(2024) 11 GUJ CK 0018

Gujarat High Court

Case No: Special Civil Application No. 14334 of 2024, Appeal From Order No. 220 of 2024

Epigral Limited (Formerly Known as Meghmani Finechem Limited)		APPELLANT
	Vs	
Vs Apical (Malaysia) Sdn. Bhd.		RESPONDENT

Date of Decision: Nov. 26, 2024

Acts Referred:

- Constitution of India, 1950 - Articles 226, 227
- Arbitration & Conciliation Act, 1996 - Section 7, 44(1), 44(1)(a), 45, 50(1)(a)
- Indian Contract Act, 1872 - Section 14, 15, 16, 17, 18, 19, 19A, 20
- Commercial Courts Act, 2015 - Section 2(c), 2(1)(c)(v), 2(1)(c)(xviii)
- Code of Civil Procedure, 1908 - VII Rule 10, Order 7 Rule 10(A), Order VII Rule 11
- Singapore International Arbitration Centre Rules, 2016 - Rule 28.2

Hon'ble Judges: Divyesh A. Joshi, J

Bench: Single Bench

Advocate: Mihir Thakore, Maulik Nanavati, Nanavati & Co., Ketan Gour, Munjaal M Bhatt

Final Decision: Allowed

Judgement

Divyesh A. Joshi, J

1. Since the challenge in both the captioned petitions is to the common order passed by the learned trial court in two separate applications, those were

heard analogously and are being disposed of by this common judgment and order.

2. For the sake of convenience, the Special Civil Application No.14334 of 2024 is treated as the lead matter.

3. By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs;

â€œ(a) This Honâ€™ble Court be pleased to issue a Writ of Certiorari, or any other Writ, order or direction in the nature of Certiorari

calling for the record of Regular Civil Suit No.98 of 2024 and after going through the record be pleased to quash and set aside the common

order dated 22nd August, 2024 passed under Exhibit Nos.14 and 15;

(b) This Honâ€™ble Court be pleased to restore the file of Regular Civil Suit No.98 of 2024 before the Honâ€™ble Principal Senior Civil

Judge, Ahmedasbad (Rural), Mirzapur at Ahmedabad or any other suitable Court as deemed proper by this Honâ€™ble Court;

(c) Pending hearing and final disposal of the present Petition, by ex-parte and interim order restraining Respondent from prosecuting,

continuing or from taking any steps in connection with or from implementing any action with respect to SIAC Arbitration No.625 of 2023

(ARB625/23/SXG);

(d) Costs of this petition be provided for;

(e) Issue any other writ, pass any other order or grant any other relief as this Honâ€™ble Court may deem fit, proper and necessary in the

interest of justice.â€

4. Shorn of details, the facts leading to the filing of the present application are as under;

4.1 The writ applicant-Epirgal Limited is a Company incorporated under the provisions of the Companies Act, 1956 who instituted a suit being Regular

Civil Suit No.98 of 2024 in its capacity as the original plaintiff. The applicant-Company is a leading integrated manufacturer of chemicals in India and

has a reputation of being the first company in India to commission a manufacturing plant for production of epichlorohydrin, which was a fully imported

product.

4.2 Epichlorohydrin is an intermediate chemical production of epoxy raisins which in turn has widespread application and use in several industries. One

of the ways to manufacture epichlorohydrin is through the process of using refined glycerin as the raw material, and the said method is not only

environmentally friendly but also cost efficient.

4.3 The respondent-Company being engaged in the manufacturing and trading of refined glycerin came into contact with the writ applicant-Company

through a sales inquiry, and after making some discussions with regard to the mode and manner of delivery as well as the primary negotiations in the

year 2022, the writ applicant-Company shown its willingness to purchase 3000 MT of refined glycerin from the respondent-Company, pursuant to

which, the respondent-Company offered USD 1520 per MT, which was accepted by the writ applicant-Company, and accordingly, placed an order of

3000 MT of glycerin, for which, the parties did not enter into any contract at any stage.

4.4 Later, a report dated 07.07.2022 of the Independent Commodity Intelligent Services revealed a step drop in the prices of the refined glycerin.

Therefore, on the very same day, the writ applicant-Company, by e-mail, informed the respondent-Company about the sudden plummeting prices of

refined glycerin in the market and requested the Respondent-Company to reconsider the initial offer of 3000 MT at the rate of 1520 USD per MT as

the writ applicant-Company, being a new entrant, could not sustain it.

4.5 Despite the above, the respondent-Company instead of reconsidering the request of the writ applicant-Company, on 08.07.2022, deliberately issued

sales contract being No.S/94/22/000991 (Sales Contract No.91) along with the proforma invoice of initial offer of USD 1530 per MT of refined

glycerin for a total sum of USD 4,560,000, and requested the writ applicant-Company to send a signed copy of the Sales Contract No.91. The

aforesaid sales contract contains certain one sided and unreasonable clauses including the clause that in case of any dispute being arose between the

parties with regard to the said transaction, the same shall be resolved through the International Arbitrator at Singapore, i.e, the Singapore International

Arbitration (for short â€˜SIACâ€™).

4.6 In pursuance to the above, extensive discussions and negotiations took place between the parties for reduction of the price per MT on purchase of

3000 MT of refined glycerin. The respondent-Company while acknowledging the market infidelity and poor demand of epichlorohydrin agreed to

reduce the price per MT on the condition of recoup of the shortfall amount between the initial offer and the agreed revised price by way of entering

into a long term pricing contract, to which the applicant-Company showed his inability to enter into any such commitment of long-term pricing contract

until recovery of the market conditions for demand of epichlorohydrin.

4.7 Accordingly, by mid July, 2022, the price was revised to USD 900 per MT for the same quantity of 3000 MT of refine glycerin for which a new

and independent contract was issued being Sales Contract No.S/94/22/001098 (Sales Contract No.98) at the rate of USD 900 per MT for the quantity

of 3000 MT glycerin, pursuant to which, payment was also made by the writ applicant-Company somewhere in the month of November, 2023.

Simultaneously, they also ad-idem to hold discussions over the long-term pricing contract sometime in October-November, 2022.

4.8. There was no communication took place between the writ applicant-Company and the respondent-Company during the period between August,

2022 and March, 2023, and such long period of silence and inactivity reasonably indicated an abandonment to hold discussions on a long-term pricing

contract.

4.9 However, when the writ applicant-Company raised a query with regard to crude glycerin (80%) in March, 2023, the respondent-Company, all of a

sudden, asked the writ applicant-Company to hold discussions over a long-term pricing contract, which was declined by the writ applicant-Company by

giving reasons that still there is no improvement in the market of epichlorohydrin due to global economic challenges and downstream demand which

impacted exhaustion of the existing batch of refined glycerin supplied under Sales Contract No.98. However, in any case, the agreed time period to

engage into discussions had already been lapsed.

4.10 The writ applicant-Company refused to enter into any such contract due to consistent poor market condition of epichlorohydrin, and upon such

refusal at the end of the writ applicant-Company, the respondent-Company threatened the writ applicant-Company to accept its liability under Sales

Contract No.91, otherwise, it would initiate legal proceedings against it. However, as the writ applicant-Company refused to budge or change its mind,

the arbitration proceedings came to be initiated by the respondent-Company on 14.12.2023 before the â€˜SIACâ€™ being SIAC Arbitration No.625

of 2023 for a wrongful and exaggerated claim amount of USD 3,180,000 being the difference between the total amount of USD 4,650,000 under Sales

Contract No.91 and the current market price of refined glycerin.

4.11 In the aforesaid proceedings, on 15.12.2023, the Registrar, SIAC, addressed a commencement letter to the writ applicant-Company, directing it to

(a) pay an exaggerated first tranche of costs of SGC 42,122,29 being writ applicantâ€™s liability towards the initial costs of the Arbitration

Proceedings and (b) file a response within 14 days, to which, the writ applicant-Company raised preliminary objections with regard to the jurisdiction

of the SIAC to conduct such arbitration proceedings in the absence of any Arbitration Agreement being entered into between the parties as also

sought extension of the time to submit its response, which was granted to the writ applicant-Company. Pursuant to such extension granted by SIAC,

the writ applicant-Company on 16.01.2024, submitted its response questioning the SIACâ€™s authority to arbitrate any dispute and, inter alia,

requested SIAC to refer the jurisdiction objection to the Court of SIAC prior to appointment of any Arbitrator.

4.12 However, to the utter shock and surprise of the writ applicant-Company, its request for reference was turned down by the SIAC and informed

the parties of its intention to appoint an Arbitrator.

4.13 Since the writ applicant-Company was compelled to litigate the wrongful proceedings, it filed a suit before the trial court on 21.02.2024, inter alia,

praying for injunctive and declaratory reliefs in respect of the Sales Contract No.91 along with an application seeking anti-arbitration injunction and

stay against the Arbitration Proceedings pending the trial proceedings, pursuant to which, notice and summons came to be issued to the respondent-

Company to enter its appearance as also to file written statement.

4.14 During the pendency of the aforesaid application, on 01.04.2024, the parties were informed about appointment of sole Arbitrator, namely, Mr.

Gavin Margeston for adjudication of the alleged disputes between the parties arising from the Sales Contract No.91. Therefore, the writ applicant-

Company moved another application for ad-interim injunctive relief as well as for early hearing of the suit. Thereafter, some developments and

exchange of communications took place in the arbitration proceedings.

4.15 Ultimately, the suit was listed for hearing of the writ applicantâ€™s stay application and the ad-interim application as also for filing of the

response to the above applications by the respondent. However, instead of filing its response and written statement, the respondent-Company moved

two applications viz. (1) an application for rejection of the suit/plaint under Order VII Rule 11 of the Civil Procedure Code (in short â€˜CPCâ€™) and

(2) an application for reference of disputes to Arbitration under Section 45 of the Arbitration & Conciliation Act, 1996, and the said conduct on the

part of the respondent-Company seems to be deliberate with a view to not only prolong the trial proceedings but also to enable continuance of the

Arbitration Proceedings as also to stall the hearing of the applications for interim relief.

4.16 As the aspect of jurisdiction of the trial court was challenged by filing the aforesaid two applications by the respondent, those were being given

priority over the applications for interim relief filed by the writ applicant-Company, to which, writ applicant-company also filed its reply. During the

pendency of the aforesaid two applications, time and again, the writ applicant-Company requested the SIAC to defer the hearing of the arbitration

proceedings in view of the pendency of the applications in the trial court challenging its jurisdiction, however, the SIAC rejected all the requests made

by the writ applicant-Company and proceeded to conduct the hearing of the ASI application ex-parte.

4.17 Thereafter, on 22.05.2024, the respondent-Company circulated a draft procedural order to the Arbitrator for its consideration, and on the same

date, the Arbitrator adopted the draft procedural order and passed a non-speaking order restraining writ applicant-Company from prosecuting not only

the suit but also from initiating any proceedings in connection with Sales Contract No.91.

4.18 Thereafter, on 28.05.2024, the respondent-Company moved an application to produce and place on record the ASI Order, and the hearing of the

said application was fixed on 30.05.2024. However, as the learned Presiding Officer was on leave, the suit was adjourned. Then, on 14.06.2024,

arguments were canvassed by the parties extensively in the production application, however, due to some technical reason, the said application came

to be withdrawn by the respondent-Company.

4.19 Ultimately, on 22.08.2024, the learned trial court has passed the impugned order partly allowing the two applications filed by the respondent-

Company below Exhs.14 and 15, whereby the plaint has been returned to the writ applicant-Company to be presented before an appropriate forum

and directed the parties to proceed with the Arbitration Proceedings before the SIAC. Being aggrieved, the writ applicant-Company is here before this

Court with the present application.

5. Learned senior advocate Mr. Mihir Thakore assisted by learned advocate Mr. Maulik Nanavati, at the outset, submits that without going into the

merits of the matter, he is agitating his grievance only to the effect that the trial court has completely erred in returning back the plaint filed by the writ

applicant under Order VII Rule 10 to be presented before the appropriate forum as it has no jurisdiction to try the suit/plaint as well as simultaneously

referring the parties to agitate their grievance in the Arbitration Proceedings. However, he would like to highlight some of the important aspects of the

matter. Learned senior advocate Mr. Thakore submits that the writ applicant-herein is the original plaintiff and the respondent herein is the original

defendant in the suit filed by the writ applicant before the Principal Senior Civil Judge, Ahmedabad (Rural) being Regular Civil Suit No.98 of 2024 for

declaration and permanent injunction. Learned senior advocate Mr. Thakore submits that the writ applicant is a well reputed company engaged in the

business of manufacturing plant for production of epichlorohydrin. The respondent is the Company situated at Malaysia engaged in the business of

trading of refined glycerin, and thus they were having business relationship with each other. One fine day, they came into contact with each other and

some business transactions started to be taken place between them. The writ applicant used to purchase raw-materials from the respondent by placing

purchase orders. Since the refined glycerin is being used in the manufacture of epichlorohydrin, the writ applicant approached the respondent-

Company for purchase of 3000 MT of glycerin and started talks of negotiations as well as mode and manner of delivery. The respondent agreed to

sell 3000 MT of refined glycerin at USD 1520, however, later, due to sudden fall in the price of the refined glycerin, the writ applicant requested the

respondent to reconsider its offer and lower the price of the product. Learned senior advocate Mr. Thakore submits that whateverr discussions took

place between the writ applicant and the respondent were all though emails and no such agreement or contract or deed came to be executed between

the writ applicant and the respondent in respect of the transaction in question. Even this time, no purchase order was issued by the writ applicant. He

further submits that despite the writ applicant showing its unwillingness to purchase the said product at such a high rate, the respondent, instead of

considering the request of the writ applicant, deliberately issued Sales Contract No.91 along with the proforma invoice of USD 1520 per MT of

refined glycerin for a total amount of USD 4,560,000, which can be said to be made one-sided, incorporating unreasonable clauses without the consent

of the writ applicant. He also submits that finally the respondent acceded to the request made by the writ applicant and, accordingly, reduced the price

of the product from USD 1520 to USD 900, but on the condition to the applicant to enter into long-term pricing contract with the respondent.

6. Learned senior advocate Mr. Thakore submits that all the conditions incorporated in the sales contract was one sided and the consent or the sense

of the writ applicant had not been obtained. Learned senior advocate Mr. Thakore submits that the writ applicant-Company has never entered into any

such contract with the respondent nor has agreed upon with any arbitration clause, as claimed by the respondent. He further submits that number of

correspondences have been taken place between the parties through E-mail, and he has produced all those correspondences having been taken place

between the parties by way of a separate paper-book, and in none of the documents placed on record in respect of the transaction in question, the

signature of the writ applicant is found. Learned senior advocate Mr. Thakore also submits that the respondent-Company is located at Malaysia, and

therefore, at the time of issuance of purchase order, as per the settled norms of the international market, letter of credit is also required to be issued,

and in absence of any letter of credit, the product cannot be sent. Here in the case on hand, neither the writ applicant has issued any purchase order

nor the respondent has issued any letter of credit. Even the product has also not reached to the writ applicant-Company. Therefore, in the absence of

any contract/agreement, purchase order or the letter of credit, by no stretch of imagination, it can be said that there was any transaction took place

between the parties so far as refined glycerin is concerned, and if there is no actual transaction in existence, then the initiation of the arbitration

proceedings is nothing but null and void. Learned senior advocate Mr. Thakore submits that the entire arbitration proceedings at SIAC has been

initiated on the basis of the arbitration clause inserted in the agreement prepared one-sided by the respondent without the knowledge and consent of

the writ applicant. The respondent-Company after preparing the aforesaid document, has just sent the same to the writ applicant through email,

requesting the writ applicant-company to acknowledge the same, which has never been accepted by the writ applicant. He further submits that as the

writ applicant was compelled to litigate the wrongful arbitration proceedings, it filed a suit before the concerned trial court, wherein notice came to be

issued which was duly served to the respondent. The respondent appeared through his advocate and raised objections about the maintainability of the

suit by way of filing an application under Order VII Rule 11 of the CPC along with an application under Section 45 of the Arbitration Act. Both the

aforesaid applications came to be disposed of by a common judgment and decree, returning the plaint of the writ applicant and also referring the

parties to proceed with the arbitration proceedings. Learned senior advocate Mr. Thakore submits that while disposing of the application under Order

VII Rule 11, the trial court has come to the conclusion that the specified value of the suit is more than 34 Crores, and as per the provisions of

Commercial Act, more particularly, Section 2(c), if the price value of the contract/commercial transaction exceeds more than 3 Lakh, then the

jurisdiction to try such cases would lie before the Commercial Court, and as such, with the aforesaid observations the suit/plaint has been returned

back to the writ applicant-plaintiff under Order 7 Rule 10(A), instead of rejecting the plaint under Order VII Rule 11. In this regard, learned senior

advocate Mr. Thakore submits that, as stated above, without entering into the merits of the matter, he would like to point out that the learned trial court

has committed a grave error while passing the impugned order, as before passing any order of returning the suit or the plaint, the concerned trial court

has to follow the procedure as prescribed under Order VII Rule 10(A) of the CPC, which provides that a prior intimation should be given to the

plaintiff about its decision of returning the plaint. He further submits that the above provision leaves no ambiguity that the Court must intimate the

plaintiff about its decision to return the plaint, and such intimation must be given prior to passing the order of returning the plaint. The rationale for this

procedure is to enable the plaintiff to take out an application specifying the Court in which plaintiff proposes to present the plaint after its return and

allow the Court to fix the date for appearance of the parties before the new Court. Learned senior advocate Mr. Thakore also submits that failure to

provide such opportunity or intimation by the Court violates the procedural scheme as contemplated in C.P.C.

7. Learned senior advocate Mr. Thakore submits that in the present case, the trial court has failed to follow the mandatory procedure as prescribed in

law. It has neither given any intimation to the plaintiff nor has provided any opportunity to the plaintiff to make an application for presentation of the

plaint before the appropriate forum, and straightway passed the impugned order, which is erroneous, illegal, perverse and against the settled principle

of law. He further submits that once the trial court comes to the conclusion that it has no jurisdiction to try the plaint, and has decided to return the

plaint to be filed before the appropriate forum, then it need not have to touch the merits of the matter, and should have simply returned back the plaint

after following the mandatory procedure as prescribed under the law, i.e, after intimating the plaintiff about its decision of returning back the plaint, so

that the plaintiff can avail appropriate remedy as provided by law. However, instead of doing so, the trial has straightway passed the order of returning

the plaint as well as issued directions to the parties to proceed with the arbitration proceedings before the SIAC. Learned senior advocate Mr.

Thakore submits that once the trial court concluded lack of its jurisdiction, then no findings on merits would sustain even to direct the parties to

proceed with the arbitration proceedings. To buttress his aforesaid submissions, learned senior advocate Mr. Thakore has relied upon the following

decisions;

(i) In the case of Ramdayal Umraomal vs. Pannalal Jagannathji, reported in (1979) MPLJ 736;

(ii) In the case of State Trading Corporation of India Ltd. vs. Government of Peoples Republic of Bangladesh, reported in 1997 (40) DRJ (DB);

(iii) In the case of Ravi Singhal & Ors. vs. Rajeev Goyal & Ors., reported in (2016) 114 ALR 64;

(iv) In the case of R.S.D.V Finance Co. Pvt. Ltd. vs. Shree Vallabh Glass Works Ltd., reported in (1993) 2 SCC 130;

(v) In the case of Shreyans Industries vs. State of U.P. & Ors., reported in (2004) 1 Mh.L.J., 50;

8. In such circumstances, referred to above, learned senior advocate Mr. Thakore prays that there being merit in this application, the same be allowed

and the impugned order be quashed and set aside.

9. On the other hand, this application has been vehemently opposed by learned advocate Mr.Ketan Gour assisted by learned advocate Mr. M.M.

Bhatt appearing for the respondent. Learned advocate Mr.Gour submits that the impugned order passed by the learned trial court is just, fair,

reasonable and based upon the sound principle of law, and thus does not require any interference as there is no perversity in the findings recorded by

the trial court. Learned advocate Mr. Gour further submits that the writ applicant-plaintiff herein is seeking two contrary reliefs by filing two separate

petitions, impugning a common order passed by the trial court. Learned advocate Mr. Gour also submits that in the appeal, the applicant is seeking

restoration of the suit by pleading that the learned trial court had the jurisdiction to decide the suit as the dispute was not commercial in nature under

the Commercial Courts Act. The consequence of such submission is that the order passed by the trial court below Section 45 application is within the

jurisdiction. Thus, by filing the appeal, it does not lie in the mouth of the writ applicant to simultaneously contend that the direction allowing the Section

45 application is passing without jurisdiction and the same is required to be set aside. Learned advocate Mr. Gour submits that, thus, he would first like

to address this Court on the aspect of Section 45 application. He submits that the learned trial court has not committed any error in allowing the

Section 45 application and directing the parties to continue with the arbitration proceedings at SIAC. Learned advocate Mr. Gour, after referring to

Section 45 of the Arbitration Act, submits that once it is found that if there is a legal agreement in existence between the parties, which is capable of

being performed by the parties to the suit, the Court has no discretion but to pass an order by referring the parties to the arbitration in terms of the

agreement, and in support of his aforesaid submission, he has put reliance upon the decision in the case of Sasan Power Ltd. vs. North American Coal

Corpn (India) (P) Ltd., (2016) 10 SCC 813. Thus, once a judicial authority finds that a valid arbitration agreement exists, there is a legal obligation cast

upon the judicial authority to refer the parties to arbitration and, therefore, the trial court has not committed any error in directing the parties to the suit

to proceed with the arbitration proceedings pending before the SIAC.

10. Learned advocate Mr.Gour, referring to the decision of the Honâ€™ble Supreme Court in the case of World Sport Group (Mauritius) Ltd. vs.

MSM Satellite, (2014) 11 SCC 639 submits that if the existence of a valid arbitration agreement is brought to the notice of the concerned trial court,

the trial court is barred from entertaining the suit and must refer the parties to arbitration. Learned advocate Mr.Gour further submits that the limited

scope of enquiry that can be undertaken regarding the validity of an arbitration agreement is whether the arbitration agreement is null and void,

inoperative or incapable of being performed. The ambit of such an enquiry was clarified in World Sport Group (supra) as under;

â€œ(a) An arbitration agreement is null and void when it is affected by an invalidity right from the beginning, such as lack of consent due

to misrepresentation, duress, fraud or undue influence.

(b) An arbitration agreement is inoperative when it has ceased to have effect, such as failure of parties to comply with a time-limit for

initiating arbitration, revocation, waiver or existence of an arbitral award or court decision with res- judicata effect concerning the same

subject-matter and parties.

(c) An arbitration agreement is incapable of being performed when the arbitration cannot be set into motion, such as the arbitration

agreement being vaguely worded or terms of the contract being contrary to the arbitration agreement such as co-equal forum selection

clauses.â€

11. Learned advocate Mr. Gour further submits that unless the aforesaid parameters are met, the arbitration is to be held to be valid, and parties must

be referred to arbitration and a judicial authority has no discretion left. To substantiate his aforesaid submission, learned advocate Mr. Gour has

referred to and rely upon the decision of this Court in the case of Galatea Limited vs. Shree Krishna Exports, Appeal From Order No.30 of 2020,

decided on 24.12.2021, wherein it has been held as under;

â€œ85 Thus, in Sasan Power Limited (supra), the Supreme Court laid emphasis on the words â€œshallâ€ and â€œrefer the parties to

arbitrationâ€ and construed those as a legal obligation on the Court to refer the parties to the arbitration once it finds that the agreement in

question is neither null and void nor inoperative and nor incapable of being performed. Once the agreement in question is found to be legal

and valid i.e. capable of being performed by the parties to the suit, the Court, thereafter, would have no discretion, but to pass an order by

referring the parties to the arbitration in terms of the agreement.â€

12. Learned advocate Mr. Gour also submits that similarly, in Enercon (India) Ltd. vs. Enercon GMBH, (2014) 5 SCC 1, the Honâ€™ble Supreme

Court has held that matters touching upon the validity or existence of the main contract, such as its conclusion or rescission, are not to be determined

under Section 45 and are not grounds that can impeach/invalidate an arbitration agreement. Learned advocate Mr. Gour has drawn the attention of

this Court to Para-78 of the said judgment, which reads thus;

â€œThe Daman Appellate Court upon reconsideration of the pleadings found that there is no plea to the effect that the agreement is null,

void or incapable of being performed. Justice Savant has not examined the pleadings as the issue with regard to the underlying contract

has been left to be examined by the Arbitral Tribunal. Before us also, it is not the plea of the Appellants that the arbitration agreement is

without free consent, or has been procured by coercion, undue influence, fraud, misrepresentation or was signed under a mistake. In other

words, it is not claimed that the agreement is null and void, inoperative and incapable of being performed as it violates any of the

provisions under Sections 14, 15, 16, 17, 18, 19, 19A and 20 of the Indian Contract Act, 1872. The submission is that the matter cannot be

referred to arbitration as the IPLA, containing the arbitration clause/agreement, is not a concluded contract. This, in our opinion, would not

fall within the parameters of an agreement being â€œnull and void, inoperative or incapable of being performedâ€, in terms of Sections 14,

15, 16, 17, 18, 19 and 20 of the Indian Contract Act, 1872. These provisions set out the impediments, infirmities or eventualities that would

render a particular provision of a contract or the whole contract void or voidable.â€

13. Learned advocate Mr. Gour submits that in the present case, the parties have expressed their clear intent to arbitrate under the following

arbitration agreement as contained in Sales Contract No.91:

â€œArbitration. Any dispute arising out of or in connection with this contract, including any question regarding its existence, shall be

referred to and finally resolved by arbitration in Singapore in accordance with the arbitration rules of the Singapore International

Arbitration Centre, for the time being in force, which rules are deemed to be incorporated by reference into this section. The tribunal will

consist of one (1) arbitrator. The place of arbitration will be Singapore The language of the arbitration will be English Process in any such

arbitration proceeding may be served on any party anywhere in the world The governing law of this contract shall be Singapore law.

14. Learned advocate Mr. Gour submits that the aforesaid, prima facie, is a valid arbitration agreement for the following reasons;

(a) The agreement is in writing;

(b) The parties have agreed to refer all disputes to the decision of a private arbitral tribunal seated in Singapore under the aegis of the SIAC,

(c) The arbitral tribunal is to decide the dispute by giving the parties an equa opportunity to present their case (which is also the mandate under the

SIA Rules); and

(d) The Parties have agreed to be bound by the decision of the arbitral tribunal agreeing that their disputes shall ""be referred to and finally resolved

arbitration"", which evidences a clear intent to arbitrate.

15. Learned advocate Mr. Gour submits that in the present case, the writ applicant has adopted contradictory positions to impeach/invalidate the

arbitration agreement contained in Sales Contract No.91, which are as follows;

(a) The first time the writ applicant raised a dispute with the arbitration agreement was in its reply dated 16th January 2024 to the Respondent's notice

of arbitration. In the same, the writ applicant contended that the Sales Contract was unconcluded as it was never entered into, and consequently, the

arbitration agreement did not exist.

(b) However, in the suit, the writ applicant took a contrary position by averring that the parties rescinded Sales Contract No.91, which also rescinded

the arbitration agreement. It was also contended that parties never consented to arbitrate.

(c) In the writ application also, the writ applicant has made another volte-face by contending that the Sales Contract was never executed and

remained inconclusive.

16. Learned advocate Mr. Gour further submits that notwithstanding that the applicant is disentitled to any relief on account of adopting such

contradictory positions, none of these grounds above impeach the validity of the arbitration agreement. It is a settled proposition of law that an

arbitration agreement is not necessarily required to be signed, the only requirement is for it to be in writing and demonstrate an intent to arbitrate. The

term ""agreement in writing"" in Section 44(1)(a) of the Arbitration Act is of inclusive nature, and an arbitration agreement is not required to be

mandatorily signed. The requirement under Section 44(1)(a) of the Arbitration Act is similar to Section 7 of the Arbitration Act, in which respect it has

been held that an agreement to arbitrate is not required to be necessarily signed and could be made out from the conduct of the parties.

17. Learned advocate Mr. Gour further submits that the contention of the writ applicant that the arbitration agreement does not exist as Sales Contract

No.91 has been rescinded/unconcluded, inconclusive ignores the principle of separability of an arbitration agreement that is well established in law. As

such, these objections do not invalidate the arbitration agreement. The issue of whether the Sales Contract was rescinded/unconcluded or not is to be

decided solely by the arbitral tribunal owing to the principle of kompetenzkompetenz, which allows an arbitral tribunal to rule on its own jurisdiction.

This principle is expressly recognized under Rule 28.2 of the SIAC Rules, which reads as under;

28.2 The Tribunal shall have the power to rude on its own jurisdiction, including any objections with respect to the existence, validity or

scope of the arbitration agreement. An arbitration agreement which forms part of a contract shall be treated as an agreement independent

of the other terms of the contract A decision by the Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the

arbitration agreement and the Tribunal shall not cease to have jurisdiction by reason of any allegation that the contract is non-extent or

null and void.â€

18. Learned advocate Mr. Gour submits that whichever agreements that are entered into in the present matter are through E-mail. The order was also

placed by the writ applicant through e-mail after agreeing upon all the terms and conditions of the contract. The transaction in question was not a first

transaction between the parties, but earlier also, they had successfully entered into such kind of transactions. Even, as per the order placed by the writ

applicant, the product was also sent through vessel to the writ applicant, in respect of which, a document was also prepared and sent through e-mail to

the writ applicant for its approval, duly signed by the authorized person of the respondent-Company, which was not signed and sent back by the writ

applicant to the respondent-Company and, therefore, solely on the ground that signature of the writ applicant is not found on the said document, it

cannot be said that there was no contract executed between the parties.

19. Learned advocate Mr. Gour submits that he has already produced all the correspondences took place between the parties through E-mail, which

clearly reveal that at the contemporaneous period, the writ applicant never disputed the existence of Sales Contract No.91 and the arbitration

agreement. It has never been contended that the arbitration agreement was null and void for lack of consent due to misrepresentation, duress, fraud or

undue influence. No concern was raised regarding a lack of consent under the arbitration agreement. As such, the writ applicant's contention in the

writ application that the parties were only negotiating the manner, mode of delivery and price of refined glycerin and never executed Sales Contract

No.91 and the arbitration agreement is unmerited does not inspire any confidence and is required to be rejected at the threshold. The very first time

that the writ applicant raised a dispute with the arbitration agreement was vide its reply dated 16th January 2024 to the Respondent's notice of

arbitration, which seems to be clearly an afterthought.

20. He further submits that it is settled law that an offer and acceptance of a contract can be spelt out from the conduct of the parties, which covers

not only their acts but omissions as well. On occasions, silence can be reflective of a party's acceptance of a contract, and in support thereof, learned

advocate Mr. Gour has drawn the attention of this Court to the decision in the case of Vishnu Agencies (P) Ltd v CTO, (1978) 1 SCC 520 (para 23)].

Learned advocate Mr. Gour submits that the writ applicantâ€™s conduct amounts to an acceptance of the Sales Contract as no reservation was

made in signifying acceptance of Sales Contract No.91 and the arbitration agreement separately, and the writ applicant has never disputed their

existence. The writ applicant's email dated 20th July 2022, in fact, unequivocally demonstrates its acceptance of Sales Contract No.91 and the

arbitration agreement, which indicates that a valid arbitration agreement exists.

21. Learned advocate Mr. Gour further submits that it was contended on behalf of the writ applicant that the writ applicant was entitled to anti-

arbitration injunction as the parties never discussed, orally or in writing, to arbitrate any dispute. The consent of a party is a pre-condition to arbitrate.

However, the said contention does not merit acceptance, and the writ applicant is not entitled to any anti-arbitration injunction for the following

reasons;

â€œ(a) There is a clear intent to arbitrate expressed by the parties, and the contemporaneous documents show that the writ applicant never

challenged the arbitration agreement as being forged or exhibiting a complete lack of consent to arbitrate, which are the limited circumstances for

granting an anti-arbitration injunction. [Mcdonald's India Pvt Ltd. v. Vikram Bakshi, 2016 SCC Online Del 3949 (para 55)].

(b) The writ applicant had raised its jurisdictional objections before the SIAC, which were rejected, and the Suit was filed after the arbitration was

initiated. The writ applicant was entitled to raise its jurisdictional objections before the arbitral tribunal as per Rule 28.2 of the SIAC Rules and the

arbitral tribunal was competent to decide issues as to its jurisdiction by virtue of the principle of kompetenz-kompetenz [Ashapura Minechem Ltd. v.

Ormet Primary Aluminium Corp & Anr 2009 SCC Online Guj 12143]

(c) At Ground K of the writ application, the writ applicant admits that the validity of the Sales Contract No 91 can only be decided in a trial, which the

arbitral tribunal alone can undertake owing to the principle of separability and kompetenz-kompetenz. As such, the requirement of a trial would

preclude the grant of an anti-arbitration injunction [Himachal Sorang Power Pvt Ltd v NCC Infrastructure, 2019 SCC Online Del 7575]

(d) An injunction cannot be granted merely because of prohibitive costs for a party in arbitrating in a foreign jurisdiction when the party has otherwise

clearly accepted the arbitration agreement. [LMJ International Ltd. v. Sleepwell Industries Co. Ltd, 2012 SCC Online Cal 10733; Jagson International

Ltd v Frontier Drilling 2003 SCC Online Bom 435 (Para 20-22)]

(e) The Ld. Trial Court was mindful that the Parties had chosen Singapore as the seat of the arbitration, which is in the nature of an exclusive

jurisdiction clause. Accordingly, the Ld Trial Court did not have supervisory jurisdiction over the Singapore Arbitration and personal jurisdiction over

the Respondent as the Respondent is not an entity registered in India. As such, the anti-arbitration injunction could not be granted. [Indus Mobile

Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd., (2017) 7 SCC 678]

(f) The Singapore Arbitration is not oppressive or vexatious as the writ applicant has the right to appear and put forth its contentions and submissions,

including any jurisdictional objections, before the arbitral tribunal, and mere economic hardship cannot be a reason to injunct an arbitration when parties

have chosen to arbitrate. Once parties have chosen to arbitrate under the aegis of the SIAC a party cannot unilaterally reject the authority of the

SIAC to administer the arbitration.

(g) The writ applicant has not highlighted a single instance where an anti-arbitration injunction was granted. On the other hand, from the table enclosed

as Annexure-B, it is apparent that courts have refused to grant an anti-arbitration injunction on various occasions.

22. Learned advocate Mr. Gour submits that the writ application under Articles 226 or 227 of the Constitution of India itself is not maintainable for the

following reasons;

(a) The jurisdiction of the trial court to direct the parties to the Singapore Arbitration arose out of Section 45 of the Arbitration Act. Section 45 cast a

legal obligation on the trial court to refer the parties to arbitration once it finds that a valid arbitration agreement existed. The trial court had no

jurisdiction left to pas any other order.

(b) In the Impugned order, the trial court considered in depth the documents record produced by the writ applicant to find that a valid arbitration

agreement exists. The writ applicant had never contemporaneously disputed the existence of the arbitration agreement and, by its correspondence and

conduct, had accepted the Sales Contract and the arbitration agreement separately.

(c) The Trial Court also noted that the existence or non-existence of the Sales Contract was an issue that could only be decided by the arbitral tribunal

once a valid arbitration agreement was found to exist. It was not required to be decided by the Trial Court keeping in mind the legislative mandate of

Section 45 of the Arbitration Act. This was in consonance with the principle of separability of the arbitration agreement and kompetenz-kompetenz

(d) Accordingly, there is no patent error of law or fact in the Impugned order, and the trial court acted within its jurisdiction in referring the parties to

arbitration once the respondent raised an objection under Section 45 of the Arbitration Act. The existence of jurisdiction in the trial court to allow the

Section 45 Application is evident from the writ applicantâ€™s pleaded case in the appeal that seeks to argue that the trial court had jurisdiction to

decide the Suit

(e) As per Section 50(1)(a) of the Arbitration Act, an appeal lies from an order refusing to refer the parties to arbitration under Section 45 of the

Arbitration Act and, therefore, in the absence of any statutory remedy of appeal, a writ application under Articles 226 or 227 of the Constitution is not

maintainable in the peculiar facts and circumstances of the present case.

23. Learned advocate Mr. Gour submits that in the appeal, the writ applicant has pleaded that the dispute is not a commercial dispute as no

commercial transaction occurred between the parties, which is supported by the fact that the writ applicant had sought a declaration that Sales

Contract No.91 was non-existent. However, the said contention raised by the writ applicant is incorrect and does not answer the case pleaded by the

respondent in its rejection application. Learned advocate Mr. Gour further submits that in the suit filedby the writ applicant before the trial court was

grossly undervalued at INR 3,600/- without any basis. It did not take into account that the Sales Contract No.91 involved a sale of 3000 MT of refined

glycerin at a price of USD 1,520 per MT, and as such, the aggregate contract value amounted to USD 4,560,000. The Proforma Invoice raised by the

respondent on 8th July, 2022 in furtherance of the sales contract was for this aggregate amount of USD 4,560,000. In the Singapore Arbitration, the

respondent has prayed for damages to the tune of USD 3,180,000 and, therefore, the plaint was liable to be rejected under Order VII Rule 11 of the

CPC due to gross undervaluation. Learned advocate Mr. Gour also submits that the respondent had consequently pleaded that the undervaluation was

done to avoid the jurisdiction of the appropriate commercial court under the Commercial Courts Act. This was because the specified value exceeded

INR 3,00,000/- and the dispute was a commercial dispute within the meaning of Section 2(1)(c)(v) and Section 2(1)(c)(xviii) of the Commercial Courts

Act as it relates to and arises out of a transaction for carriage of goods and/or sale of goods. Accordingly, the plaint was liable to be rejected and not

returned, and thus, the contention that the procedure under Order VII Rule 10A of the CPC was not followed is unmerited.

24. In the last, learned advocate Mr. Gour submits that the rejection application was to be considered by the trial court in the alternative to the Section

45 Application if the trial court was of the opinion that Section 45 Application lacked merit. This is because of the legal obligation cast upon the trial

court under Section 45 of the Arbitration Act to refer the parties to arbitration once a valid arbitration agreement is found to exist. As the jurisdiction

to decide Section 45 Application arose out of Section 45 of the Arbitration Act, the trial court had no other option left but to make the reference once

it found that a valid arbitration agreement existed. Accordingly, notwithstanding the objection taken by the respondent in its rejection application, the

trial court had jurisdiction to decide the Section 45 Application and correctly directed the parties to continue with the Singapore Arbitration. This would

also be the eventual result, if the writ applicantâ€™s pleaded case in the appeal is accepted that the suit was not a commercial dispute, as that would

imply that the trial court had the jurisdiction to decide and allow the Section 45 Application, and consequently, the direction to the parties to continue

with the Singapore Arbitration would remain intact.

25. In such circumstances, referred to above, learned advocate Mr.Gour prays that there being no merit in the application as well as in the appeal, the

same are required to be rejected.

ANALYSIS

26. I have anxiously considered the submissions of the learned counsel for the parties and also considered the written submissions.

27. Although learned senior advocate Mr. Thkore has contended that he is not touching the merits of the matter, yet I would like to pose the following

two questions for myself to be answered in the present application;

(A) Whether the trial court is right in returning the plaint of the plaintiff without following the due procedure as prescribed in the statute? and

(B) Whether the trial court can touch the merits of the matter and issue any direction to the parties when it finds lack of jurisdiction?

28. My answer to both the aforesaid questions is in the negative for the following reasons.

Question No.A

29. It is the peculiar case where a suit/plaint filed under Order VII Rule 11 of the CPC has been returned on the ground that the Court does not have

the jurisdiction. However, while doing so, no prior intimation or further date has been given to the plaintiff, which is a mandatory procedure that is

required to be followed before passing any order of returning of plaint to its maker. In this regard, Rule 10 of Order VII of the CPC is reproduced

hereunder for easy reference:

â€œ10. Return of plaint.-(1) Subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be presented to the

Court in which the suit should have been instituted.

Explanation.- For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree

passed in a suit, the return of the plaint under this sub-rule.

(2) Procedure on returning plaint.-On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name

of the party presenting it, and a brief statement of the reasons for returning it.â€

30. Rule 10A of Order VII of the CPC is also reproduced hereunder for easy reference:

â€œ10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return.-(1) Where, in any suit, after the

defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the

plaintiff.

(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court-

(a) specifying the Court in which he proposes to present the plaint after its return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that

the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,-

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date of appearance is given under sub-rule (3),

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for

appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the

date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal

against the order returning the plaint.â€

31. A perusal of Rule 10 of Order VII of the CPC is clear that any return of plaint is subject to the following of the provisions of Rule 10A of Order

VII of CPC and while returning the plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it

and a brief statement of reasons for returning it.

32. Sub-Rule 10A of Order VII of CPC makes it clear that in any suit after the defendant has appeared, the Court is of the opinion that the plaint

should be returned, it shall before doing so, intimate the said decision to the plaintiff and when intimated the said decision, the plaintiff could make an

application to the Court specifying the Court in which he proposes to present the plaint after its return, praying for the Court to fix a date for the

appearance of the parties in the said Court, as also requesting that the notice of the date so fixed may be given to him and to the defendant.

33. In the event of the application not having been made under sub-rule (2) of Rule 10A of Order VII of CPC, the Court while returning the plaint,

shall fix a date for appearance of the parties in the Court in which the plaint is proposed to be presented and give to the plaintiff and defendant notice

of such date for appearance. Thus, no Court can return the plaint on the ground of lack of pecuniary jurisdiction without following the requirements of

Rule 10 of Order VII of CPC which mandates the following of the procedure prescribed under Rule 10A of Order VII of CPC.

34. In the present case, the Trial Court has passed the impugned order of returning the plaint under Order VII Rule 10 of the CPC to the plaintiff on

the ground that no pecuniary jurisdiction exits to the said Court to consider the matter. However, while passing the aforesaid order, the trial court has

not followed the mandatory procedure as prescribed under Rule 10A of Order VII of the CPC, which provides for giving of a prior intimation to the

plaintiff of its such decision.

Question No.B

35. Now so far as Question No.B is concerned, that whether the trial court should have gone to the merits of the matter when it finds lack of

jurisdiction, I have found substance in the contention raised by learned senior advocate Mr. Thakore that the trial court could not have gone to the

merits of the matter and issue any direction when it comes to the conclusion that it has no jurisdiction to try the suit. Once the court comes to the

conclusion that it has no jurisdiction to entertain the suit, the only course open to the court is to return the plaint to the plaintiff to be presented in the

competent Court and any finding recorded on merits of the matter would be of no consequence. In other words, with the court coming to the

conclusion that it has no jurisdiction to try the suit, it loses all its powers/jurisdiction to decide any interlocutory application filed thereunder, as also to

issue any direction below the said application.

36. The law is well settled in this regard. In Shreyans Industries (supra), it has been held thus;

â€œI have considered the contentions canvassed by the learned Counsel for the parties. On the backdrop of the above referred facts, it is

evident that the plaint was returned to the appellant/plaintiff under Order VII Rule 10 of Code of Civil Procedure since the trial Court had

held that it does not have jurisdiction to try the suit and, therefore, appellant is required to present the plaint in the competent Court having

jurisdiction to try the suit. Once the Court comes to the conclusion that it has no jurisdiction to entertain the suit, the only course open to the

Court is to return the plaint to the plaintiff to be presented in the competent Court and any finding recorded on merits of the matter would be

of no consequence. If plaint is returned for want of jurisdiction and the same Court also records findings on merits, such findings are

without jurisdiction and null and void. Similarly, the very purpose of returning the plaint for want of jurisdiction would be frustrated and

that would also foreclose the issue in the plaint, which was returned to the plaintiff to be presented to the competent Civil Court. In view of

this legal position, the findings recorded by the trial Court on issue Nos. 1, 2 and 3 are without jurisdiction and it will be open for the

competent Court at Lucknow to consider the entire claim of the appellant/plaintiff on its own merits. In the circumstances, the appellant is

entitled to take back the plaint from the trial Court at Nagpur and file the same in the appropriate Court at Lucknow within a period of

ninety days from today, failing which the suit shall be deemed to have been dismissed.â€

37. In R.S.D.V Finance Co. Pvt. Ltd. (supra), it has been held as under;

â€œThe Division Bench was totally wrong in passing an order of dismissal of suit itself when it had arrived to the conclusion that the

Bombay Court had no jurisdiction to try the suit. The only course to be adopted in such circumstances was to return the plaint for

presentation to the proper court and not to dismiss the suit.â€

38. In Ravi Singhal (supra), after referring to the decisions in the case of R.S.D.V Finance Co. Pvt. Ltd. (supra) and Shreyans Industries (supra), the

Allahbad High Court has held that when the trial court has come to the conclusion that it had no authority to proceed to decide other issues on merits,

the only way open to it was to return the plaint instead of proceeding to decide other issues on merits and dismiss the suit. It has been furth4er held as

under;

â€œ7. Learned counsel for appellants submitted that once the Court finds that it has no jurisdiction to try the suit, it should have returned

plaint and had no jurisdiction to dismiss the suit or proceed to decide the suit on merits and to that extent, judgment of Court below is nullity

and without jurisdiction. He placed reliance on Supreme Court decision in R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works

Ltd. AIR 1993 SC 2094, a Single Judge judgment of this Court in Ram Swaroop Vs. Kalicharan 1995 (2) ARC 370 and Bombay High Court's

decision in Shreyans Industries Vs. State of U.P. 2004 (2) ICC 773.

8. The Apex Court in R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd (supra) has observed in para 7 as under:

The Division Bench was totally wrong in passing an order of dismissal of the suit itself when it had arrived at the conclusion that the High

Court had no jurisdiction to try the suit. The only course to be adopted in such circumstances was to return the plaint for presentation to the

proper Court and not to dismiss the suit.

9. Similarly, in Ram Swaroop Vs. Kalicharan (supra), the Court held:

Obviously, once it is found by the appellate court that the trial Court lacked jurisdiction to entertain the suit any further adjudication upon

merit of other issues by it would be without jurisdiction and nullity.

The lower appellate court has categorically found that the revenue court alone had jurisdiction to take cognizance of the suit and it was not

cognizable by the trial Court, namely, the Court of Munsif. After this finding and conclusion, only course open to the lower appellate court

was to direct, after setting aside the decree and judgment of the trial court, the return of the plaint for presentation to the revenue court. It

acted illegally in adjudicating upon other issues on merit and dismissing the suit."" (emphasis added)

10. Similar view was taken in Shreyans Industries Vs. State of U.P. (supra), observing:

Once the Court comes to the conclusion that it has no jurisdiction to entertain the suit, the only course open to the Court is to return the

plaint to the plaintiff to be presented in the competent Court and any finding recorded on merits of the matter would be of no consequence.

If plaint is returned for want of jurisdiction and the same Court also records findings on merits, such findings are without jurisdiction and

null and void.

39. In the case of Amrit Bhikaji Kale and Ors. Vs. Kashinath Janardhan Trade and Anr., reported in (1983) 3 SCC 437 the Supreme Court has held

that when a Tribunal of limited jurisdiction erroneously assumes jurisdiction by ignoring a statutory provision and its consequences in law on the status

of parties or by a decision are wholly unwarranted with regard to the jurisdictional fact, its decision is a nullity and its validity can be raised in collateral

proceeding.

40. In Balvant N. Viswamitra and Ors. Vs. Yadav Sadashiv Mule (Dead) through Lrs. and Ors., reported in (2004) 8 SCC 706 the Supreme Court

held thus:

â€œ9. The main question which arises for our consideration is whether the decree passed by the trial court can be said to be ""null"" and

void"". In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong,

incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a

decree or making an order, a decree or order passed by such court would be without jurisdiction, nonest and void abinitio. A defect of

jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such

defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is

a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings.â€

41. Thus, it is well settled that jurisdiction goes to the root of the matter, and any order passed without jurisdiction is nullity. It is also well settled that

the jurisdiction can neither be assumed nor presumed, nor confer or acquire by acquiescence of the parties.

42. In the backdrop of the aforesaid discussion, I am of the considered opinion that the impugned order is contrary to the applicable law, and as such, I

pass the following:

ORDER

i) Both the petitions are allowed.

ii) The order dated 22.08.2024 passed below application Exh.14 by the Principal Senior Civil Judge, Ahmedabad (Rural) in Regular Civil Suit No.98 of

2024 at Annexure-P-1 is hereby quashed. Since the Trial Court is of the opinion that it does not have pecuniary jurisdiction, the matter is remanded

back to the Trial Court to comply with the requirements of Rule 10 and 10A of order VII of the CPC which shall be so done within a period of 30

days from the date of receipt of copy of this order.

(iii) So far as the connected matter, i.e, Appeal From Order No.220 of 2024 is concerned, the order dated 22.08.2024 impugned therein is also

quashed and set aside, and the matter is remanded back to the jurisdictional trial court where the suit would lie;

iv) Registry is directed to forthwith forward the Record & Proceedings of the Trial Court, if secured.