted that Section 2(1)(e) of the Arbitration Act, 1996 specifically

provides that it does not include any Civil Court of a grade inferior to such Principal Civil Court. It is submitted that therefore, under Section 2(1)(e)(i) of the Arbitration Act, 1996, all courts inferior to Principal Civil Court are excluded. It is submitted that wherever an application has to lie to a “court” (under the Commercial Courts Act), it must lie to the Principal Civil Court and the jurisdiction of all inferior courts is excluded.

3.2 It is submitted that when in exercise of the powers under Section 3 of the Act, 2015, jurisdiction to hear applications under Sections 9, 14, 34 of the Arbitration Act, 1996, is conferred on commercial courts which are subordinate to the Principal Civil Court of original jurisdiction in the district, there is a clear conflict with the provisions of Section 2(1)(e) of the Arbitration Act, 1996.

3.3 It is further submitted by Ms. Babbar, learned counsel appearing on behalf of the appellants that the “Court” under Section 2(1)(e) of the Arbitration Act, 1996 is the superior most court in the district and as such legislature intended to minimize the supervisory role of the courts in the arbitral process. Reliance is placed on the decisions of

this Court in the cases of **State of Maharashtra and Anr. Vs. Atlanata Ltd.; (2014) 11 SCC 619** and **State of West Bengal and Ors. Vs. Associated Contractors; (2015) 1 SCC 32.**

3.4 It is further submitted by Ms. Babbar, learned counsel appearing on behalf of the appellants that the Arbitration and Conciliation Act, being a special statute vis-à-vis the Commercial Courts Act, shall prevail over the Commercial Courts Act in the case of any conflict as held by this Court in the cases of **Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd.; (2011) 8 SCC 333** and **Kandla Export Corporation and Anr. Vs. OCI Corporation and Anr.; (2018) 14 SCC 715**, the Arbitration and Conciliation Act shall prevail.

3.5 It is further submitted that the High Court has proceeded on an erroneous premise that the Arbitration and Conciliation Act must yield to the Commercial Courts Act as both are special statutes, and the Commercial Courts Act is the later statute. It is submitted that aforesaid is contrary to the aforesaid two decisions of this Court. It is

submitted that as observed and held by this Court in the case of **Fuerst Day Lawson Ltd.** (supra) the Arbitration Act is a self-contained code and exhaustive and therefore, the same shall prevail over the Commercial Courts Act being a Special Act. It is further submitted that the decision of this Court in the case of **Kandla Export Corporation** (supra) has been subsequently approved by a bench of three Hon'ble Judges in the case of **BGS SGS SOMA JV Vs. NHPC Ltd.; (2020) 4 SCC 234**. It is submitted that in the said decision, this Court has categorically held that the Arbitration Act is a complete code and a Special Act which excludes the general law, including the Commercial Courts Act. It is submitted that therefore the view taken by the High Court in the common impugned judgment and order is just contrary to the decision of this Court in the case of **Kandla Exports Corporation** (supra) and another decision referred hereinabove.

3.6 It is further submitted by Ms. Babbar, learned counsel appearing on behalf of the appellants that the objective of

the Arbitration Act is to ensure speedy disposal of cases which minimal court's interference. If the Civil Judge (Senior Division) is designated as Commercial Court, then the litigant would be provided another challenge to the High Court under Article 227 even after disposal of the appeal by the District Judge, which shall defeat the objective of speedy disposal. Reliance is placed on para 27 of the decision of this Court in the case of **Kandla Exports Corporation** (supra).

3.7 Ms. Babbar, learned counsel appearing on behalf of the appellants has pointed that there is a conflict in the views of various High Courts. It is submitted that the Gujarat High Court and the Madhya Pradesh High Court have taken the view that the Arbitration Act will prevail over the Commercial Courts Act and on other hand the Bombay High Court, Rajasthan High Court and Orissa High Court have taken a contrary view.

3.8 Making the above submissions and relying upon the above decisions, it is prayed to declare and hold that the notification issued by the State of Odisha conferring the powers upon the Commercial Court – Court of Civil Judge

(Senior Division) to exercise the powers under the Commercial Courts Act in respect of arbitration disputes as illegal, bad in law and consequently to quash and set aside the impugned common judgment and order passed by the High Court.

4. Shri Gaurav Aggarwal, learned counsel and Amicus Curiae has taken us to the object and purpose of enactment of Commercial Courts Act and establishment of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Court. It is submitted that the Commercial Courts Act and the establishment of Commercial Courts are with a view to facilitate early disposal of the high value disputes/commercial disputes. It is submitted that with a view to achieving the object of speedy disposal of the commercial disputes, the legislature has enacted the Commercial Courts Act, 2015. It is submitted that under Section 3 of the Commercial Courts Act, 2015, a commercial Court can be set up and a commercial Appellate Court can be set up under Section 3A of the Commercial Courts Act, 2015. It is submitted that a dispute relating to arbitration is a commercial

dispute under Section 2(c) of the Commercial Courts Act, 2015. It is submitted that Section 10 of the Commercial Courts Act, 2015 is a special provision in respect of arbitration matters. It is submitted that as per sub-section (3) of Section 10, if the arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration Act that would ordinarily lie before any principal civil court of original jurisdiction in a district, shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted. It is submitted that the Commercial Courts Act – being a later Act and has been enacted for a specific purpose for speedy disposal of the commercial disputes, the same shall prevail. It is submitted that when the legislature in its wisdom in a later enactment has specifically provided as per sub-section (3) of Section 10 of the Commercial Courts Act, 2015 that all applications/appeals arising out of the Arbitration Act other than the international commercial arbitration would

be heard and disposed of by the Commercial Court, the same shall prevail. It is submitted that if the submissions made on behalf of the appellants is accepted in that case Section 10 would become otiose or redundant and/or nugatory. It is submitted that therefore, it is requested not to have the interpretation which shall result any provision of the Act nugatory and/or otiose.

- 4.1 Now so far as the reliance placed upon the decision of this Court in the case of **Kandla Export Corporation** (supra) is concerned, it is vehemently submitted that the said decision does not imply that all provisions of the Arbitration Act would prevail over the Commercial Courts in case of any conflict and inconsistency.
- 4.2 It is submitted that similarly the decision of this Court in the case of **BGS SGS SOMA JV** (supra) shall not be applicable to the facts of the case on hand, it is submitted that in the said decision it is held that Section 13(1) of the Commercial Courts Act does not provide for independent right of appeal, but merely provides forum of filing appeal.
- 4.3 Making the above submissions it is prayed to dismiss the present appeals and hold that in the present case the

notification issued by the State Government conferring powers upon the Commercial Court – Court of Civil Judge (Senior Division) to exercise the powers under the Commercial Courts Act is neither illegal nor bad in law.

5. We have heard Ms. Uttara Babbar, learned counsel appearing for the appellants and Shri Gaurav Aggarwal, learned Amicus Curiae.
6. The question of law arising for consideration in the present appeal is, whether in exercise of powers under Section 3 of the Commercial Courts Act, 2015, the State Government can confer jurisdiction to hear applications under Sections 9, 14 and 34 of the Arbitration and Conciliation Act, 1996, upon Commercial Courts which are subordinate to the rank of the Principal Civil Judge in the District, contrary to the provisions of Section 2(1)(e) of the Arbitration Act?
7. While considering the aforesaid question of law, relevant provisions of the Arbitration Act, 1996 and the Commercial Courts Act, 2015 are required to be referred to and considered, namely, Section 2(1)(e) of the Arbitration Act and Sections 3, 10, 15 & 21 of the Commercial Courts Act, 2015, which read as under:

“Section 2(1)(e) of the Arbitration Act, 1996:

(e) “Court” means –

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court”

Sections 3, 10, 15 & 21 of the Commercial Courts Act, 2015:

3. Constitution of Commercial Courts - (1) The State Government, may after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those courts under this Act:

Provided that with respect to the High Courts having ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, constitute Commercial Courts at the District Judge level:

Provided further that with respect to a territory over which the High Courts have ordinary original civil jurisdiction, the State Government may, by notification, specify such pecuniary value which shall not be less than three lakh rupees and not more than the pecuniary jurisdiction exercisable by the District Courts, as it may consider necessary.]

(1-A) Notwithstanding anything contained in this Act, the State Government may, after consultation with the concerned High Court, by notification, specify such pecuniary value

which shall not be less than three lakh rupees or such higher value, for whole or part of the State, as it may consider necessary.]

(2) The State Government shall, after consultation, with the concerned High Court specify, by notification, the local limits of the area to which the jurisdiction of a Commercial Court shall extend and may, from time to time, increase, reduce or alter such limits.

(3) The [State Government may], with the concurrence of the Chief Justice of the High Court appoint one or more persons having experience in dealing with commercial disputes to be the Judge or Judges, of a [Commercial Court either at the level of District Judge or a court below the level of a District Judge].

10. Jurisdiction in respect of arbitration matters - Where the subject-matter of an arbitration is a commercial dispute of a specified value and—

(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial

jurisdiction over such arbitration where such Commercial Court has been constituted.

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.

(4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issue such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance [with Order XV-A] of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the proviso to sub-rule (1) of Rule 1 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to such transferred suit or application and the court may, in its discretion, prescribe a new time period within which the written statement shall be filed.

(5) In the event that such suit or application is not transferred in the manner specified in sub-section (1), sub-section (2) or sub-section (3), the Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

21 Act to have overriding effect —Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than this Act.”

8. It is the case on behalf of the appellants, relying upon Section 2(1)(e) of the Act, 1996 that in case of arbitration other than the international commercial arbitration, the principal Civil Court of original jurisdiction in a district only have the jurisdiction to decide the questions forming the subject-matter of the arbitration, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes. Therefore, it is the case on behalf of the appellants that therefore conferring the jurisdiction upon the Court of learned Civil Judge (Senior Division) as Commercial Court to hear applications under Section 9, 14 and 34 of the Act, 1996 shall be directly in conflict with Section 2(1)(e) of the Act, 1996 and

therefore the notification of the State Government conferring such powers upon the Court of learned Civil Judge (Senior Division) which is subordinate to the rank of Principal Civil Judge in a district shall be bad in law.

9. While considering the aforesaid issue/question, first of all, one has to consider the object and purpose of establishment of the Commercial Courts and the enactment of the Commercial Courts Act, 2015.

9.1 In the year 2003, the Law Commission of India *suo moto* took up the issue of constitution of Commercial Divisions in the High Courts with a view to facilitate fast disposal of high value commercial disputes. In its 188th Report, the Law Commission, after carrying out in-depth study of Commercial Courts in United Kingdom, USA, Singapore etc. recommended setting up of Commercial Division in each of the High Courts to expedite commercial cases of high pecuniary value.

9.2 On the basis of the above recommendations of the Law Commission, a Bill was introduced in Lok Sabha on 16.12.2009 and passed on 18.12.2009 for setting up commercial divisions in the High Courts. The Bill was

referred to a Select Committee which suggested certain amendments to the said Bill. The Bill was redrafted and placed before the Rajya Sabha for its consideration. However, the same came to be withdrawn by the Government and thereafter the matter was again referred to the Law Commission for its report. The Law Commission in its 253rd Report submitted in January, 2015 suggested a new approach for expediting commercial disputes and therefore proposed a new Bill. The Law Commission made the following recommendations qua arbitration matters involving the commercial disputes:

“3.24.4 Second, in the case of domestic arbitrations concerning a commercial dispute of more than Rupees One Crore, applications or appeals may lie either to the High Court or a Civil Court (not being a High Court) depending upon the pecuniary jurisdiction. It is recommended that all applications or appeals arising out of such arbitrations under the A& C Act, that have been filed on the original side of the High Court shall be heard by the Commercial Division of the High Court where such Commercial Division is constituted in the High Court. However, in the absence of a Commercial Division being constituted, the regular Bench of the High Court will hear such applications or appeals arising out of domestic arbitration. If the application or appeal in such domestic arbitration is not within the jurisdiction of the High Court and would ordinarily lie before a Civil Court (not being a High Court) and there is a Commercial Court exercising territorial jurisdiction in respect of such arbitration, then such application or appeal shall be filed in and heard by such Commercial Court.”

Accordingly, Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 was introduced in Rajya Sabha on April 29, 2015 which was referred to Departmental Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. While the matter was pending before the Parliamentary Committee, an Ordinance was promulgated by His Excellency the President of India on 23.10.2015, namely, Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015.

That thereafter, the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 was passed by the Parliament, which has been subsequently re-named as Commercial Courts Act, 2015. The statements of Objects and Reasons of the said Act, *inter alia*, provides as under:

“The proposal to provide for speedy disposal of high value commercial disputes has been under consideration of the Government for quite some time. The high value commercial disputes involve complex facts and question of law. Therefore, there is a need to provide for an independent mechanism for their early resolution. Early resolution of commercial disputes

shall create a positive image to the investor world about the independent and responsive Indian legal system.”

That thereafter the Commercial Courts Act, 2015 has been amended in the year 2018 which has come into force with effect from 03.05.2018, by which Sections 3(1A) & 3A have been inserted enabling the State Governments to designate such number of commercial Appellate Courts at District level to exercise appellate jurisdiction over the commercial courts below the District Judge level. Thus, a commercial Court can be set up under Section 3 of the Act, 2015 and a commercial appellate Court can be set up under Section 3A of the Act, 2015.

10. Thus, the Objects and Reasons of Commercial Courts Act, 2015 is to provide for speedy disposal of the commercial disputes which includes the arbitration proceedings. To achieve the said Objects, the legislature in its wisdom has specifically conferred the jurisdiction in respect of arbitration matters as per Section 10 of the Act, 2015. At this stage, it is required to be noted that the Act, 2015 is the Act later in time and therefore when the Act, 2015 has

been enacted, more particularly Sections 3 & 10, there was already a provision contained in Section 2(1)(e) of the Act, 1996. As per settled position of law, it is to be presumed that while enacting the subsequent law, the legislature is conscious of the provisions of the Act prior in time and therefore the later Act shall prevail. It is also required to be noted that even as per Section 15 of the Act, 2015, all suits and applications including applications under the Act, 1996, relating to a commercial dispute of specified value shall have to be transferred to the Commercial Court. Even as per Section 21 of the Act, 2015, Act, 2015 shall have overriding effect. It provides that save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

11. Therefore, considering the afore-stated provisions of the Act, 2015 and the Objects and Reasons for which the Act, 2015 has been enacted and the Commercial Courts, Commercial Division and Commercial Appellate Division in the High Courts are established for speedy disposal of the commercial disputes including the arbitration disputes,

Sections 3 & 10 of the Act, 2015 shall prevail and all applications or appeals arising out of arbitration under the provisions of Act, 1996, other than international commercial arbitration, shall be filed in and heard and disposed of by the Commercial Courts, exercising the territorial jurisdiction over such arbitration where such commercial courts have been constituted. If the submission on behalf of the appellants that all applications/appeals arising out of arbitration under the provisions of Act, 1996, other than the international commercial arbitration, shall lie before the principal civil Court of a district, in that case, not only the Objects and Reasons of enactment of Act, 2015 and establishment of commercial courts shall be frustrated, even Sections 3, 10 & 15 shall become otiose and nugatory. If the submission on behalf of the appellants is accepted, in that case, though with respect to other commercial disputes, the applications or appeals shall lie before the commercial courts established and constituted under Section 3 of Act, 2015, with respect to arbitration proceedings, the applications or appeals shall lie before the principal civil

Court of a district. There cannot be two *fora* with respect to different commercial disputes.

Under the circumstances, notification issued by the State of Odisha issued in consultation with the High Court of Orissa to confer jurisdiction upon the court of learned Civil Judge (Senior Division) designated as Commercial Court to decide the applications or appeals arising out of arbitration under the provisions of Act, 1996 cannot be said to be illegal and bad in law. On the contrary, the same can be said to be absolutely in consonance with Sections 3 & 10 of Act, 2015. We are in complete agreement with the view taken by the High Court holding so.

12. In view of the above and for the reasons stated above, all these appeals fail and the same deserve to be dismissed and are accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

13. Before parting with the case, we appreciate the assistance rendered by Shri Gaurav Aggarwal, learned counsel as Amicus Curiae in the matter.

.....J.
[M.R. SHAH]

NEW DELHI;
OCTOBER 19, 2022

.....J.
[KRISHNA MURARI]