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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ TR.P.(C.) 75/2024 & CM APPL. 26928/2024

SANJAY GOEL

..... Petitioner

Through: Mr. Mayank Wadhwa, Ms. Muskan Gupta, Mr. Shorya Goel, Ms. Niti Khanna, Ms. Srishti Raichandani and Ms. Tushita Arya, Advs.

versus

MAJESTIC BUILDCON PVT. LTD.

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

07.05.2024

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1. This petition is an example of the pernicious practice, adopted by litigants in certain cases – which, mercifully, are few and far between – in which the jurisdiction vested in the High Court by Section 24¹ of the Code of Civil Procedure 1908 (CPC) is sought to be misused to seek transfer cases out of courts which are competent to deal with them, for the sole reason that orders passed by the court

¹ 24. **General power of transfer and withdrawal. –**

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

- (i) try or dispose of the same; or
(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or
(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.



concerned are not palatable to the litigant.

2. The petition seeks transfer of CS (Comm) 525/2018, pending before the learned District Judge (Commercial Courts)-04, Central Tis Hazari Courts, Delhi (hereinafter referred to as “the learned Commercial Court-04”), to any other Commercial Court in the said district.

3. It is *not* the case of the petitioner that the learned Commercial Court-04, which is presently in *seisin* of the dispute, is not competent to hear the matter.

4. At this juncture, Mr. Wadhwa interjects and submits that he had never conceded the competence of the learned Commercial Court-04 to adjudicate the present matter. In his submission, the very fact that the petitioner is being driven to challenge every order passed by the Court renders the said court incompetent to deal with the case.

5. Mr. Wadhwa’s understanding of “competence”, as a legal principle applicable to Section 24 of the CPC is, in my opinion, flawed. “Competent” is employed, in Section 24 of the CPC, in the context of *jurisdictional competence*, not *judicial competence*. Mr. Wadhwa is, in his submission, apparently conflating these two distinct concepts.

6. The passing of an order which, according to a litigant, may be incorrect, or even perverse, does not *ipso facto* render the court, which



passes it, incompetent to deal with the matter. Ergo, the submission of Mr. Wadhwa that the petitioner was being driven to challenge every order passed by the learned Commercial Court-04 and that, therefore, the learned Commercial Court-04 was incompetent to hear the matter, is completely misconceived. The decision on whether to challenge the orders passed by the court is that of the petitioner. No one drives the petitioner to challenge every order. It is the petitioner's choice whether to challenge an order passed by a court, or not, and, the fact that he decides to challenge every order does not render the court passing the order incompetent. Even if, for that matter, all challenges were to succeed, and every order passed by the Court were to be set aside, that, too, would not render the Court which passed the orders incompetent, within the meaning of Section 24 of the CPC.

7. On another note, it may be stated that, in commercial matters, most orders *are* challenged, interlocutory or otherwise.

8. The contention of Mr. Wadhwa, learned Counsel for the petitioner, is that the manner in which the learned Commercial Court-04 is proceeding with the matter is so injudicious that this Court should exercise its jurisdiction under Section 24 and transfer the matter to some other court.

9. To support this submission, Mr. Wadhwa has referred me to three – actually four – orders passed by the learned Commercial Court-04.



10. Order dated 6 November 2023

10.1 The first order is dated 6 November 2023. The grievance of Mr. Wadhwa is regarding the decision of the learned Commercial Court-04 to strike off the written statement of the petitioner, as Defendant 1 in the suit, off the record, as contained therein.

10.2 Paras 17 and 18 of the order dated 6 November 2023 read thus:

“17. So far as application of defendant no. 1 is concerned, the same has been filed on 16.08.2022 which is much beyond the period of 90 days from 01.03.2022 during which the court could have condoned the delay in rectification of procedural irregularities. Order 6 Rule 15 A (5) CPC specifically provides for striking out a pleading which is not verified by a Statement of Truth, namely the affidavit set out in the Appendix to this Schedule.

18. The WS filed by defendant no. 1 without Statement of Truth is non est filing and no steps were taken by the defendant no. 1 for curing this procedural irregularities within the outer period of 90 days as provided by Hon’ble Supreme Court in its order dated 10.01.2022. Hence, the court has no power to condone the delay in rectification of the procedural irregularities and WS of defendant no. 1 is accordingly taken off the record. The application stands disposed of accordingly.”

10.3 It is clear, from a reading of paras 17 and 18 of the order dated 6 November 2023, that the learned Commercial Court-04 has refused to take the written statement of the petitioner (as Defendant 1) on record, as the statement of truth, which had to accompany the written statement, was filed beyond the maximum condonable period of 90 days within which the written statement was required to be filed. In exercising his jurisdiction to strike off the written statement from the record, the learned Commercial Court-04 has invoked Order VI Rule



15A(5)² of the CPC, as amended by the Commercial Courts Act, 2015.

10.4 The learned Commercial Court-04 has also noted the fact that the written statement filed by the petitioner was not accompanied by any statement of truth. No steps were taken by the petitioner, as Defendant 1, to cure this defect within the maximum condonable period of 90 days. In these circumstances, the learned Commercial Court-04 held that the written statement could not be taken on record.

10.5 Mr. Wadhwa's contention is that the view of the learned Commercial Court-04 is contrary to the law laid down by the Division Bench of this Court in *Prayag Polytech Pvt. Ltd. v. Raj Kumar Tulsian*³.

10.6 He relies, for this purpose, on the principle of law, enunciated in the said decision, to the effect that the defect in verification of an affidavit in the nature of a statement of truth was a curable defect.

10.7 While exercising jurisdiction under Section 24 of the CPC, I am not required to enter into that arena. Suffice it to state that, at the very highest, the correctness of the order dated 6 November 2023 passed by the learned Commercial Court-04 may be said to be arguable.

10.8 Mr. Wadhwa submits, here, that, in fact, the order dated 6

² (5) The court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule.

³ 2023 SCC Online Del 6058



November 2023 was challenged by the petitioner before this Court by means of CM (M) 2144/2023, which was allowed by judgment dated 24 January 2024, relying, *inter alia*, on **Prayag Polytech**. He submits that it is this order which has persuaded him to file the present petition.

10.9 The fact that this Court, in its order dated 24 January 2024, in CM (M) 2144/2023, has reversed the order dated 6 November 2023 passed by the learned Commercial Court-04 can obviously not constitute any reasonable basis for seeking the transfer of the case from the learned Commercial Court-04. If the mere passing of an order which is set aside in appeal is to make out a case for transfer of the case out of the Court which has passed the order, cases would keep hopping from Court to Court. The proposition has, to use a time-worn cliché, merely to be urged to be rejected.

10.10 The learned Commercial Court-04 proceeded on the premise that period of limitations stipulated in commercial Courts Act are strict and non-negotiable. Inasmuch as the written statement was filed beyond the maximum condonable period of limitation, and in view of the fact that a proper statement of truth, which was required to accompany written statement was not filed within the maximum condonable period of 90 days from the date of service of summons, the learned Commercial Court-04, exercising its jurisdiction under Order VI Rule 15A(5) of the CPC, refused to take the written statement on record.



10.11 As the order stands set aside by this Court in its judgment dated 24 January 2024 in CM(M) 2144/2023, it is not for me to venture any opinion regarding the correctness of the view taken by the learned Commercial Court-04 in his order dated 6 November 2023. Suffice it, however, to state that the view cannot be treated to be perverse or absurd, but was based on what the learned Commercial Court-04 regarded as the proper construction of the provisions of the Commercial Courts Act. Perhaps, the learned Commercial Court-04 may have had in mind the judgment of the Supreme Court in ***Sudhir Kumar v. Vinay Kumar G.B.***⁴ which holds that period of limitation stipulated in the Commercial Courts Act are strict and non-negotiable.

10.12 In any event, it cannot be said by any stretch of imagination that the order dated 6 November 2023 justifies divesting the learned Commercial Court-04 of the right to continue and proceed to deal with the matter.

11. Orders dated 20 December 2023 and 6 January 2024

11.1 The second order cited by Mr. Wadhwa was passed by the learned Commercial Court-04 on 20 December 2023 and reads thus:

“MISC. DJ 814/23
SANJAY GOEL VS. AMIT GUPTA

20.12.2023

Present: Ld. Counsel Mr. Mayank Wadhwa for the applicant through VC and Mr. Shaurya in person appeared physical in the court.

An application u/s 340 Cr.PC has been moved by the applicant.

⁴ (2021) 13 SCC 71



Counsel for the applicant submits that there is no requirement of supplying the copy of the application to the non applicant. He has relied upon a Supreme Court Judgment titled State of Punjab Vs. Jasbir Singh.

It is basic principle of law that no one can be condemned unheard.

Copy of application be supplied to the counsel for non applicant.

Put up on the date already fixed for consideration on the application u/s 340 Cr. PC.”

(ANIL KUMAR SISODIA)
District Judge (Commercial Court)-04
Central/Delhi/20.12.2023

11.2 The next order passed by the learned Commercial Court-04 on 6 January 2024 has also been cited by Mr. Wadhwa and may, therefore, be reproduced thus:

“Misc DJ814/23
SANJAY GOEL Vs. AMIT GUPTA

06.01.2024

Present: Ld. Counsel Mr. Shorya Goel for applicant.
Ld. Counsel Ms. Pooja Singh along with
Namanveer Singh for the non applicant.

On the last date of hearing applicant was directed to supply the copy of application to the non applicant.

The said order has neither been challenged in the appeal/revision nor counsel for the applicant is ready to comply with the order.

The application is dismissed for non-compliance of the order dated 20.12.2023. Application be consigned to record room after necessary compliance.

(ANIL KUMAR SISODIA)
District Judge (Commercial Court)-04
Central/Delhi/06.01.2024”

11.3 Mr. Wadhwa’s contention is that the judgment of the Supreme

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Court in *State of Punjab v. Jasbir Singh*⁵, which was specifically cited by the petitioner before the learned Commercial Court-04 on 20 December 2023, expressly does away with the requirement of advance notice on an application under Section 340 of the Criminal Procedure Code, 1973 (CrPC), before a court takes up the matter. As such, he submits that the learned Commercial Court-04 was in manifest error in requiring a copy of the application under Section 340 CrPC to be served on the respondent, despite *Jasbir Singh* having been cited before the learned Commercial Court-04.

11.4 Equally, Mr. Wadhwa submits that the learned Commercial Court-04 was in error in dismissing the petitioner's Section 340 CrPC application for non-compliance with the direction to serve a copy of the application on the respondent.

11.5 I have seen the judgment of the Supreme Court in *Jasbir Singh*. In the said decision, the Supreme Court framed the question arising before it for consideration thus:

“(i) Whether Section 340 of the Code of Criminal Procedure, 1973 mandates a preliminary inquiry and an opportunity of hearing to the would-be accused before a complaint is made under Section 195⁶ of the Code by a Court?

⁵ (2020) 12 SCC 96

⁶ 195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. –

- (1) No Court shall take cognizance—
- (a)(i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
 - (ii) of any abetment of, or attempt to commit, such offence, or
 - (iii) of any criminal conspiracy to commit such offence,
- except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;
- (b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or



(ii) What is the scope and ambit of such preliminary inquiry?”

11.6 Section 195(2) of the CrPC starts with the word “Where a complaint has been made by a public servant...”. The making of a complaint, therefore, refers to the filing of that complaint before the court of competent jurisdiction by the complainant. Section 195(1) deals with the power of a court to take cognizance of any offence punishable under Sections 172 to 188 of the Indian Penal Code, 1860 (IPC) or of the abetment of conspiracy to commit such offence and proscribes the taking of cognizance except on a complaint in writing of the public servant concerned.

11.7 The making of a complaint, therefore, is different from the taking of cognizance by the court on such complaint.

11.8 Question (i) framed by the Supreme Court as arising for consideration in *Jasbir Singh* clearly identifies the issue before the Supreme Court as “whether a preliminary inquiry and an opportunity of hearing to the would-be accused was necessary *before a complaint was made* under Section 195”.

(ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

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11.9 It is also important to note the situation in which the criminal appeal came up before the Supreme Court. In a civil case in which the respondent Jasbir Singh was involved, it was alleged that he had resorted to forgery. An FIR was registered on that basis. The High Court apparently granted relief to Jasbir Singh, qua the said FIR, on the ground that the FIR, while raising allegations under Section 340 CrPC, did not comply with the mandatory requirements thereof, as it had been filed without inquiry and without an opportunity to the respondent to be heard.

11.10 Thus, the issue before the Supreme Court was relating to the aspect of whether a preliminary inquiry had to precede the making of a complaint under Section 340 CrPC. The decision in *Jasbir Singh* could not, therefore, be said to have, in any manner of speaking, proscribed the learned Commercial Court-04 from directing a copy of the application under Section 340 CrPC. to be supplied to the counsel for the non-applicant.

11.11 Even otherwise, it is an undeniable position that, the entertainment of an application under Section 340 CrPC sets the criminal law in motion against the accused in the application.

11.12 If the learned Commercial Court-04, therefore, felt it appropriate to direct a copy of the application to be provided to the respondent in the application, before taking it up for hearing, I fail to understand how the Commercial Court could be said to have acted so



improperly as to seek transfer of the matter from that Court.

11.13 Though Mr. Wadhwa submits that the order dated 20 December 2023 is presently subject matter of a challenge before this Court, it is not his case that any interlocutory order has been passed by this Court in that regard.

11.14 As such, if the learned Commercial Court-04 dismissed the petitioner's application for non-compliance with the direction to serve a copy thereof on the respondent, that again was a decision taken within the legitimate confines of the discretion vested in the learned Commercial Court-04. Irrespective of the correctness of the said decision, which I am told is being examined by a coordinate Bench of this Court, the order dated 6 January 2024 too cannot make out any case for transfer of proceedings from the learned Commercial Court-04 where it is presently pending.

12. Order dated 5 April 2024

12.1 The third order with which Mr. Wadhwa is aggrieved, was passed by the learned Commercial Court-04 on 5 April 2024. The order reads thus:

“CS (COMM)1432/20
M/S BKR CAPITAL PVT LTD Vs. SANJAY GOEL

05.04.2024

Present: Ld. Counsel Mr. Rajat Sharma for the plaintiff.
Vakalatnama filed on behalf of the plaintiff. Same is taken on record.
Ld. Counsel Mr. Shourya Goel for the defendant no.1.

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Ld. Counsel Mr. Namanveer for defendant no.2 and 3.

Defendant no.1 has filed WS along with statement of truth, list of documents and affidavit of A/D and copy of judgment dated 24.01.2024 passed by Hon'ble High Court, Delhi in CM(M) No.2144/2023.

Perusal of the order dated 24.01.2024 shows that defendant no.1 was permitted to file the WS along with statement of truth by appending signature on each and every page. WS has been filed by defendant no.1 in compliance of the said order. Hence, the same is taken on record. However, the documents filed along with the WS were not filed earlier with the WS filed in the year 2021 when the original WS was filed. Hence, these documents cannot be taken on record at this stage. The same are taken off the record.

On the last date of hearing, counsel for the defendant no.1 had sought time for filing appropriate application. He was granted one week's time for filing the application but the application has been filed only today. It appears that the intention of defendant no.1 is only to delay the proceedings. Hence, defendant no.1 is directed to deposit cost of Rs.10,000/- with DLSA within a week from today for causing unnecessary delay in the case.

Plaintiff shall file the reply to the application within a week with advance copy to the counsel for defendant no.1.

Put up for arguments on the application on **23.04.2024**.

(ANIL KUMAR SISODIA)
District Judge (Commercial Court)-04
Central/Delhi/05.04.2024"

13. Mr. Wadhwa seeks to point out that the learned Commercial Court-04 had itself, on 13 March 2024, granted time to the petitioner to file an appropriate application under Order VII Rule 10 of the CPC. On the mere ground that the application was not filed within the time granted by the court, he submits that the learned Commercial Court-04 ought not to have mulcted the petitioner with costs of ₹ 10,000/-, even before taking up the application for hearing.



14. In this instance, I do not even see any serious infirmity in the decision of the learned Commercial Court-04.

15. The Supreme Court, as well as various Division Benches of this Court, have repeatedly held that proceedings in commercial matters have to be prosecuted, continued and completed with utmost expediency. Delay in commercial proceedings is to be avoided at all costs. It is for this reason that the Supreme Court has in *Sudhir Kumar* held that the proceedings of the Commercial Courts Act, including those which deal with mere matter of procedure, have to be strictly construed, and there is no scope for relaxation therein.

16. The learned Commercial Court has merely imposed token costs of ₹ 10,000/- for delay on the part of the petitioner in filing the application under Order VII Rule 10 of the CPC. There is no infirmity in the learned Commercial Court-04 having decided to do so, much less does the said decision make out any case for transferring the matter outside the learned Commercial Court.

17. At this juncture, Mr. Wadhwa, interjects to urge one more contention, relating to the decision of the learned Commercial Court, not to take certain documents on record, with the written statement which was filed in 2021. He seeks to point out that the said documents were actually filed under an index dated 17 August 2021.

18. This, at the highest, could only constitute an error of fact in the



order of the learned Commercial Court-04, for which the petitioner has adequate legal remedies available to him. I am not expressing any opinion thereon. Suffice, however, to state that this, too, cannot make out a case for transfer of the matter outside the court which is presently hearing it.

19. None of the grounds urged by Mr. Wadhwa, therefore, make out a case for transferring the litigation outside the commercial court which is presently in *seisin* thereof.

20. Transfer of a matter outside the court which is hearing it, and which has the jurisdiction to hear it, is an extremely serious matter. It is a step which is ordinarily not to be resorted to. It casts aspersions on the impartiality and, at times, even on the integrity, of the Judge hearing the matter. It seriously demoralizes the judge concerned. An order of transfer of a matter, even if innocuous in form, may be injurious in substance.

21. It is only, therefore, where cogent, convincing and clear material placed on record to indicate that either that the judge hearing the matter is prejudiced or biased, or that continuance of the proceedings in that court is bound to result in manifest injustice to either of the parties, that a court can, in exercise of the jurisdiction vested in it by Section 24 of the CPC, transfer the matter outside that court.

22. A single order of such transfer may, on occasion, mar the career



of the judicial officer concerned for life.

23. Applications such as the present are an abuse of process. A litigant cannot seek to argue a matter before a court which, according to a litigant, is the most convenient. Every order passed by a court which is not palatable to a litigant cannot constitute a basis to escape the court and argue the matter elsewhere. Such a practice has to be emphatically deprecated.

24. This is all the more so where the litigation in question is a commercial litigation. It is a matter of common knowledge that, in commercial litigation, all stops are pulled out and the litigant tends to resort to every possible method to prejudice the proper continuance of the proceedings.

25. No case for transfer of CS (Comm) 525/2018 is made out.

26. The petition is dismissed with costs of ₹ 50,000/-, to be paid to the Delhi High Court Legal Services Committee within a period of one week from today.

C. HARI SHANKAR, J.

MAY 7, 2024/dsn

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