

## IN THE HIGH COURT OF ANDHRA PRADESH: AT AMARAVATI

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**Tr. C.M.P. No.321 of 2022**

Between

1. Andhra Pradesh Industrial Infrastructure Corporation (APIIC),  
Rep. by its Vice Chairman and Managing Director,  
D.No.59A-20-30A, 1<sup>st</sup> to 3<sup>rd</sup> floors, Shiva Complex,  
Gurunanak Colony, Vijayawada-520 008, Andhra Pradesh  
and 2 others

... Petitioners

and

M/s. Meghavaram Power Pvt. Ltd., Office at Unit No.22,  
Technocrats Industrial Estate, Balanagar, Hyderabad-500 037,  
Rep. by its Authorized Signatory Mr. K. Somaraju,  
S/o. Late K. Ramaraju, aged about 39 years,  
R/o. H.No.15-12/1, Road No.7, Balaji Nagar,  
Medchal Town, Medchal – Malkajgiri District-501 401

... Respondent

DATE OF JUDGMENT PRONOUNCED: 19-4-2023

**HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY  
AND  
HON'BLE SRI JUSTICE V. GOPALA KRISHNA RAO**

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|---|---|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgment? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals      | Yes/No |
| 3 | Whether Their Lordships wish to see the fair copy of the Judgment?        | Yes/No |

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**JUSTICE CHEEKATI MANAVENDRANATH ROY**

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**JUSTICE V. GOPALA KRISHNA RAO**

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Vs.

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Medchal Town, Medchal – Malkajgiri District-501 401

... Respondent

! Counsel for the Petitioners: Sri J. Ugranarasimha

Counsel for Respondent: Sri P. Badrinath

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> Head Note:

? Cases referred:

1. AIR 2021 Cal 190

**THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

**AND**

**THE HON'BLE SRI JUSTICE V. GOPALA KRISHNA RAO**

**Tr.C.M.P. No.321 of 2022**

**ORDER:-** (Per Hon'ble Sri Justice Cheekati Manavendranath Roy)

This application under Section 24 of CPC is filed by the petitioners seeking transfer of Commercial Suit No.15 of 2020 on the file of the Special Court for trial and disposal of Commercial Disputes, Ibrahimpatnam, Vijayawada, to the Court of Special Judge for trial and disposal of Commercial Disputes, Visakhapatnam, on the ground that the Special Court for trial and disposal of Commercial Disputes, Vijayawada, has no territorial jurisdiction to entertain the said suit.

2. Heard learned counsel for the petitioners and learned counsel for the respondent.

3. The petitioners are the defendants in Commercial Suit No.15 of 2020 on the file of the Special Court for trial and disposal of Commercial Disputes, Vijayawada. The respondent herein is the plaintiff in the said Suit. He has filed the said suit for recovery of a sum of Rs.1,47,32,525/- from the defendants in the said suit. The petitioners, who are the defendants, have taken a plea in the said suit that the Commercial Court in Vijayawada has no territorial jurisdiction to entertain the said suit. According to the defendants,

the property relating to the said transaction is situate in Santhabommali, Srikakulam District, and the document in question, which is relating to the said property is the basis for the suit claim and it was executed between both the parties in Santhabommali and as such only the Commercial Court in Visakhapatnam got territorial jurisdiction to entertain the suit. The plaintiff in the said suit has taken a plea that as the Head Office of the 1<sup>st</sup> defendant – APIIC is situate in Vijayawada, under Section 20 of CPC, the suit can be instituted where the office of the said APIIC is situate and as such the suit is instituted in the Commercial Court of Vijayawada.

4. The said issue relating to territorial jurisdiction of the Court has to be decided by the trial Court in the final adjudication of the said suit. It is brought to the notice of this Court at the time of hearing the petition and as per the plea taken by the respondents herein in the counter that the entire trial of the suit has been concluded and the matter posted for hearing arguments. Therefore, the suit is now at the fag end of the hearing which is ripe for disposal. Since a plea relating to lack of territorial jurisdiction of the Commercial Court, Vijayawada, was already taken, the same has to be decided by the trial Court and a finding has to be given to that effect. In this context, it is relevant to note that Order VII Rule 10 of CPC also envisages that at any stage of the suit, the Court can return the plaint to present the same in the proper Court. Therefore, as noticed supra, since a plea has been taken in the trial Court

relating to the said territorial jurisdiction, the same has to be decided by the trial Court itself. If the trial Court finds that it has got territorial jurisdiction, it has to further proceed with the suit according to law and if it finds that it has no territorial jurisdiction, then the trial Court has to follow the procedure contemplated under Order VII Rule 10 of CPC. But on that ground, the petitioners now cannot seek transfer of the said suit from the Commercial Court of Vijayawada to Commercial Court of Visakhapatnam. It is a disputed question of fact which has to be decided by the trial Court after considering the evidence before it and also Section 20 of CPC which is invoked by the plaintiff.

5. Learned counsel for the petitioners vehemently contended that Section 15(2) and 15(5) of the Commercial Courts, Act, 2015, (for short "the Act") applies to the present facts of the case and the suit has to be necessarily transferred to Commercial Court of Visakhapatnam. Section 15 is part of Chapter V of the Act. It deals with transfer of pending suits. A reading of the said provision makes it clear that only the suits which are pending in other Courts on the date when the said Commercial Courts Act, 2015, came into force, are to be transferred to the Commercial Courts which are special Courts constituted under the said Act. It has nothing to do with the suits that are instituted after the Act came into force. Section 15(5) of the Act also deals with pending suits prior to 2015 when the Act came into force. The present suit was filed in the year 2020. So, it is

not a suit which was pending on the date on which the Act came into force. So, Section 15 of the Act has absolutely no application to the present facts of the case. The petitioners cannot invoke Section 15 of the Act in the given facts and circumstances of the case. Therefore, the petition that is now filed under Section 24 of CPC for transfer of the suit invoking Section 15 of the Act is totally misconceived and it is not maintainable.

6. The Calcutta High Court had an occasion to deal with the issue whether Section 15 of the Act is applicable to suits which are filed after the Act came into force and whether subsequently instituted suits can be transferred to another Court by invoking Section 15 of the Act or not. Answering the issue, the Calcutta High Court at para-71 of the judgment in **Laxmi Polyfab Pvt. Ltd. v. Eden Realty Ventures Pvt. Ltd.**<sup>1</sup> held as follows:

“71. ... .. A suit which has been filed subsequent to the notification of the Specified Value in the Ordinary Original Civil Jurisdiction of the High Court cannot be transferred to the Commercial Division of the High Court by virtue of Section 15(1) of the Act of 2015. A suit filed subsequent to the notification of the Specified Value in the Ordinary Civil Jurisdiction of a High Court having a Commercial Division cannot be said to be a “pending” suit within the meaning of Section 15(1) of the Act of 2015. The moment a suit is not “pending” in terms of Section 15(1) of the Act of 2015, the same cannot be transferred to the Commercial Division by virtue of Section 15(1) of the Act of 2015. ... ..”

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<sup>1</sup> AIR 2021 Cal 190

7. The Calcutta High Court also incidentally held that insofar as the suits that are filed subsequent to the notification i.e. after the Act of 2015 came into force, the Court would have power only under Order VII, Rule 10 of CPC to deal with the same. At paras-73 and 74 of the judgment, it is held as follows:

“73. Despite the absence of power under Section 15(1) of the Act of 2015 to transfer a suit relating to a commercial dispute of a Specified Value filed in the Ordinary Original Civil Jurisdiction of the High Court, having a Commercial Division, to the Commercial Division of such High Court, after such suit being filed subsequently to the specification of the Specified Value, the Court has power under Order VII Rule 10 of the Code of Civil Procedure, 1908 to deal with the same. Power under Order VII Rule 10 of the Code of Civil Procedure, 1908 stands regulated by Section 15(1) of the Act of 2015 so far as pending suits relating to a commercial dispute of the Specified Value in the Ordinary Original Civil Jurisdiction of the High Court. Once the suit has been filed beyond date of the notification of the Specified Value, Order VII Rule 10 of the Code of Civil Procedure, 1908, governs the field.

74. In exercise of powers under Order VII Rule 10 of the Code of Civil Procedure, 1908, the Court has to return the plaint to be filed before the Court having jurisdiction. In the case of a suit relating to a commercial dispute of the Specified Value filed in the Ordinary Original Civil Jurisdiction of the High Court having a Commercial Division, filed beyond the date of notification of the Specified Value, the plaint of such a suit must be returned to the plaintiffs for presentation before the appropriate Court, in exercise of powers under Order VII Rule 10 of the Code of Civil Procedure, 1908. Once the same is done, the plaintiff in such a suit has to file the plaint of such suit in the same High Court but in the Commercial Division of such High Court. Once the same is done, the question of operation of Section 12A of the Act of 2015 will arise.”

8. Then, at para-76, it is held as follows:

“76. A suit transferred under the provisions of Section 15 of the Act of 2015 has to be considered as the continuation of the old suit now to be tried either in the Commercial Division or in the Commercial Court as the case may be. However, a suit involving a commercial dispute and of the Specified Value filed subsequent to the notification of the Specified Value has to be transferred to the Commercial Court or the Commercial Division as the case may be under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908. Such suit when presented before the Commercial Court or the Commercial Division has to be treated as a fresh suit in view of the ratio laid down in *Modern Construction and company* (supra).”

9. Thus, the legal position is now clear that in respect of the suits that are filed subsequent to the date on which Act of 2015 came into force, when a plea relating to lack of territorial jurisdiction is taken, the same has to be dealt with only under Order VII, Rule 10 of CPC. Therefore, a petition under Section 24 of CPC seeking transfer of the said suit from one Commercial Court to another Commercial Court on the ground that the Court in which the said suit is instituted lacks territorial jurisdiction is clearly misconceived and unsustainable.

10. Although in the above judgment of the Calcutta High Court the issue is relating to transfer of suit that was instituted after the Act came into force from Ordinary Civil Jurisdiction of the High Court to the Commercial Division of the High Court, the same analogy applies



even to transfer of suits from one Commercial Court to another Commercial Court.

11. Therefore, the Transfer Civil Miscellaneous Petition is dismissed. However, as it is said that the said plea relating to lack of territorial jurisdiction was already taken in the trial Court and as the suit is now at the stage of arguments after completion of trial, the trial Court shall give a finding on it according to law, as discussed supra. No costs.

Miscellaneous petitions, if any pending, in this Petition, shall stand closed.

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**JUSTICE CHEEKATI MANAVENDRANATH ROY**

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**JUSTICE V. GOPALA KRISHNA RAO**

Date: 19.04.2023

Note:-  
L.R. Copy to be marked.  
(B/o)  
AKN/SCH

**THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

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