

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.752 of 2023

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Bihar State Power (Holding) Company Limited (A Government of Bihar Company) having its registered Office at Vidyut Bhawan, Jawahar Lal Nehru Marg, P.S Kotwali, Town and District -Patna-800021, through its Deputy Law Advisor.

... .. Petitioner/s

Versus

1. Gammon India Limited a Public Limited Company registered under the Companies Act, 1956, having its registered office at Gammon House, Veer Savarkar Marg, Post Box No. 9129, Prabha Devi, Mumbai, through its Managing Director.
2. Sri Madan Lal, Father's name not known, Presiding Arbitrator, Resident of Pratiksha Vatika Parisar, Vijay Nagar, Patna- 800014.
3. Sri K.B. Rajoria, Father's name not known, FIE Arbitrator, resident of B-25, Greater Kailash Enclave-II, New Delhi- 110048.
4. Sri L.N. Roy Son of Ram Gahan Roy, Resident of Mitra Mandal Colony, P.O. Anishabad, Patna- 800002,

... .. Respondent/s

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with

CIVIL MISCELLANEOUS JURISDICTION No. 755 of 2023

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Bihar State Power (Holding) Company Limited (A Government of Bihar Company) having its registered office at Vidyut Bhawan, Jawahar Lal Nehru Marg, P.S. Kotwali, Town and District-Patna-800021, through its Deputy Law Advisor.

... .. Petitioner/s

Versus

M/s Gammon Engineering and Construction Pvt. Ltd. a Public Limited Company registered under the Companies Act, 1956, having its registered office at Gammon House, Veer Savarkar Marg, Post Box No. 9129, Prabha Devi, Mumbai, through its Managing Director.

... .. Respondent/s

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with

CIVIL MISCELLANEOUS JURISDICTION No. 305 of 2024

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M/S Hindustan Construction Company Limited, having its Office at HINCON House, Lal Bahadur Shastri Marg, Vikhroli (West), Mumbai- 400083.

... .. Petitioner/s

Versus

Bihar Rajya Pul Nirman Nigam Limited, having its registered office at-7, Sardar Patel Marg, Patna, Bihar- 800015 through its Managing Director.

... .. Respondent/s

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Appearance :

(In CIVIL MISCELLANEOUS JURISDICTION No. 752 of 2023)

For the Petitioner/s : Mr. Umesh Prasad Singh, Sr. Advocate



Mr. Kumar Manish, Advocate
Mr. Vaibhava Veer Shanker, Advocate
Mr. Kumar Saurav, Advocate
Mr. Arun Kumar Prasad, Advocate
Ms Aishwarya Shankar, Advocate
For the Respondent no.1 : Mr. Shyam Kishore Sharma, Sr. Advocate
Mr. Ashok Kumar Sinha, Advocate
Mr. Nilesh Kumar Nirala, Advocate
(In CIVIL MISCELLANEOUS JURISDICTION No. 755 of 2023)
For the Petitioner/s : Mr. Umesh Prasad Singh, Sr. Advocate
Mr. Kumar Manish, Advocate
Mr. Vaibhava Veer Shanker, Advocate
Mr. Kumar Saurav, Advocate
Mr. Arun Kumar Prasad, Advocate
Ms Aishwarya Shankar, Advocate
For the Respondent no.1 : Mr. Shyam Kishore Sharma, Sr. Advocate
Mr. Ashok Kumar Sinha, Advocate
Mr. Nilesh Kumar Nirala, Advocate
(In CIVIL MISCELLANEOUS JURISDICTION No. 305 of 2024)
For the Petitioner/s : Mr. Anurag Saurav, Advocate
Mr. Inderjeet Sinha, Advocate
Ms. Prity Kumari, Advocate
Ms. Sharda Raje Singh, Advocate
Mr. Ankesh Bibhu, Advocate
For the Respondent/s : Md. Nadim Seraj, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 29-11-2024

In these three cases, the issues are common and interrelated, as such, all have been heard together and are being disposed of by this common judgment. The reliefs sought by the petitioners are as under :

Civil Misc. No. 752 of 2023

2. The instant petition has been filed by the petitioner under Article 227 of the Constitution of India seeking following reliefs :

“(i) To issue a rule NISI in the nature of writ of certiorari to quash and cancel the order dated 09.06.2023 passed by the Ld. District Judge,



Civil Court, Patna, in Miscellaneous (Arbitration) Case No. 04/2018 (M/s Bihar State Power Holding Company Ltd. Vs. Gammon India Ltd. & Ors.) by which the Ld. District Judge has been pleased to transfer this case to Ld. Additional District Judge-27, Patna along with Execution Case No. 382/2019, a 'Court' having no jurisdiction;

(ii) To issue a writ of mandamus commanding the 'District Judge' being the Principal Civil Court in terms of section 2 (e) defining 'Court' as per Arbitration & Conciliation Act 1996 and also having been declared a Commercial Court by notification as contained in memo no. 5080 dated 25.07.2019 by the order of Governor of Bihar in terms of section 3 of the Commercial Court Act 2015 (Act 4 of 2016) to transfer such cases to any other court which are covered u/s 2 (c) being the commercial disputes read with section 10 of the Commercial Court Act 2015 (Act 4 of 2016);

(iii) To issue order/orders, direction/directions and restore the Miscellaneous (Arbitration) Case No. 04/2018 (Bihar State Power Holding Company Ltd. Vs. Gammon India Ltd. & Ors.) to the court of Ld. District Judge presently pending in the Court of Ld. Additional District Judge-27, Patna;

(iv) To issue a writ of prohibition restraining the Additional District Judges from deciding the cases u/s 2 (c) of the Arbitration and Conciliation Act 1996 read with section 10 (2) & (3) of the Commercial Court Act 2015;



(v) To issue an interim order granting stay of the further proceedings in the aforementioned case and/or to stay the operation of the impugned order during pendency of the present application;

(vi) To issue other appropriate writ or writs, order or orders, direction or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case”.

Civil Misc. No. 755 of 2023

3. The instant petition has been filed by the petitioner under Article 227 of the Constitution of India seeking following reliefs :

“(i) To issue a rule NISI in the nature of writ of certiorari to quash and cancel the order dated 09.06.2023 passed by the Ld. District Judge, Civil Court, Patna, in Execution Case No. 382/2019 (M/s Gammon Engineering & Construction Pvt. Ltd. Vs. M/s Bihar State Power Holding Company Ltd.) by which the Ld. District Judge has been pleased to transfer this case to Ld. Additional District Judge-27, Patna along with Miscellaneous (Arbitration) Case No. 04/2018 , a ‘Court’ having no jurisdiction along;
(ii) To issue a writ of mandamus commanding the ‘District Judge’ being the Principal Civil Court in terms of section 2 (e) defining ‘Court’ as per Arbitration & Conciliation Act 1996 and also having been declared a Commercial Court by



notification as contained in memo no. 5080 dated 25.07.2019 by the order of Governor of Bihar in terms of section 3 of the Commercial Court Act 2015 (Act 4 of 2016) to transfer such cases to any other court which are covered u/s 2 (c) being the commercial disputes read with section 10 of the Commercial Court Act 2015 (Act 4 of 2016);

(iii) To issue order/orders, direction/directions and restore the Execution Case No. 382/2019 (M/s Gammon Engineering & Construction Pvt. Ltd. Vs. M/s Bihar State Power Holding Company Ltd.) to the court of Ld. District Judge presently pending in the Court of Ld. Additional District Judge-27, Patna;

(iv) To issue a writ of prohibition restraining the Additional District Judges from deciding the cases u/s 2 (c) of the Arbitration and Conciliation Act 1996 read with section 10 (2) & (3) of the Commercial Court Act 2015;

(v) To issue an interim order granting stay of the further proceedings in the aforementioned case and/or to stay the operation of the impugned order during pendency of the present application;

(vi) To issue other appropriate writ or writs, order or orders, direction or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case".

Civil Misc. No. 305 of 2024

4. The instant petition has been filed by the



petitioner under Article 227 of the Constitution of India seeking following reliefs :

“(i) For issuance of Rule NISI in the nature of writ of certiorari to quash the order dated 14.06.2023 passed by the Learned District Judge, Civil Court, Patna, in Miscellaneous Case No. 62/2022 (M/s Hindustan Construction Company Limited Versus Bihar Rajya Pul Nirman Nigam Limited) by which the Learned District Judge has been pleased to transfer this case to Learned Additional District Judge-XIV, Patna and the Miscellaneous Case has been erroneously transfer to a “Court” which have no jurisdiction to decide the Commercial Suit in terms of Notification No. 5080J/ dated 25.07.2019 (English Translation vide Memo No. 5250 Dated 02.08.2019) issued by Secretary Government of Bihar in terms of Section 3 of Commercial Court Act, 2015. along with Execution Case No. 382/2019, a ‘Court’ having no jurisdiction;

(ii) For issuance of a writ of Mandamus commanding the ‘District Judge’ being the Principal Civil Court in terms of section 2 (e) defining ‘Court’ as per Arbitration & Conciliation Act 1996 and also having been declared a Commercial Court by notification as contained in Memo No. 5080 dated 25.07.2019 by the order of Governor of Bihar in terms of section 3 of the Commercial Court Act 2015 (Act 4 of 2016) to transfer such cases to any other court which are covered u/s 2 (c) being the commercial disputes read with section 10 of the Commercial Court Act



2015 (Act 4 of 2016);

(iii) For issuance of order/orders, direction/directions to restore the Miscellaneous Case No. 62 of 2022 (M/s Hindustan Construction Company Limited Versus Bihar Rajya Pul Nirman Nigam Limited) to the court of learned District Judge presently pending in the Court of learned Additional District Judge-XIV, Patna;

(iv) For issuance of writ of Prohibition restraining the Additional District Judges from deciding the cases u/s 2 (c) of the Arbitration and Conciliation Act 1996 read with section 10 (2) & (3) of the Commercial Court Act 2015;

(v) For Granting Stay of the further proceedings in the aforementioned case and/or to stay the operation of the impugned order during pendency of the present application;

(vi) To issue other appropriate writ or writs, order or orders, direction or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case".

Facts of Civil Misc. Nos. 752 of 2023 & 755 of 2023

5. The petitioner- Bihar State Power (Holding) Company Limited is a Government Company registered under the provisions of the Companies Act, 1956 as well as the Electricity Act, 2003. The Company came into existence on 01.11.2012. It appears the Company took over the functions of erstwhile Bihar State Electricity Board (hereinafter referred to as 'BSEB') which ceased to exist with effect from 10.06.2003,



but not as a successor company. The respondent no.1 undertook some construction work for BSEB after the agreement was entered into on 22.07.1989. The original completion period was fifteen months to be reckoned from 1.11.1989 to 15.06.1991. It further transpires that the period so stipulated was exceeded and with further negotiation between the parties, the work was completed on 30.08.2000. The respondent no.1 was paid the final bill amounting to Rs.20,87,071.26/- and escalation bill of gross value of Rs. 3,03,015/- was also paid. However, the respondent no.1 raised certain other claims under different heads which were rejected by the petitioner. Aggrieved by the decision of the petitioner, the respondent no.1 invoked clause 4.18 of the agreement and nominated respondent no. 3 as its nominee arbitrator and requested the petitioner to appoint one arbitrator from its side. The petitioner-company nominated respondent no. 4 as its arbitrator vide its letter no. 1 dated 5.01.2011. The two arbitrators (respondent nos. 3 & 4) were required to nominate a third arbitrator within 30 days, but they did not appoint the 3rd arbitrator within the prescribed period of 30 days. Subsequently, the respondent no.1 vide its letter dated 04.03.2011 requested the two arbitrators nominated by the parties to nominate presiding arbitrator. Pursuant thereto, the two arbitrators



nominated respondent no.2 as the Presiding Arbitrator. The respondent no.2, thereafter, intimated the parties about the formation of the Arbitral Tribunal for adjudication of the disputes between the petitioner and the respondent no.1 and the first sitting of Arbitral Tribunal was fixed on 28.06.2011. The petitioner raised certain objection regarding constitution of the Arbitral Tribunal, *inter alia*, that the agreement was of the year 1989 and the arbitration clause was governed by the Arbitration Act, 1940 and adoption of the provision of 1996 Act was not permissible. Further development also took place and the petitioner withdrew its nominee arbitrator. However, remaining two arbitrators made an award on 05.07.2018 and sent the same to the office of the petitioner by email in the evening of 05.07.2018. The petitioner challenged the award dated 05.07.2018 under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the A & C Act, 1996) read with Section 10 (3) of the Commercial Courts Act, 2015 (hereinafter referred to as 'the C C Act, 2015') and the respondent-Gammon India Limited filed Execution Case No. 382 of 2019 under Section 36 of the A & C Act, 1996 for execution of award. Both the cases, i.e., Miscellaneous (Arbitration) Case No. 04 of 2018 filed by the petitioner and



Execution Case No. 382 of 2019 filed by the respondent no.1, were heard together by the learned District Judge, Patna and vide order dated 09.06.2023, the learned District Judge, Patna transferred both the cases to the learned Additional District Judge-27, Patna. The petitioner challenged the said order apart from seeking other reliefs as already mentioned here-in-before.

Facts of Civil Misc. No. 305 of 2024

6. The petitioner- M/s Hindustan Construction Company Limited is a Company registered under the Companies Act, 1956, whereas the respondent-Bihar Rajya Pul Nirman Nigam Limited is a government Company registered under the Indian Companies Act, 1956. The work of construction of Four Lane High Level RCC Bridge (2900.00M) between Daudnagar and Nasriganj including approach roads over River Sone in the district of Aurangabad and Rohtas under the NABARD Scheme was awarded by the respondent to the petitioner for a contract value of Rs.432.69 crores. In terms of Contract, the work was to be completed by the petitioner within 36 months. The commencement and completion date under the Contract were 04.03.2014 and 03.03.2017, respectively. However, it is claimed that on account of several reasons and causes which were solely attributable to the respondent, the



work could not progress in a timely manner as per the planned scheme. From time to time, the petitioner requested the respondent to extend the project completion date along with the associated cost. The respondent extended the project completion date up to 31.03.2019 without levy of liquidated damage. Thereafter, the petitioner submitted a claim for an amount of Rs.5753.16 lacs for the period from 04.03.2014 to 31.05.2015, however, the same was summarily rejected by the respondent. The petitioner again submitted a claim for an amount of Rs.3970.36 lacs for the period from 01.06.2015 to 31.12.2016. The petitioner further updated its claim amounting to Rs.1686.03 lacs for the period from 01.01.2017 to 03.03.2017. When no determination of the claims made by the petitioner was communicated to the petitioner by the respondent, the petitioner approached the authorities in terms of Clause 25 of the Contract. When the authorities did not arrive at any decision, the petitioner issued the Notice of Intention to commence arbitration proceeding and requested for appointment of Arbitrator in terms of Clause 26 of the Contract for adjudication of dispute. Since the respondent failed to make appointment of arbitrator, the petitioner approached this Court for appointment of Arbitrator by filing Request Case No. 04 of 2019 under



Section 11 of the A & C Act, 1996. This Court vide order dated 02.08.2019 appointed the sole arbitrator for adjudication of dispute and, accordingly, the matter had come up before the sole Arbitrator. The sole arbitrator, vide Award dated 31.12.2021, partly allowed the claim of the petitioner and further vide order dated 14.02.2022, rejected the claim of the petitioner for additional award. The petitioner challenged the award dated 31.12.2021 and rejection of additional award dated 14.02.2022 under Section 34 of the A & C Act, 1996 read with Section 10 (3) of the C C Act, 2015 by filing Miscellaneous Case No.62 of 2022. Vide order dated 09.06.2023, the learned District Judge, Patna transferred the case to the learned Additional District Judge-27, Patna. The petitioner challenged the said order apart from seeking other reliefs as already mentioned here-in-before.

**Submission on behalf of petitioner of Civil Misc.
Nos.752 of 2023 & 755 of 2023**

7. Mr. Umesh Prasad Singh, learned senior counsel appearing on behalf of the petitioner contended that the learned District Judge, Patna could not transfer the case to the learned Additional District Judge-27, Patna and the impugned order has been passed against the provisions of the law applicable in this regard. The learned senior counsel further submitted that the matter arises out of a commercial dispute as defined under



Section 2 (1) (c) (vi) of the C C Act, 2015. Section 6 of the C C Act, 2015 provides for jurisdiction of Commercial Court which provides that the Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested the territorial jurisdiction. The learned senior counsel further submitted that Commercial Court has been defined under Section 2 (1) (b) which provides 'Commercial Court' means the Commercial Court constituted under Section 3 (1) of the C C Act, 2015. The learned senior counsel further submitted that the State Government, vide its Notification dated 25.09.2019, constituted the court of District Judge in all districts in the State of Bihar as Commercial Courts under the C C Act, 2015 to exercise original jurisdiction in respect of Commercial disputes where the value of suit or dispute exceeds Rs. 1 Crore in respect of the entire territorial area of the district, which was amended on 02.08.2019, by constituting the court of District Judge in all the district of the State of Bihar as a commercial court to exercise original jurisdiction in respect of commercial disputes where the value of the suit or dispute exceeds Rs. 1 Crore in respect of the entire territorial area of the district. The learned senior counsel further



submitted that Section 10 (3) of the C C Act, 2015 provides that where the subject matter of an arbitration is a commercial dispute of a specified value and if such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of A & C Act, 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. Reading the provisions together with definition of word 'Court' under Section 2 (1) (e) of the A & C Act, 1996, the 'Court' means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original 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. The learned senior counsel further submitted that Section 2 (1) (e) of the A & C Act, 1996 and Section 10 (2) (3) of the C C Act, 2015 refer to principal Civil Court whereas the notification issued by the State Government



has used the word 'District Judge' of the District to notify the court of District Judge alone and not Additional District Judge or any other Judge. The Notification of the State Government talks about District Judge in two capacities; as an original commercial court having jurisdiction of Rs. 1 crore and above and at the same time, as an appellate court to hear the appeal against the order of Civil Judge (Senior Division) having the authority to decide commercial disputes between Rs. 3 lacs to Rs. 1 crore. The learned senior counsel further submitted that as the arbitral award dated 05.07.2018 is subject matter of challenge under Section 34 of the A & C Act, 1996, the same is also covered under Section 10 (3) of the C C Act, 2015 and, as such, it is only the principal Civil Court, who is none else but the District Judge of the district concerned, who has been declared as Commercial Court under Section 10 (3) of the C C Act, 2015, who alone is competent to hear the challenge under Section 34 of the A & C Act, 1996.

8. The learned senior counsel for the petitioner further submitted that the learned District Judge while passing the impugned order has taken note of Article 236 of the Constitution of India, but the said interpretation is not correct in view of the fact that under the aforesaid provision of Article 236 (a), the



expression “district judge” includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge. If the said interpretation is taken as correct, then the District Judge as an appellate authority would also come to include Additional District Judges and if the original commercial dispute covered by an award made under the A & C Act, 1996 can be transferred to the court of Additional District Judge, in the same manner, the District Judge as an appellate authority can also transfer the appeal to the Additional District Judges. The learned senior counsel further submitted that there could be one and only one principal Civil Court and there cannot be more than one principal Civil Court. Thus, the same would only mean the District Judge and not the Additional District Judges unless a notification is separately issued as envisaged under Section 10 (3) of the C C Act, 2015.

9. The learned senior counsel further submitted that the District Judge is a particular authority just like Chief Justice of the High Court and this fact becomes clear from the reading of un-amended Section 11 (5) of the A & C Act, 1996 where the



word 'Chief Justice' was mentioned.

10. The learned senior counsel thereafter referred to the decisions of the Hon'ble Supreme Court in the cases of ***Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*** reported in ***(2011) 8 SCC 333*** and ***Kandla Export Corporation and Anr. vs. OCI Corporation and Anr.*** reported in ***(2018) 14 SCC 715*** on the point of applicability of special statute and how it will operate *vis-a-vis* a general statute.

11. The learned senior counsel further referred to the decision of the Hon'ble Supreme Court in the case of ***PASL Wind Solutions Private Limited vs. GE Power Conversion India Private Limited*** reported in ***(2021) 7 SCC 1*** wherein the Hon'ble Supreme Court, while dealing with the question of Explanation to Section 47 of the Arbitration Act *vis-a-vis* Sections 10 of the Commercial Courts Act, observed in paragraph 97 as under :

“97. Even otherwise, this Court has made it clear in BGS SGS SOMA JV v. NHPC [BGS SGS SOMA JV v. NHPC, (2020) 4 SCC 234 : (2020) 2 SCC (Civ) 606] (at paras 12 and 13) that the substantive law as to appeals and applications is laid down in the Arbitration Act whereas the procedure governing the same is laid down in the Commercial Courts Act. In this context, it has also been held that the Arbitration Act is a special Act vis-à-vis the



Commercial Courts Act which is general, and which applies to the procedure governing appeals and applications in cases other than arbitrations as well. In Kandla Export Corpn. v. OCI Corpn. [Kandla Export Corpn. v. OCI Corpn., (2018) 14 SCC 715 : (2018) 4 SCC (Civ) 664] , this Court held : (SCC pp. 731 & 733-34, paras 20 & 27)

“20. Given the judgment of this Court in Fuerst Day Lawson [Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2011) 8 SCC 333 : (2011) 4 SCC (Civ) 178] , which Parliament is presumed to know when it enacted the Arbitration Amendment Act, 2015, and given the fact that no change was made in Section 50 of the Arbitration Act when the Commercial Courts Act was brought into force, it is clear that Section 50 is a provision contained in a self-contained code on matters pertaining to arbitration, and which is exhaustive in nature. It carries the negative import mentioned in para 89 of Fuerst Day Lawson [Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2011) 8 SCC 333 : (2011) 4 SCC (Civ) 178] that appeals which are not mentioned therein, are not permissible. This being the case, it is clear that Section 13(1) of the Commercial Courts Act, being a general provision vis-à-vis arbitration relating to appeals arising out of commercial disputes, would obviously not apply to cases covered by Section 50 of the Arbitration Act.

27. The matter can be looked at from a slightly



different angle. Given the objects of both the statutes, it is clear that arbitration itself is meant to be a speedy resolution of disputes between parties. Equally, enforcement of foreign awards should take place as soon as possible if India is to remain as an equal partner, commercially speaking, in the international community. In point of fact, the raison d'être for the enactment of the Commercial Courts Act is that commercial disputes involving high amounts of money should be speedily decided. Given the objects of both the enactments, if we were to provide an additional appeal, when Section 50 does away with an appeal so as to speedily enforce foreign awards, we would be turning the Arbitration Act and the Commercial Courts Act on their heads. Admittedly, if the amount contained in a foreign award to be enforced in India were less than Rs 1 crore, and a Single Judge of a High Court were to enforce such award, no appeal would lie, in keeping with the object of speedy enforcement of foreign awards. However, if, in the same fact circumstance, a foreign award were to be for Rs 1 crore or more, if the appellants are correct, enforcement of such award would be further delayed by providing an appeal under Section 13(1) of the Commercial Courts Act. Any such interpretation would lead to absurdity, and would be directly contrary to the object sought to be achieved by the Commercial Courts Act



viz. speedy resolution of disputes of a commercial nature involving a sum of Rs 1 crore and over. For this reason also, we feel that Section 13(1) of the Commercial Courts Act must be construed in accordance with the object sought to be achieved by the Act. Any construction of Section 13 of the Commercial Courts Act, which would lead to further delay, instead of an expeditious enforcement of a foreign award must, therefore, be eschewed. Even on applying the doctrine of harmonious construction of both statutes, it is clear that they are best harmonised by giving effect to the special statute i.e. the Arbitration Act, vis-à-vis the more general statute, namely, the Commercial Courts Act, being left to operate in spheres other than arbitration.””

12. The Hon’ble Supreme Court further held that Arbitration and Conciliation (Amendment) Act, 2015 and the C C Act, 2015, both came into effect from 23.10.2015. Referring to the case of ***R.S. Raghunath v. State of Karnataka*** reported in ***(1992) 1 SCC 335***, the Hon’ble Supreme Court held that even a later general law which contains a *non-obstante* clause does not override a special law as both must be held to operate in their own spheres. It has been held that there should be a clear inconsistency between the two enactments before giving an overriding effect to the *non-obstante* clause but when the scope



of the provisions of an earlier enactment is clear, the same cannot be cut down by resorting to a *non-obstante* clause. There is no inconsistency and the amendment to the General Rules cannot be interpreted so as to supersede the Special Rules. Just because there is a *non-obstante* clause, it cannot be interpreted that the amendment to the General Rules, though later in point of time, would abrogate the special rule, the scope of which is very clear and which coexists particularly when no patent conflict or inconsistency can be spelt out.

13. The learned senior counsel further referred to the decision of the Hon'ble Supreme Court in the case of ***SBP & Co. vs. Patel Engineering Ltd. and another*** reported in ***(2005) 8 SCC 618*** wherein the Hon'ble Supreme Court held that power under Section 11(6) of the un-amended A & C Act, 1996 in its entirety, could be delegated by the Chief Justice of the High Court only to another Judge of that Court and by the Chief Justice of India to another Judge of the Supreme Court and it has further been held that designation of a District Judge as the authority under Section 11 (6) of the Act by the Chief Justice of the High Court is not warranted in the scheme of the Act.

14. The learned senior counsel further referred to the decision of the Hon'ble Supreme Court in the case of the



State of *Uttar Pradesh vs. Sabir Ali and another* reported in *AIR 1964 SC 1673* wherein it has been held that if certain provisions of Forest Act provides that offence shall be triable by a magistrate of the second class or third class, the offence are not triable by any other magistrate. This decision has been referred by learned senior counsel to stress the point that when the Arbitration Act provides for dealing of the matter under Section 34 of the A & C Act, 1996 by the principal Civil Court which is the court of the District Judge, which is the commercial court constituted under Section 3 (1) of the C C Act, no derogation is permissible.

15. The learned senior counsel further referred to the decision of the Hon'ble Supreme Court in the case of *State of Jharkhand & Ors. vs. Hindustan Construction Company* reported in *(2018) 2 SCC 602* wherein the Hon'ble Supreme Court referred the three Judge Bench decision in the case of *State of West Bengal vs. Associated Contractors* reported in *(2015) 1 SCC 32* which differentiated the definition of 'court' in the A & C Act, 1996 and Arbitration Act, 1940 and held that under Section 2 (1) (e) of the Act of 1996, the competent court is fixed as the principal Civil Court exercising original jurisdiction or a High Court exercising original civil



jurisdiction, and no other court and the Supreme Court cannot be a 'Court' for the purposes of Section 42.

16. The learned senior counsel, thus, submitted that to avoid conflict in jurisdiction, there could not be two principal Civil Courts and the court of Additional District Judge is not a court of principal Civil Court on the lines of aforesaid reasoning.

17. The learned senior counsel also referred to the decision of the Hon'ble Supreme Court in the case of ***MSP Infrastructure Limited vs. Madhya Pradesh Road Development Corporation Limited*** reported in ***(2015) 13 SCC 713***. In that case, the issue was raised before the Hon'ble Supreme Court that a party is entitled under the law to raise an objection at any stage as to the absence of the jurisdiction of the court which decided the matter, since the order of such a court is nullity as objection to the jurisdiction which passed the award was raised before it. The Hon'ble Supreme Court held that it is not necessary to refer to the long list of the cases in this regard since, that is the law. It further held that it must be remembered that this position of law has been well settled in relation to civil disputes in courts and not in relation to arbitrations under the A & C Act, 1996. It has been further held that the Parliament has



the undoubted power to enact a special rule of law to deal with arbitrations and, in fact, has done so. The Parliament, in its wisdom, must be deemed to have had knowledge of the entire existing law on the subject and if it chose to enact a provision contrary to the general law on the subject, its wisdom cannot be doubted.

18. Thus, learned senior counsel submitted that when Section 34 read with Section 2 (1) of the A & C Act, 1996 provides one principal Civil Court, there could be no further delegation of power by such civil court and, hence, transfer of the cases under Section 34 or even transfer of case under Section 36 of the A & C Act, 1996 for enforcement of award is not permissible under the law.

19. The learned senior counsel next referred to the decision of the learned Single Judge of this Court in the case of ***Shri Sudhir Chandra Ghose & Anr. vs. Patna Municipal Corporation & Ors.*** reported in ***1998 (1) BLJ 3*** wherein, while dealing with Section 502 of Patna Municipal Corporation Act, 1951, the learned Single Judge upheld the power of superintendence vested in the District Judge for exercise of all the powers and jurisdiction expressly conferred on or vested in by the provisions of the Act and not in any authority subordinate



to it and the learned Single Judge set aside the impugned orders passed by the learned Additional District Judge-12, Patna.

20. Thus, learned senior counsel submitted that Section 10 (3) and 13 (1) (A) of the C C Act, 2015 must be given harmonious construction with Section 2 (1) (e), 34 and 36 of the A & C Act, 1996 and any application filed under Section 34 or 36 would be heard and disposed of by the District Judge of the concerned district being the principal Civil Court.

21. Thereafter, learned senior counsel referred to the two decisions of the Hon'ble Division Bench of this Court; first decision is ***dated 03.08.2018 passed MJC No. 1323 of 2018 (M/s Vishal Builtech India Pvt. Ltd. vs. The Union of India and Ors.)*** and second decision is ***dated 09.09.2024 passed in Commercial Appeal No. 8 of 2024 (M/s Johnson Paints Pvt. Ltd vs. M/s Johnson Paints Company)***. In ***MJC No.1323 of 2018***, the learned District Judge transferred a case filed before it under Section 34 of the A & C Act, 1996 to the court of learned Additional District Judge-V, Patna. The Hon'ble Division Bench vide its judgment dated 03.08.2018 held that the District Judge being notified as Commercial Court would only have the jurisdiction to hear, consider and decide the concerned matter and thus ordered for transfer of the matter from the court of



learned Additional District Judge-V, Patna to the court of learned District Judge, Patna being the Commercial Court, Patna.

22. The learned senior counsel further submitted that in a recent decision of the Hon'ble Division Bench of this Court presided over by the Hon'ble Chief Justice vide its *judgment dated 09.09.2024* passed in *Commercial Appeal No. 8 of 2024* considered the challenge of making over the records of the case to the learned Additional District Judge-14, Patna by the learned District Judge, Patna referring to the decision of *M/s Vishal Builtech India (supra)* and also to *Jaycee Housing Private Limited & Ors. vs. Registrar (General) Orissa High court, Cuttak & Ors.* reported in *(2023) 1 SCC 549* observed that Section 21 and also Sections 10 & 15 of the same Act gives overriding effect to the Commercial Court Act; it was categorically held that even in a challenge under Section 34 of the Arbitration Act, though ordinarily the jurisdiction lies before the principal Civil Court of original jurisdiction in a district, the matter 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; as per section 10 (3) of the Commercial Court Act. Thus, the



Hon'ble Division Bench held that in the light of binding precedent and the provisions of the Commercial Court Act as also the Notification issued by the State Government, the learned District Judge erred insofar as making over the case to the Additional District Judge-XIV and transferred the case to the learned District Judge, Patna who has been constituted as Commercial Court under the Notification issued by the State Government.

23. The learned senior counsel further submitted that the decision of the Hon'ble Division Bench leaves no doubt that it is the District Judge who has been designated as a Commercial Court under the Notification of the State Government and construing the provisions of Section 10 (3) of the C C Act, 2015 along with Sections 34 and 36 of the A & C Act, 1996, the impugned orders transferring the respective cases are without jurisdiction and the orders being erroneous and illegal are not sustainable and need to be set aside. In the similar manner, even the execution case cannot be transferred to the court of Additional District Judge by the learned District Judge. Such order making over the case to any other court is not sustainable.

Submission on behalf of petitioner of Civil Misc.
No. 305 of 2024



24. The learned counsel appearing on behalf of petitioner of Civil Misc. No. 305 of 2024 adopting the argument made on behalf of the petitioner of Civil Misc. Nos. 752 of 2023 & 755 of 2023, referred to the definition clause of Section 2 (1) (b) and section 3 (3) of the C C Act, 2015 to underscore that it is the court of District Judge or a court below the level of District Judge which could be designated as a Commercial Court. Similarly, Section 3 (A) of the C C Act, 2015 provides for designation of such number of Commercial Appellate Courts at District Judge level for the purposes of exercising jurisdiction and powers conferred on those Courts under the C C Act, 2015. The learned counsel next referred to Sections 13 and 13 (1A) where again the word 'District Judge' has been mentioned to signify that the expression 'District Judge' has been used to distinguish the Commercial Court or Commercial Appellate Court from any other Court. The learned counsel next submitted that since the word 'District Judge' or the court at the level of District Judge has been used, it has created confusion. The learned counsel further submitted that Section 10 (3) of the C C Act, 2015 provides that all applications or appeals arising out of such arbitration under the provisions of the A & C Act, 1996 except an international commercial arbitration, that would



ordinarily lie before the 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. So, the cases which have been filed under the provisions of A & C Act, 1996 before the principal Civil Court which is the court of District Judge needs to be continued in the same court as the said court has been designated as Commercial Court having jurisdiction over value of subject matter of Rs. 1 Crore and above. Such jurisdiction has not been vested with any other Additional District Judge even though Section 2 (I) (e) of the C C Act, 2015 has expanded the meaning of District Judge taking recourse of Article 236 (a) of the Constitution of India. Yet the conjoint reading of Sections 3 (3) (3A), 10 (3), 13, 13 (1A) of the C C Act, 2015 and Notification of the State Government dated 02.08.2019 makes it clear as crystal that the Commercial Court within the meaning of aforesaid provisions is the court of District Judge and no other court. The learned counsel further submitted that Section 21 of the C C Act, 2015 has overriding effect over all other laws and anything inconsistent with the provisions of the C C Act, 2015 shall give way to the provisions



of this Act. The learned counsel also referred to the decision of the Hon'ble Division Bench in the case of *M/s Johnson Paints* (supra) and submitted that the law has been settled by the decision of the Hon'ble Division Bench and the learned District Judge cannot transfer the matter filed under Section 34 of the A & C Act, 1996 to any other Court of Additional District Judge as it is the District Judge who has been designated as a Commercial Court under the Notification dated 02.08.2019 and any order passed by the learned Additional District Judge would be without jurisdiction and hence *non-est*.

Submission made on behalf of the respondents.

25. On the other hand, learned counsel appearing on behalf of the respondent Bihar Rajya Pul Nirman Nigam Limited in Civil Misc. No. 305 of 2024 submitted that there is no infirmity in the impugned order and the learned District Judge, Patna has considered the contention of the petitioner and, thereafter, came to the right conclusion that the District Judge in the Commercial Court Act would include Additional District Judges as well. The learned counsel further submitted that this fact is clear from the definition clause of District Judge in the C C Act, 2015 as Section 2 (1) (e) of the C C Act, 2015 provides that the District Judge shall have the same meaning as assigned



to it in clause (a) of Article 236 of the Constitution of India and
Article 236 (a) of the Constitution of India reads as under :

“Article 236 (a)- the expression “district judge” includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge”.

26. The learned counsel further submitted that this definition makes it clear that the District Judge within the meaning of Section 2 (1) (e) of the C C Act, 2015 would also include the Additional District Judge etc. So, there could no no doubt about the power of the District Judge to make over the case to the court of Additional District Judge. This fact has further been made clear by Section 3 (3) of the C C Act, 2015 which provides that 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. A plain reading of this section makes it abundantly clear that the legislature intended to have the Judges at the level of the District Judge to act as Commercial Court and provided for their appointments as such. The learned counsel



further submitted that the legislature being aware of the provisions of the A & C Act, 1996 further provided that any arbitration matter which would ordinarily lie before the principal Civil Court of original jurisdiction in the district shall be filed and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Courts have been constituted. Therefore, the provisions of A & C Act, 1996 could not be read in a manner so as to make the provisions of Commercial Courts Act redundant. The learned counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Jaycee Housing Private Limited*** (supra) wherein the Hon'ble Supreme Court held as under :

“24. Thus, the Objects and Reasons of the 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 2015 Act. At this stage, it is required to be noted that the 2015 Act is the Act later in time and therefore when the 2015 Act has been enacted, more particularly Sections 3 & 10, there was already a provision contained in Section 2(1)(e) of the 1996 Act. 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.

25. It is also required to be noted that even as per Section 15 of the 2015 Act, all suits and applications including applications under the 1996 Act, relating to a commercial dispute of specified value shall have to be transferred to the Commercial Court. Even as per Section 21 of the 2015 Act, the 2015 Act, 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.

26. Therefore, considering the aforesaid provisions of the 2015 Act and the Objects and Reasons for which the 2015 Act 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 2015 Act shall prevail and all applications or appeals arising out of arbitration under the provisions of the 1996 Act, 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.

27. If the submission on behalf of the appellants that all applications/appeals arising out of arbitration under the provisions of the 1996 Act, 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 the 2015 Act and establishment of Commercial Courts shall be frustrated, even Sections 3, 10 & 15 shall become otiose and nugatory.

28. 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 the 2015 Act, 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.

29. 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 the 1996 Act 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 the 2015 Act. We are in complete agreement with the view [Jaycee Housing (P) Ltd. v. District Judge, Khurda, 2022 SCC OnLine Ori 3833] taken by the High Court holding so”.

27. Thus, learned counsel submitted that there cannot be any application of the provisions of the A & C Act, 1996 when Commercial Courts have been established and there could be no insistence that the applications or appeals shall lie



before the principal Civil Court of a district in exclusion of the Commercial Courts. Once there is no ambiguity on the jurisdiction of the Commercial Courts, the wordings of Sections 2 (1) (e), 3 (3) and 10 (3) of the Commercial Courts Act make it very clear that the matter could be made over by the District Judge to the court of Additional District Judges.

28. The learned counsel further submitted that so far as powers of the District Judge and Additional District Judges are concerned, both are exercising the same power under the Civil Courts Act, 1887. Thus, learned counsel submitted that there is no need for interference in the impugned orders and the same needs to be affirmed.

29. The learned counsel appearing on behalf of the respondents in Civil Misc. Nos. 752 of 2023 and 755 of 2023 adopted the argument made on behalf of the respondent in Civil Misc. No. 305 of 2024 and submitted that Section 15 of the Commercial Courts Act provides for transfer of any case to the Commercial Court and the District Judge can always transfer the matter to the Additional District Judge.

30. By way of reply, learned senior counsel appearing on behalf of the petitioner of Civil Misc. Nos. 752 of 2023 and 755 of 2023 submitted that for appeals, the District



Judge has recorded the finding that only the court of District Judge has been designated as Commercial Appellate Court to exercise the appellate jurisdiction and dispose of the appeals arising out of the judgment passed by the Commercial Courts and the appeals cannot be transferred to the court of Additional District Judges and, on the other hand, the learned District Judge has recorded that the court of District Judge has been constituted as Commercial Court and it is not only the court of District Judge but it also includes the courts of Additional District Judges, hence, the cases can be assigned to the Additional District Judges too. Such approach of the learned District Judge is contradictory as, on one hand, the learned District Judge has been saying that the Commercial Court which is the court of District Judge would include the court of Additional District Judge as well. But when it comes to the appellate authority, the learned District Judge, Patna is not ready to transfer such appeal to the court of other Additional District Judges, though language of Notification is very much the same.

31. I have given my thoughtful consideration to the rival submission of the parties and also to the facts and circumstances of the case.

32. The common issues involved in the aforesaid



three cases which arises for consideration are (i) whether the District Judge is empowered to make over the cases of commercial dispute arising out of arbitration proceeding to the court of Additional District Judge; (ii) whether the court of Additional District Judge would be a court within the meaning of Section 34 of the A & C Act, 1996 read with Section 10 of the Commercial Courts Act; (iii) whether the court of District Judge includes court of Additional District Judges which would be the court within the meaning of Commercial Courts Act as notified under Section 3 of the Commercial Courts Act; (iv) whether the learned District Judge could transfer execution case filed for enforcement of an award; (v) whether the court of Additional District Judges, within the meaning of Section 2 (1) (e), 10 and 10 (3) of the Commercial Courts Act, would mean only the District Judge of the district and not any other Judge including the Additional District Judges and (vi) whether under the Notification dated 02.08.2019, only the District Judge has been designated as Commercial Court having monetary jurisdiction of Rs.1 crore and above?

33. The A & C Act, 1996 came into effect on 22.08.1996. The Act has been amended from time to time and some major amendment were introduced by Act 3 of 2016



which came into effect from 23.10.2015. Similarly, the C C Act, 2015 also came into effect from 23.10.2015. The definition of 'Court' has been given in Section 2 (1) (e) of the A & C Act, 1996 which reads as under :

"2 (1) (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 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 the decrees of courts subordinate to that High Court".

34. So, within the meaning of Arbitration Act, the Court is principal Civil Court of original jurisdiction in a



district, and includes High Court in exercise of its ordinary original civil jurisdiction, but does not include any Civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes. There is no dispute as to which court would be considered as a principal Civil Court and from a catena of decisions, it has been settled that the court of District Judge in a district is the principal Civil Court because bringing any other court within the ambit of principal Civil Court would naturally result in the said court being inferior to the court of District Judge.

35. Now Section 34 (1) of the A & C Act, 1996 reads as under :

“34 (1). Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

36. The word ‘Court’ used in Section 34 will naturally have the same meaning as provided under Section 2 (1) (e) of the A & C Act, 1996. In similar manner, the word ‘Court’ would be read in Section 36 of the A & C Act, 1996 which provides for enforcement of arbitral award.

37. The Hon’ble Division Bench of this Court in the case of ***Shivam Housing Pvt. Ltd. & anr. vs. Thakur Mithilesh Kumar Singh & anr.*** reported in ***2015 SCC OnLine Pat 6005***,



while considering the reference as to whether Subordinate Judge or the District Judge is principal Civil Court of original jurisdiction in a district within the meaning of Section 34 of the A & C Act, 1996, considered Section 2 (1) (e) of A & C Act, 1996 and Section 18 of the Civil Courts Act and came to the conclusion that in the State of Bihar, the Court, within the meaning of Section 34 of the Act vested with the jurisdiction to consider the validity of the arbitral award, is the court of District Judge, who is also having the original civil jurisdiction which is not a grade inferior to any other civil court within the same jurisdiction. The Hon'ble Division Bench observed that the court entertaining the application to set aside the arbitral award under Section 34 of the Act has to be the civil court of original jurisdiction highest in grade and may also include the High Court exercising ordinary original civil jurisdiction to try a suit. It further held that the civil court considering the arbitral award cannot be of a grade inferior to the principal Civil Court and Patna High Court is having no original civil jurisdiction to try a suit and hence, it is only the District Judge who has jurisdiction to consider the challenge made to the arbitral award. However, while parting with the order, the Hon'ble Division Bench directed that the miscellaneous cases to be dealt with by the



District Judge in accordance with law and further held that the same may also include Additional District Judge.

38. The aforesaid decision of ***Shivam Housing Pvt. Ltd.*** (supra) though clears the doubt about the nature of principal Civil Court holding it to be the court of District Judge of a district, yet the same decision put the court of Additional District Judge at the same footing with the court of District Judge. So, there appears some ambiguity as to whether only the court of District Judge would be considered the principal Civil Court or whether it would include the courts of Additional District Judges as well.

39. Now, the dispute of the parties in the above-mentioned three petitions would come within the purview of commercial disputes as defined in Section 2 (1) (c) (vi). Section 2 (1) (b) defines commercial court to mean the commercial court constituted under Section 3 (1) of the Commercial Courts Act which reads as under :

“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]”.

40. Thereafter, Section 10 of the C C Act, 2015 reads as
under :

“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”.

41. From the aforesaid provision, it is clear that in case of arbitration other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of Arbitration Act, 1996 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 Courts have been constituted. The catch word is the applications or appeals that would ordinarily lie before any principal Civil Court of original jurisdiction in a district, and all such matters could be dealt with by the Commercial Court exercising territorial jurisdiction over such arbitration. Even the pending cases would stand transferred to such Commercial Courts in terms of Section 15 of the Commercial Courts Act which reads as under :

“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”.

42. Further, Section 21 of the Commercial Courts Act shows overriding effect of the Commercial Courts Act. Section 21 of the Commercial Courts Act reads as under :

“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.

21-A. Power of Central Government to make rules.—

(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for or any of the following matters, namely—

(a) the manner and procedure of pre-litigation mediation under sub-section (1) of Section 12-A;]



(b) any other matter which is required to be, or may be, prescribed or in respect of which provision is to be made by rules made by the Central Government.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]”.

43. Now, the A & C Act, 1996 has been held to be Special Act *vis-a-vis* Commercial Courts Act which is held to be general law which is applicable to the procedure governing appeals or applications in cases other than arbitration as well as has been held by the Hon’ble Supreme Court in the case of **PASL Wind Solutions Private Limited** (supra). In the same decision, it has also been held that even a later general law which contains a *non-obstante* clause does not override a special law. The doctrine of harmonious construction being applied to



both statutes, it has been held that they are best harmonized by giving effect to the special statute, i.e., the Arbitration Act, *vis-a-vis* the more general statute, namely the Commercial Courts Act, being left to operate in spheres other than arbitration. So, the Arbitration Act being the special and substantive law would prevail over Commercial Courts Act, if any discrepancy arises; otherwise both would operate in their own spheres.

44. In terms of Section 3 of the C C Act, 2015, the State Government issued notification dated 25.07.2019 and later on substituted by notification dated 02.08.2019. The Notification dated 02.08.2019 reads as under :

“ NOTIFICATION
S.O...../ dated-.....

In exercise of the powers conferred by Section 3 of The Commercial Courts. Commercial Appellate Courts. Commercial Divisions and Commercial Appellate Divisions of High Courts Act. 2015 (No. 4 of 2016), the State Government of Bihar, in consultation with the High Court of Judicature at Patna superseding the previously issued notification memo no.-1150/J dated-03.03.17 of Law Department. Bihar. Patna on the subject, is hereby pleased to:-

(a) constitute the Court of Civil Judge (Senior Division) of each district as a Commercial Court to exercise original jurisdiction in respect of commercial disputes where the value of the suit or dispute is not less than Rs. 3 Lacs and up to Rs. 1 Crore:

(b) constitute the Court of District Judge in all the districts of the State of Bihar as a Commercial Court to exercise original



Jurisdiction in respect of commercial disputes where the value of the suit or dispute exceeds Rs. 1 Crore in respect of the entire territorial area of the district: and

(c) designate the Court of District Judge in each district as Commercial Appellate Court to exercise appellate jurisdiction and dispose of the appeals arising out of the judgments and orders passed by a Commercial Court below the level of the District Judge.

This notification shall come into force with effect from the date of its publication in the official Gazette.

(File No. A/act-10/2016/5250/J)

By Order of the Governor of Bihar”

45. A plain reading of the aforesaid notification would show the State Government constituted the court of District Judge in all the districts in the State of Bihar as a Commercial Court to exercise original jurisdiction in respect of commercial disputes where the value of the suit or dispute exceeds Rs. 1 crore in respect of the entire territorial area of the district. After coming into force the notification read with relevant provisions of Commercial Courts Act and the Arbitration Act, it seems whenever the commercial dispute arises in connection with any arbitration matter and jurisdiction of principal Civil Court of original jurisdiction extends to such dispute, in terms of Section 10 (3) of the C C Act, 2015, the matter would be heard and disposed of by the Commercial Court.



46. However, while providing for constitution of Commercial Court, Section 3 of the Commercial Courts Act provides for constitution of such number of Commercial Courts at district level as it may deem necessary for the purpose of exercising jurisdiction and power is to be conferred on those courts under this Act. So, there could be more than one Commercial Court at the district level and it does not appear necessary that there could be only one Commercial Court presided over by the District Judge of the concerned district. Similarly, Section 3 (3) of the C C Act, 2015 provides that the State Government with the concurrence of the Chief Justice of the High Court may appoint one or more person having experience in dealing with commercial disputes to be the Judge or Judges of a Commercial Court either at the level of District Judge. In this manner, the State Government may notify more than one Commercial Courts at the level of District Judge or below the level of District Judge. Now the District Judge can only be one court in terms of Section 2 (1) (e) of the A & C Act, 1996 as the District Judge is the only principal Civil Court. However, when the State Government issued notification, it notified and constituted the court of District Judge in all the districts of the State of Bihar as Commercial Court. It means



only one court has been notified as Commercial Court to exercise original jurisdiction in respect of commercial disputes where the value of the suit or dispute exceeds Rs. 1 crore in respect of the entire territorial area of the district. For the matters of value not less than Rs. 3 lacs and up to Rs. 1 crore, the court of Civil Judge (Senior Division) has been constituted as Commercial Court. Therefore, natural inference flowing from the reading of the statutory provisions and the notification dated 02.08.2019, is that unless the State Government chooses to designate the courts of Additional District Judges apart from the court of District Judge as Commercial Court, the jurisdiction of Commercial Court would be exercised by the District Judge alone of the district concerned.

47. At the same time, in the case of ***Shivam Housing Pvt. Ltd.*** (supra), the Hon'ble Division Bench of this Court while considering the nature of court under principal Civil Court as defined in Section 2 (1) (e) of the A & C Act, 1996 has taken within its ambit the court of Additional District Judges as well while holding that it is the court of District Judge which is a principal Civil Court. Such interpretation appears to be practical in view of the fact that the court of District Judge is already overburdened. After notification as Commercial Court, naturally



the burden would increase when the execution matters are also left to be disposed of by the court of District Judge, plight of such courts could be easily understood. If the court of District Judge is subjected to everything, the whole purpose of enactment of Commercial Courts Act and Arbitration and Conciliation Act would be frustrated as these enactments have been made to expedite the process of disposal of the arbitration matters and commercial disputes. This factor is also to be taken into consideration, but sadly the Notification dated 02.08.2019 has completely missed the point.

48. No doubt, the District Court has been defined by the Commercial Courts Act by Section 2 (1) and includes the Judges as mentioned in Article 236 (a) of the Constitution of India. Literal interpretation of the said section would have made the court of Additional District Judges to come within purview of District Judge. However, in the light of pronouncement of the Hon'ble Division Bench in the case of *M/s Vishal Builtech India* (supra) and *M/s Johnson Paints Pvt. Ltd.* (supra), this interpretation is not possible and no other inference could be drawn and no different view could be taken in the light of binding decisions of the Hon'ble Division Bench of this Court. Paragraphs 9, 10 & 11 of the decision in the case of *M/s*



Johnson Paints Pvt. Ltd. (supra) squarely covers the present dispute. The said paragraphs read as under :

*“9. Reference can be made usefully to **Jaycee Housing Private Limited** (supra), which challenged the Notification issued by the State of Orissa which constituted the court of Civil Judge (Senior Division) as Commercial Courts for the purpose of exercising the jurisdiction and powers under the C.C.Act. The writ petitioners, who had initiated the proceeding under Section 34 of the Arbitration Act challenged the Notification on the ground that it would render nugatory the provisions of Section 2(1)(e) of the Arbitration Act. The Hon’ble Supreme Court held so in paragraphs-24 and 25, which are extracted hereunder:*

“24. Thus, the Objects and Reasons of the 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 2015 Act. At this stage, it is required to be noted that the 2015 Act is the Act later in time and therefore when the 2015 Act has been enacted, more particularly Sections 3 & 10, there was already a provision contained in Section 2(1)(e) of the 1996 Act. 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.

25. It is also required to be noted that even as per Section 15 of the 2015 Act, all suits and applications including applications under the 1996 Act, relating to a commercial dispute of specified value shall have to be transferred to the Commercial Court. Even as per Section 21 of the 2015 Act, the 2015 Act, shall have overriding effect. It provides that save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything in consistent therewith contained in any other law for the time being in force.”

10. By virtue of Section 21, which gives overriding effect to the C.C.Act and also Sections 10 & 15; it was categorically found that even in a challenge under Section 34 of the Arbitration Act, though ordinarily the jurisdiction lies before the principal Civil Court of original jurisdiction in a district, the matter 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; as per Section 10(3) of the C.C.Act.

11. Going by the above binding precedents and the provisions of the C.C.Act as also the Notification issued by Annexure-A/17, we cannot but observe that the learned District Judge erred insofar as making over the case to the ADJ-XIV. The case shall stand transferred to the District Judge, Patna who has been constituted as a Commercial Court under Annexure-A/17. The orders passed by the ADJ; being without



jurisdiction, are non est in law.”

49. Since there is specific observation made by the Hon’ble Division Bench of this Court in the cases of ***M/s Vishal Builtech India*** (supra) and ***M/s Johnson Paints Pvt. Ltd.*** (supra) that it is the court of District Judge which has been notified as Commercial Court, it was not within the competence of the District Judge to make over the case to any Additional District Judge.

50. In such view of the matter, the issue stands settled and it is held that the District Judge alone would be competent to exercise original jurisdiction in respect of commercial disputes where the value of the suit or dispute exceeds Rs. 1 crore in respect of the entire territorial area of the district.

51. Now, Section 36 of the A & C Act, 1996 reads as under :

“36. Enforcement.—(1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the



court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908) :]

[Provided further that where the Court is satisfied that a prima facie case is made out that,—

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award, was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under Section 34 to the award.

Explanation.—For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.]”

52. For enforcement of award, again the matter would



be required to be filed before the Commercial Court of territorial and pecuniary jurisdiction. However, territorial jurisdiction has been clarified by the decision of the Hon'ble Supreme Court in the case of *Sundaram Finance Ltd. v. Abdul Samad* reported in *(2018) 3 SCC 622*. So, the matter could be filed at any place in the country. If such matter is below Rs. 1 crore and not less than Rs. 3 lacs, the same should be filed before the court of learned Civil Judge (Senior Division), which would hear and dispose of the same. If the value of subject matter is above Rs. 1 crore, the Commercial Court so designated under Section 3 (3) of the Commercial Courts Act by the State Government is the court of District Judge. So, it appears even the execution matter needs to be filed before the court of District Judge.

53. Now, the question arises whether the District Judge can transfer the execution matters filed before it to any other court or the same needs to be heard and disposed of by the court of District Judge alone?

54. Section 36 of the A & C Act, 1996 specifically provides that in execution of an award, the provisions of the Code of Civil Procedure, 1908 would be applicable. Section 39 of the Code of Civil Procedure provides for transfer of decree.



Thus, the court where decree has been filed for execution can transfer the same to other courts having pecuniary jurisdiction. So far as the A & C Act, 1996 is concerned, there could be no doubt over the power of the original court to transfer the decree to any other court in terms of Section 39 of the Code of Civil Procedure. But the bar created under Sections 3 (3) and 10 (3) of the Commercial Courts Act would come into play in the light of Notification issued by the State Government. If a petition under Section 34 of the A & C Act, 1996 involving commercial dispute is to be compulsorily filed, heard and disposed of by the Commercial Court, I do not think a petition under Section 36 of the A & C Act, 1996 would have a different fate because allowing the execution matter for awards under the A & C Act, 1996 to be transferred to other court would give rise to incongruous situation. The Hon'ble Division Bench of this Court has held and decided that it is the District Judge alone who being notified as Commercial Court has the jurisdiction to hear all such matters and not the Additional District Judge. The word 'Court' could not have two different meanings under Sections 34 and 36 of the A & C Act, 1996 unless so differentiated by statute or by any authoritative judicial pronouncement. So, even for execution matters in commercial



disputes arising out of arbitration, it is the Commercial Court so designated whether the court of District Judge or the court of Civil Judge (Senior Division) which alone would retain the jurisdiction over such matters. In this manner the Notification issued by the State Government makes the provision of Section 39 of the Code of Civil Procedure otiose and nugatory.

55. In the light of the discussion made here-in-before, the authority cited by the learned counsel for the respondent in Civil Misc. No. 305 of 2024 could not be of any help.

56. Hence, in terms of the decisions of the Hon'ble Division Bench of this Court in the cases of *M/s Vishal Builtech India* (supra) and *M/s Johnson Paints Pvt. Ltd.* (supra), the learned District Judge, Patna committed an error of jurisdiction in transferring the records of Miscellaneous (Arbitration) Case No. 04 of 2018 and Miscellaneous Case No. 62 of 2022 to the learned Additional District Judges, Patna. By the same analogy even the execution case could not be transferred to the court of learned Additional District Judge-14, Patna and the same needs to be filed, heard and disposed of by the Commercial Court which in the present case is the court of learned District Judge, Patna.

57. Therefore, the order dated 09.06.2023 passed in



Miscellaneous (Arbitration) Case No.04 of 2018, the order dated 09.06.2023 passed in Execution Case No.382 of 2019 and order dated 14.06.2023 passed in Miscellaneous Case No.62 of 2022, all by the learned District Judge, Patna, are set aside.

58. Consequently, records of Miscellaneous (Arbitration) Case No.04 of 2018, Execution Case No.382 of 2019 and Miscellaneous Case No.62 of 2022, having been transmitted to the Additional District Judges concerned, will be re-transmitted to the learned District Judge, Patna, who has been designated as Commercial Court under the Commercial Courts Act.

59. Accordingly, the instant petitions stand disposed of.

60. Pending interlocutory application, if any, stands disposed of.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	30.09.2024
Uploading Date	02.12.2024
Transmission Date	NA

