
**Daimler Financial Services India Pvt. Limited Vs Chandan Choudhary And
Ors**

Writ Petition (C). No. 3935 Of 2019

Court: Jharkhand High Court

Date of Decision: June 24, 2020

Acts Referred:

Commercial Courts Act, 2015 " Section 2(1)(i), 3(1A), 12#Commercial Courts, Commercial Division and Commercial Appellate Division of High Court Act, 2015 " Section 3(1)#Code of Civil Procedure, 1908 " Section 39#Arbitration and Conciliation Act, 1996 " Section 2(1)(e), 34#Constitution Of India 1950 " Article 227

Citation: (2020) 06 JH CK 0025

Hon'ble Judges: Anil Kumar Choudhary, J

Bench: Single Bench

Advocate: Bharat Kumar, Prabhas Ch. Sinha

Judgement

S. No,Commercial Court,"Jurisdiction (Local Limits)

notified by Law

Department vide

Notification No. 1220/J

dated 24.05.2016", "E xte nde d Jurisdiction

(Local Limits)

1-,Ranchi,Ranchi,"S o u t h Chotanagpur

Division and Palamau

Division

2-,Dhanbad,Dhanbad,"N o r t h Chotanagpur

Division and Santhal

Pargana Division

3-,"E a s t Singhbhum

(Jamshedpur)","E a s t Singhbhum

(Jamshedpur)","Kolhan Division

Law Department Govt. of Jharkhand, Ranchi." ,,,

It is submitted by Mr. Kumar, the learned counsel for the petitioner that the said Amendment Act, 28 of 2018 has received Presidential assent on" ,,,

20.08.2018 though inadvertently due to a printing error, in paragraph no.15 of this instant writ application, the said date has wrongly been mentioned as" ,,,

20.08.2019 and the said Act has been published in Gazette on 21.08.2018 but the same has been applicable with retrospective effect from 03.05.2018. ,,,

7. Mr. Kumar, the learned counsel for the petitioner also drew the attention of this Court to the statement of objects and reasons of the said" ,,,

amendment Act of 28 of 2018 and submits that conjoint reading of section 2(1)(i) and section 3(1-A) of the Commercial Courts Act, 2015 as amended" ,,,

by the amendment Act of 28 of 2018, implies that the Central Government is empowered to notify the ""specified value"" as defined under section 2(1)" ,,,

(i) of the Commercial Courts Act and the notification of the said amendment by way of publishing the same in the official Gazette dated 21.08.2018, in" ,,,

effect has fixed the ""specified value"" for all purposes as not less than rupees three lakhs or in other words an amount of three lakhs rupees or more. It" ,,,

is then submitted that unless and until the State Government after consultation with the High Court, by notification, specify such pecuniary value not" ,,,

less than rupees three lakhs or any higher value for whole or part of the State, the ""Specified Value"" for the Commercial Court established at Dhanbad" ,,,

by the said notification will be not less than rupees three lakhs or in other words an amount of three lakhs rupees or more. It is further submitted by" ,,,

the learned counsel for the petitioner that section 3(1-A) of the Commercial Courts Act, 2015 as amended by the amendment Act of 28 of 2018," ,,,

confers a discretion with the state government that it may after consultation with the concerned High Court, by notification, specify such "" Specified" ,,,

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 which means" ,,,

that the state government may not specify any ""Specified value"" other than ""not less than three lakh rupees"" as fixed by section 2(1)(i) of the" ,,,

Commercial Courts Act, 2015 as amended by the amendment Act of 28 of 2018 and as yet no notification has been published by the State" ,,,

Government by specifying any pecuniary value other than the one of amount not less than rupees three lakhs as mentioned in Section 2(1)(i) of the" ,,,

Commercial Courts Act, 2015 as amended by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts" ,,,

(Amendment) Act, 2018 (28 of 2018). Hence, it is submitted that in view of the said amended Section 2(1)(i) of the Commercial Courts Act, 2015 as" ,,,

amended by the Act 28 of 2018, for the Commercial Court at Dhanbad, the ""specified value"" to be determined in accordance with Section 12 of the",,,

Commercial Courts Act, 2015 is "" not less than three lakhs rupees""; hence the said execution petition filed is maintainable in the Commercial Court at",,,

Dhanbad.,,,

8. In support of his contention, Mr. Bharat Kumar, the learned counsel for the petitioner relied upon the Judgment of Hon'ble Gujarat High Court, in",,,

the case of Vijay Cotton And Fiber Company vs. Agarwal Cotton Spinning Pvt. Ltd. dated 11.02.2019, paragraph no.16 of which reads as under:-",,,

16. The sum and substance of the above discussion is that in State of Gujarat where the commercial Courts are constituted at District level, the",,,

execution petition would be maintainable in that Court; as contemplated in the notification referred herein above irrespective of its Judge being lower in",,,

hierarchy than the District Judge. Since the commercial Court lower in hierarchy than the district level is not contemplated under subsection (1) of",,,

Section 3, there would be no question of institution of the execution petition with the District Judge and transfer by him under Section 39 of CPC to the",,,

Court lower in hierarchy than the such District Judge. The Principal Civil Court in the District Court as defined in Section 2 (1) (e) of the Arbitration",,,

and Conciliation Act read with Section 3 of the Commercial Courts Act, in respect of the commercial disputes, would be the Commercial Court at the",,,

district level as constituted under subsection (1) of Section 3 of the later Act and would be the Court competent to execute awards declared under",,,

Section 34 of the Arbitration Act other than those relating to international arbitration. By virtue of the notification above referred, as also by",,,

C/AO/216/2018 ORDER virtue of the provisions referred to herein above, the Court contemplated in the notification, irrespective of the designation of",,,

the Judge would be the commercial Court at district level; and in absence of contemplation of Commercial Court of the lower hierarchy than the",,,

District level, in the Commercial Court Act, it would execute the decree without transferring it under Section 39 CPC.""",,,

9. Mr. Bharat Kumar also relied upon the Judgment of Hon'ble Supreme Court of India in the case of R adhey Shyam & Anr. vs. Chhabhi Nath & Ors.,,,

reported in (2015) 5 SCC 423, in support of its contention that challenges to judicial order can lie by way of a petition under Article 227 of the",,,

Constitution of India.,,,

10. Hence, it is submitted by Mr. Kumar that the said impugned order dated 27.04.2019 passed by the District Judge-XIV-cum-Presiding Officer",,,

Commercial Court, Dhanbad in Execution Case No. 36 of 2019 be quashed and set aside and the Commercial Court at Dhanbad be directed to",,,

proceed ahead with the said Execution Case no. 36 of 2019 as per law.,,,

11. Learned counsel for the opposite parties- respondents, Mr. Prabhash Ch. Sinha, opposes the prayer of the petitioner and defends the impugned",,,

order dated 27.04.2019 passed by learned District Judge-XIV-cum-Presiding Officer, Commercial Court, Dhanbad in Execution Case No. 36 of 2019",,,

and submits that the Commercial Court, Dhanbad has no pecuniary jurisdiction to entertain the Execution Petition and the same has rightly been",,,

dismissed.,,,

12. Having heard the submissions made by the learned counsel for the petitioner and after going through the materials in the record, this Court finds",,,

force in the submission of the learned counsel for the petitioner; as it is crystal clear that after amendment of Section 2(1)(i) of the Commercial Courts,,,

Act by the amendment Act 28 of 2018, the ""Specified value"" of the commercial Courts established under section 3(1) of The commercial Courts Act",,,

2015 to be determined in accordance with Section 12 of the said Act is ""not less than three lakhs rupees"" which in other words means an amount of",,,

rupees three lakhs or more with effect from 03.05.2018. As rightly submitted by Mr. Kumar, in the absence of any notification under section 3 (1-A)",,,

of the said Commercial Courts Act, 2015 as amended by the said Act 28 of 2018, the commercial Court at Dhanbad having been established under",,,

section 3(1) of the Commercial Courts Act by the notification dated 24th May, 2016 will have its revised ""Specified Value"" of ""not less than three",,,

lakhs rupees"" w.r.e.f. 03.05.2018 instead of ""not less than rupees one crore"" as it stood fixed prior to 03.05.2018.",,,

13. In view of the position of law, this Court is of the considered view that the impugned order dated 27.04.2019 passed by the Presiding Officer",,,

Commercial Court, Dhanbad in Execution Case No. 36 of 2019 by dismissing the said execution petition on the ground that the Commercial Court",,,

Dhanbad has no pecuniary jurisdiction; is not sustainable in law and is liable to be set aside.,,,

14. Accordingly the impugned order dated 27.04.2019 passed by the District Judge-XIV-cum-Presiding Officer, Commercial Court, Dhanbad in",,,

Execution Case No. 36 of 2019 is quashed and set aside and this writ petition is disposed of with a direction to the commercial Court at Dhanbad to,,,

proceed with Execution Case No. 36 of 2019 in accordance with law, from the stage where it was, on the date said impugned order dismissing the",,,

said Execution Case No. 36 of 2019, was passed.",,,

15. It is made clear that this court has not passed any opinion on the merit of the said execution case.,,,