Between the lines...

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Key Highlights

I. Delhi High Court orders for global takedown of Data

The High Court of Delhi, in the case of ***Swami Ramdev and Another v. Facebook, Inc., and Others*** *(decided on October 23, 2019)* ordered Facebook, Inc. and other platforms to takedown, remove, block, restrict or disable access on a global basis, to all the defamatory videos and content that was challenged in this suit, from Indian IP addresses, holding that the videos are not just offensive against the plaintiffs but could also be considered to border on threats constituting violations of law.

Facts

Swami Ramdev and Patanjali Ayurveda Limited (**"Plaintiffs"**) filed a suit in the Delhi High Court against Facebook, Inc., Google, Inc., YouTube LLC, Google Plus, Twitter International Company and Ashok Kumar (John Doe) (**"Defendants"**) on the ground that various defamatory remarks and information in the form of videos, based on the book *'Godman to Tycoon- the Untold Story of Baba Ramdev',* are being published on the web platforms of the Defendants. The named book was restrained earlier by a Single Judge Bench of the Delhi High Court from being published, distributed or sold without deleting the offending portions of the book. The Plaintiffs alleged that the allegations contained in the videos uploaded on the Defendants' platforms were the same as the offending portions of the book which were directed to be removed. Thus, an interim order was granted directing removal of the offending URL and web links for the domain of India. Thereafter, the platforms have placed on record the Basic Subscriber Information (**"BSI"**) relating to the uploading of the videos. None of the Defendants have any objection to blocking the URLs and disabling the same, insofar as access in India is concerned. However, all the Defendant platforms have raised objections to removal / blocking / disabling the impugned content on a global basis.

Issues

Since the Defendants had no issue in blocking the content in the Indian domain, the *prima facie* issues and arguments discussed in court were on the question of global blocking of the content -

1. Mis-joinder/ non-joinder of parties;
2. Whether the content is defamatory?
3. Whether the Defendants are intermediaries and if so, what should be the form of injunction order that is to be passed against them?

Arguments

The Plaintiffs put forth the argument that if the Defendants seek the protection under Section 79 of the Information Technology Act, 2000 (**"IT Act"**) on the ground that they are intermediaries, then they are bound to follow due diligence required under law. The Plaintiffs relied on the case of ***Shreya Singhal v. Union of India [AIR 2015 SC 1523]*** to interpret the phrase "actual knowledge" in Section 79 in a Court order, leading to the argument that, once the Court passes an order, they are bound to disable the content globally, and cannot raise objections to the geographical extent of the implementation of the injunction. The Plaintiffs further relied on the definitions of ***"computer resource", "computer system", "computer network"*** and ***"data"*** in the IT Act respectively to submit that the IT Act does not provide that the blocking has to be restricted to the territory of India. Ultimately, the Plaintiffs submitted that it is impractical to force them to avail legal remedies in every country to ensure that content is taken down, and that such a stance would also render the remedy granted by the Court completely ineffective.

The Defendants placed their reliance on various cases such as ***Google, Inc. v. Equustek Solutions, Robert Angus and Clarma Enterprises, Inc. [2017 SCC 34 (Supreme Court of Canada)]*** and ***Google LLC v. Equustek Solutions, Inc.,*** *(decided on December 14, 2017)*, to submit that what constitutes defamation varies from jurisdiction to jurisdiction, and therefore, passing of a global disabling order would be contrary to the principle of comity of courts and would result in conflict of laws. It was also one of their major contentions that no effort was made by the Plaintiffs to implead the persons whose details were provided in the BSI by the Defendants, and parties that were actually responsible for uploading the actual content online.

Another line of argument put forth by the Defendants was that the distribution of information and views on the internet were an integral part of freedom of speech and expression, and that the criticism is ought to be borne by the Plaintiffs as they are public figures. It is also argued that if orders can be passed by national Courts which would result in global removal of content, then law of free speech on the internet would be reduced to the lowest common denominator.

In rejoinder submissions, the Plaintiffs submitted that the BSI released by the Defendants' platforms do not give any details except the IP addresses, and in some cases, mobile numbers and e-mail addresses have been given. It was submitted that the list does not lead to the clarity whether those individuals are even identifiable.

Analysis and Findings of the Delhi High Court

Issue 1:

On the question of mis-joinder and non-joinder, the court observed and found that the BSI released by the Defendants contains information in the form of account IDs along with IP addresses, and the Defendants have to make detailed enquiries and investigations in order to identify the complete contact details of the individuals. The court found that the Plaintiffs could not have ascertained the identity of the individuals at the time the suit was filed, as the information appeared cryptic. Thus, the Delhi High Court found that the objection by the Defendants that, due to non-joinder of these parties the suit is not liable to be entertained, is not tenable at this stage. Therefore, this led to the conclusion by the Court that, at the prima facie stage, the suit is not liable to be dismissed for non-joinder of the alleged uploaders of the information or the publishers, or the author of the book.

Issue 2:

On the issue whether the content in the video is of defamatory nature, the Delhi High Court found that there was no uncertainty in the fact that the video clearly attempted to give an impression to the viewers that the Plaintiffs have been involved in various murders, financial irregularities, misuse of animal parts, etc. The Court also observed that the video claimed to have derived and summarized the views of the book itself, thus making the Single Judge Bench judgement, that held certain parts of the book as defamatory, clearly a relevant fact. It further observed and found that the Single Judge, after considering the law of defamation, including the balance between Article 19(1)(a) and Article 21 of the Constitution of India, had concluded that the content of the book is not justified. The implicit allegations have been held to be *prima facie* untrue. Therefore, the Delhi High Court held that the videos were in violation of the judgement earlier passed by the Single Bench. This led the Delhi High Court to conclude that the content of the videos was defamatory.

Issue 3:

On the third issue, the Delhi High Court analysed the definition of "geo-blocking", and concluded it to mean the blocking of a content from country to country, or one region to another. It also observed that when a content is geo-blocked, it would still be available on the other global platforms save on the platforms of the country where geo-blocking has been carried out. Referring and analysing the international legal position on geo-blocking and global injunctions, the Court observed that some courts have taken the view that granting of global injunctions is not appropriate, and other courts and forums, in recent decisions, have taken a view that if the circumstances warrant, global injunctions ought to be granted. The Court noted that arguments pertaining specifically to comity of courts, conflict of laws, etc. were raised even in these proceedings. It analysed in detail, the terms "access" and "intermediaries" in Section 79 of the IT Act. It also elaborately discussed the relevant holdings of several Indian and international case laws, comparing their relevancy to the present factual matrix, concluded that so long as the uploading from India led to the data or information ***residing in*** the network or being ***connected to*** the network, the same ought to be disabled or blocked globally.

The Court also analysed the exact order of injunction that is required to be passed in the present case. It concluded that Section 75 of the IT Act shows that the IT Act does have extra territorial application to offences or contraventions committed outside India, so long as the computer system or network is located in India.

Decision of the Delhi High Court

On the findings and conclusions of the Delhi High Court, as discussed above, it passed the following directions in the present case, clearly iterating that the views of the Court in the judgement are prima facie in nature-

1) The Defendants were directed to take down, remove, block, restrict/ disable access, on a global basis, all such videos/ web links/ URLs that had the defamatory videos discussed in the judgement, which have been uploaded from IP addresses within India.

2) The Defendants were directed to block access and disable the URLs/ links that contained the defamatory videos, which have been uploaded from outside India, and prevent them from being viewed in the Indian domain and ensure that users in India are unable to access the same.

3) The Court also further directed the Plaintiffs to notify the Defendant platforms, when they find any further URLs containing defamatory/ offending content as discussed above, which shall then be taken down by the Defendants either on a global basis, or for the Indian domain, depending on from where the content has been uploaded. Upon receiving such intimation from the Plaintiffs, if the Defendants are of the opinion that they were not defamatory, they shall intimate the Plaintiffs of the same and the Plaintiffs could seek remedy in accordance with law.

VA View

The Delhi High Court has given a judgement with far reaching consequences, which may open a pandora's box of territorial conundrum. The global application of an injunction not only gives sweeping powers to block data, but at the same time involves imposition of India's take on what comprises of defamation on other jurisdictions.

This judgement is against the tide in the international trend of free flow of data on the internet, and takes a rather cloistered view of the same. The Court of Justice of the European Union passed a judgement on September 24, 2019 holding that Google cannot be directed to remove search results from its global service, just because the content was declared illegal by an EU member state.

This judgement has also allowed the Plaintiffs to directly approach the platforms in case of any future content, and thereafter, if the platforms hold it to be not defamatory, it can approach the courts. This permission is a deviation from the settled principles of law which require an intermediary to take down content only when there is an order from the government or the court, in accordance with the IT Act. If such permissions of making direct requests to the intermediaries is entertained, the intermediaries will be required to judge thousands of requests every day, which would be difficult to act upon.

Furthermore, the Delhi High Court failed to understand that in today's world of data and deeply intertwined connectivity, any data or information uploaded from India is likely to reside in the network or connected to the network in a matter of minutes, especially in case of public figures. Elucidating such a narrow view of parameters to enforce global blocking is an antiquated approach requiring reconsideration. Thus, this judgement gives a wide array of powers to the courts to block data globally, without completely foreseeing the consequences, and in deviation from the common law. If the platforms were to approach the courts around the world, and if these courts of foreign jurisdictions restrict the application of the Delhi High Court's judgement, it could severely undermine the dignity of Indian courts in the foreign arena.

II. Promoter of a corporate debtor in liquidation is ineligible to apply for the compromise and arrangement of such corporate debtor

In ***Jindal Steel and Power Limited v. Arun Kumar Jagatramka and Another*** *(dated October 24, 2019)* the National Company Law Appellate Tribunal (**"NCLAT"**) has held that even though a compromise and arrangement is permissible with respect to a company undergoing liquidation, however, the promoter of such a company is ineligible to make an application for such compromise and arrangement.

Facts

An appeal was filed by Jindal Steel and Power Limited (**"Unsecured Creditor"**) which is an unsecured creditor of Gujarat NRE Coke Limited (**"Corporate Debtor"**) against an order passed by National Company Law Tribunal, Kolkata (**"NCLT, Kolkata"**). In the said matter, the Corporate Debtor ran into financial crisis due to adverse market conditions and was driven to filing an insolvency application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (**"IBC"**) (initiation of corporate insolvency resolution process by corporate applicant). The said application was admitted. However, the committee of creditors formed was unable to approve a resolution plan and eventually the NCLT passed a liquidation order against the Corporate Debtor. Thereafter, the promoter of the Corporate Debtor filed an application before the NCLT under Sections 230 to 232 of the Companies Act, 2013 (**"Companies Act"**) to obtain the sanction for a scheme of compromise and arrangement between the promoter, the Corporate Debtor, its creditors and its shareholders. Pursuant to this application, NCLT Kolkata passed an order to convene the meeting of the shareholders and creditors of the Corporate Debtor. Aggrieved by the said order, the Unsecured Creditor filed an appeal before the NCLAT contesting the same.

Issues

The issues framed by the NCLAT were as follows:

1. Whether in a liquidation proceeding under IBC, the scheme for compromise and arrangement can be made in terms of Sections 230 to 232 of the Companies Act?

2. If so permissible, whether the promoter is eligible to file application for compromise and arrangement, while he is ineligible under Section 29A of the IBC to submit a 'Resolution Plan'?

Arguments

The arguments of the parties were not discussed by the NCLAT.

Findings of the NCLAT

While determining the first issue, the NCLAT referred to its judgement in ***S.C. Sekaran v. Amit Gupta and Others [Company Appeal (AT) (Insolvency) Nos. 495 and 496 of 2019]*** (**"S.C. Sekaran"**) and ***Y. Shivram Prasad v. S. Dhanapal and Others [Company Appeal (AT) (Insolvency) No.224 of 2018]*** (**"Y. Shivram Prasad"**). In the aforementioned judgements, the issue was the same as the one in the instant case that is whether during a liquidation proceeding under IBC, an application under Sections 230 to 232 of the Companies Act can be entertained by the NCLT or not. The NCLAT had held that even during liquidation, the liquidator could sell the business of the corporate debtor as a going concern. It was further held that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The IBC is thus, a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors.

It further emphasized on the Supreme Court judgement in ***Meghal Homes Private Limited v. Shree Niwas Girni K.K. Samiti and Others [(2007) 7 SCC 753]*** whereby, it was held that Section 391(1)(b) of the Companies Act, 1956 (now replaced by Section 230 of the Companies Act) gives a right to the liquidator in the case of a company which is being wound up, to propose a compromise or arrangement with creditors and members indicating that the provision would apply even in a case where an order of winding up has been made and a liquidator had been appointed. The NCLAT in Y. Shivram Prasad accordingly held that before taking steps to sell the assets of the corporate debtor, the liquidator would take steps in terms of Section 230 of the Companies Act. In view of the aforesaid decisions of NCLAT in Y. Shivram Prasad and S.C. Sekaran, the first question was answered in the affirmative, that is, in a liquidation proceeding under the IBC, a petition under Section 230 to 232 of the Companies Act was maintainable.

Pronouncing on the second issue, NCLAT relied on yet another Supreme Court judgement, ***Swiss Ribbons Private Limited and Another v. Union of India and Others [Writ Petition (Civil) No. 99 of 2019],*** which states that 'primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation'. It was held that the aforesaid judgement clarified that even during the period of liquidation, for the purpose of Sections 230 to 232 of the Companies Act, the corporate debtor is to be saved from its own management, meaning thereby, the promoters, who are ineligible under Section 29A of the IBC, are not entitled to file an application for compromise and arrangement in their favour. Proviso to Section 35(f) of the IBC prohibits the liquidator to sell the immovable and movable property or actionable claims of the 'Corporate Debtor' in liquidation to any person who is not eligible to be a resolution applicant. It states that, "Subject to the directions of the Adjudicating Authority, the liquidator shall

have the following powers and duties, namely:--....(f) subject to Section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation... Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant."Accordingly, the promoter was ineligible to file an application for compromise and arrangement under Sections 230-232 of the Companies Act.

Decision of the NCLAT

The NCLAT held that although a scheme of compromise and arrangement is maintainable even if a Corporate Debtor is under liquidation, the promoter of the Corporate Debtor shall not be eligible to propose such a scheme.

VA View

The NCLAT previously in the case of ***Rajesh Balasubramanian v. M/s. Everon Castings Private Limited and Another*** *(dated February 25, 2019)* and Y. Shivram Prasad had held that if the members of the corporate debtor or the creditors approach the company through the liquidator for compromise or arrangement by making a proposal of payment to all the creditor(s), the liquidator on behalf of the company will move an application under Section 230 of the Companies Act before the National Company Law Tribunal. However, none of these judgements envisaged a situation where the promoter of the corporate debtor, who very likely will be a member of the corporate debtor, would approach the liquidator/tribunal with a compromise and arrangement proposal. This judgement clarifies the position and holds that the ineligibility of the promoter to submit the resolution plan would continue even in the event of liquidation where a compromise and arrangement between the shareholders and the creditors is to be considered. The reasoning provided, backed by the proviso to Section 35(f) of the IBC, is that one of the purposes of the IBC is to protect the corporate debtor from its own management. The principle that the control of the corporate debtor should not be given to the very same entity that drove it to insolvency has been upheld in various other judgements as well and seems to be sound.

III. Delhi High Court: Applications seeking transfer of proceedings from the High Court to the National Company Law Tribunal operating under the IBC are maintainable

The Delhi High Court, in the case of ***Action Ispat and Power Limited v. Shyam Metalics and Energy Limited*** *(decided on October 10, 2019)* held that an application seeking transfer of proceedings from the Delhi High Court to the National Company Law Tribunal operating under the Insolvency and Bankruptcy Code, 2016 (**"IBC"**) is maintainable.

Facts

Pursuant to a winding up petition filed against Action Ispat and Power Limited (**"Appellant"**) by Shyam Metalics and Energy Limited (**"Respondent 1"**) under Section 433 of the Companies Act, 1956, on August 27, 2018, the

winding up petition was admitted and Official Liquidator (**"OL"**) was appointed who was directed to take over all the assets, books of accounts and records of the Appellant. During the pendency of the proceedings, but before the passing of the winding up order on August 27, 2018, State Bank of India (**"Respondent 2"**) filed a petition under Section 7 of the IBC and filed an application to the Company Judge, praying for a transfer of the pending winding proceedings to the National Company Law Tribunal (**"NCLT"**). The Company Judge, vide an order dated January 14, 2019 allowed this transfer, and held that the power to transfer proceedings to the NCLT is discretionary and should be exercised keeping in mind the facts and circumstances of each case so as to expeditiously deal with the proceedings. It was observed that liquidation was at the initial stage since after the appointment of the OL, the office and factory premises of the Appellant were sealed but further exercise was yet to be carried out. It was opined that such transfer was in the interest of justice, as well as in the interest of the Appellant and the creditors involved and accordingly, an appeal was preferred before a Division Bench of the Delhi High Court.

Issue

Whether application seeking transfer of proceedings from the Delhi High Court to the NCLT operating under the IBC is maintainable?

Arguments

The Appellant argued that since the winding up order has already been passed, and an OL has been appointed, the winding up proceedings should continue before the Company Judge and the OL alone has jurisdiction to liquidate the assets of the Appellant and settle the claims of all the creditors and contributors. It was further contended that consequent to the passing of the winding up order by the Company Judge under Section 433(e) of the Companies Act, 1956, no party has the right to seek transfer of proceedings, as, once a winding up order is passed, the creditors are required to approach the OL and file their respective claims. The power of the Company Judge to recall a winding up order was also questioned by the Appellant. The judgements of the honourable Supreme Court of India in the cases of ***Forech India Limited v. Edelweiss Assets Reconstruction Company Limited*** *(decided on January 22, 2019)* (**"Forech Case"**) and ***Jaipur Metals and Electricals Employees Organisation v. Jaipur Metals and Electricals Limited*** (*decided on December 12, 2018*) (**"Jaipur Metals Case"**), where transfer of proceedings was permitted were cited, in an attempt to draw a distinction between the instant case and the formed legal position. It was argued that in the Forech Case and the Jaipur Metals Case, no OL was appointed, whereas in the instant case, the OL has been appointed and has commenced his duties. It was further submitted that the legislative intent was to harmonize the provisions of the Companies Act, 1956 and IBC, and therefore at this late stage, the proceedings should not be transferred.

The Respondent 2 argued that the transfer was fully in compliance with the provisions of law and that the matter should have been transferred to the NCLT, as the object of IBC was aimed towards the protection of interests of the creditors, the corporate debtor, and to maximize the value of the assets of the corporate debtor. Hence, proceedings before the NCLT for initiation of corporate insolvency resolution process under IBC seek to resolve the debts of the Company and are also aimed at its revival.

Further, the Jaipur Metals Case was cited by the Respondent 2, wherein, it was held that a proceeding under the IBC is an independent proceeding with regards to the transfer of pending winding up proceedings before the Delhi High Court. It was held therein:

"it was open for the Respondent No.3 at any time before a winding up order is passed to apply under section 7 of the Code."

The Respondent 2 contended the argument made by the Appellant and stated that the liquidation order was not passed, but was merely admitted, and that the OL was given only the limited mandate to take over all the assets, books of accounts and records of the Appellant, to publish citations in newspapers, to prepare a complete inventory of all the assets and to conduct valuation. Hence, it could be said that no liquidation proceedings had commenced, and the winding up of the company had not been achieved.

Observations of the Delhi High Court

The Court observed that the scope of the proceedings before the Company Court after admission of the winding up petition is unidirectional, as the OL acts with the mandate of liquidating the assets of the company with a view to satisfy the claims of the secured and other creditors. On the other hand, the NCLT is a specialized body which looks to revive the company, if feasible, and only if the revival of the company is not feasible, proceeds to take steps to wind it up. Further, the Delhi High Court referred to its judgement in the case of ***Rajni Anand v. Cosmic Structures Limited*** *(decided on September 27, 2018),* where it was held that the power of the court to order transfer of the winding up proceedings to the NCLT is discretionary in nature, and that the best interests of all the creditors has to be considered while deciding on the aspect of the transfer of the winding up proceedings to the NCLT.

Further, reference was given to Section 238 of the IBC, which states that the provisions of the IBC can override other laws. It was further held that the decision of the Company Court to order winding up is not irrevocable, and that winding-up of a company is a multi-tiered process, that is not achieved merely when an order is passed. Reliance was placed on the case of ***Sudarshan Chits v. Sukumaran Pillai [AIR 1984 SC 1579],*** where it was held that: *"a winding up order once made can be revoked or recalled but till it is revoked or recalled it continues to subsist".*

Decision of the Delhi High Court

The Court held that merely because the winding up of the Appellant was directed, it does not mean that the Appellant should be compulsorily wounded up and dissolved. Further, other options available, namely to resolve/ revive the company can and should always be explored for which purpose the NCLT is invested with the jurisdiction, unless irrevocable steps towards liquidation have already been undertaken. Therefore, the proceedings should be transferred to the NCLT.

VA View

The Delhi High Court's stand would go a long way in ensuring that procedural hurdles which may have limited the impact of the IBC are cleared to a certain extent. The Delhi High Court's observation, that the IBC envisages resolution rather than liquidation, and should therefore, be the preferred approach to take is a ringing endorsement of the IBC and the aims and objectives of the legislature in enacting the same. In order to ensure the success of laws such as the IBC, the courts must take spirited and pro-active stances in ensuring that the legislative intent is not mired in procedural quagmires, and that resolution and continuation of corporate debtors as going concerns takes prominence over liquidation and dissolution.

IV. Supreme Court: Definition of commercial disputes under the Commercial Courts Act, 2015 to include immovable property 'actually used' and not 'likely to be used', 'ready to be used' or 'to be used'

The Honourable Supreme Court of India (**"Supreme Court"**) in its judgement, in ***Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP &Anr. {Civil Appeal No. 7843 of 2019}*** *(decided on October 04, 2019)* held that as far as disputes arising out of agreements relating to immovable property are concerned, only those disputes which arise of immovable property being actually and exclusively used in trade or commerce, shall be categorised as 'commercial disputes.'

Facts

On February 14, 2012, Ambalal Sarabhai Enterprises Limited (**"Appellant Company"**) executed an agreement (**"Agreement"**) to sell a piece of land (**"Said Land"**) to one Ketan Bhailalbhai Shah (**"Respondent No. 2"**). Thereafter, Respondent No. 2 assigned and transferred all his rights under the Agreement to K.S. Infraspace LLP (**"Respondent No. 1"**), by executing a Deed of Assignment (**"Assignment Deed"**) dated October 12, 2017. Consequently, Respondent No. 1 purchased the Said Land from the Appellant Company by way of a Deed of Conveyance (**"Conveyance Deed"**) dated November 03, 2017. Since there were some aspects of the Said Land that were to be changed, particularly with reference to its nature of use, the right of the Appellant Company was required to be protected. In pursuance of the same, a Memorandum of Understanding dated November 03, 2017 (**"MOU"**) was executed amongst the Appellant Company, Respondent No. 1 and Respondent No. 2. As per the terms of the MOU, a mortgage deed was to be executed in favour of the Appellant Company. Accordingly, a Mortgaged Deed (**"Mortgage Deed"**) was executed on November 03, 2017, albeit it was not registered. The Appellant Company, thereafter, sought to enforce execution of the Mortgage Deed, by filing a Commercial Civil Suit ("Suit") before the Commercial Court at Vadodara (**"Commercial Court"**). Furthermore, the Appellant Company also sought permanent injunction and other reliefs before the Commercial Court.

On being notified of the Suit, Respondent No. 1 and Respondent No. 2 (collectively referred to as **"Respondents"**) contended that since the dispute was not a 'commercial dispute' as per Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 ("**CC Act**"), the Suit would not be maintainable. In addition, the Respondents filed an application under Order VII Rule 10 of the Civil Procedure Code, 1908 (**"Application"**) seeking that the plaint be presented in the Court in which such a Suit should have been actually instituted. However, the Commercial Court rejected the Application by way of its order dated October 17, 2018. The Commercial Court had relied upon the Memorandum of Association and Articles of Association of the Appellant Company to take note of the business that the Appellant Company could undertake. Thereafter, the Commercial Court concluded that the Appellant Company seemed to be carrying on a business as an estate agent and thus the dispute that had transpired between the Appellant Company and the Respondents was a 'commercial dispute.' Aggrieved by the aforementioned order of the Commercial Court, the Respondents filed an appeal in the High Court of Gujarat (**"High Court"**). The High Court passed an order dated March 01, 2019, that allowed the petition of the Respondents and set aside the order dated October 17, 2018, passed by the Commercial Court. By the aforementioned order, the High Court also allowed the Application, directing that the plaint was to be returned to the Appellant Company, in order to be presented to an appropriate Court. The High Court had taken a conclusive view that the immovable property, was in fact, not being used for either trade or commerce. The Appellant being aggrieved by the order of the High Court, thereby approached the Supreme Court.

Issue

Whether a dispute arising out of an agreement involving an immovable property could be considered as a 'commercial dispute' so as to enable the Commercial Court to entertain such a suit?

Arguments

The Appellant Company contended that it was running an industry on the Said Land and had indeed acquired the same for the very purpose. Furthermore, it contended that the Respondent No. 1 had purchased the Said Land for developing it and thus, the Said Land is being used for trade and commerce purposes.

On the other hand, the Respondent No. 1 contended that the Appellant Company had ceased to function for the past several years. Owing to the factum that the Appellant Company was defunct, the Said Land was not being used for either trade or commerce. Respondent No. 1, further elaborated that though it had sought for change in the use of Said Land for developing it, the same would be subject to such change of land use that would be granted and the use for which would it would be put to, in the future. Therefore, the Said Land, at present was not being used for either trade or commerce and thus, the dispute would not be maintainable before the Commercial Court.

Moreover, Section 2(1)(c)(vii) of the CC Act states, "a commercial dispute means a dispute arising out of agreements relating to immovable property used exclusively in trade or commerce." With regard to the same, the Appellant Company relied on the decision of the Division Bench of the High Court of Delhi in ***Jagmohan Behl v. State Bank of Indore [2017 SCC On Line Del 10706]*** **("Appellant Company's Case Law").** Herein, it was held that the expression "arising out of" and "in relation to immovable property" should not be given the narrow and

restricted meaning and the expression would include all matters relating to agreements in connection with immovable property.

The Respondents relied on the decision of the Division Bench of the High Court in ***Vasu Healthcare Private Limited v. Gujarat Akruti TCG Biotech Limited [AIR 2017 Gujarat 153]*** (**"Respondent's Case Law No. 1"**). Herein, the High Court concluded that on a plain reading of Section 2(1)(c) of the CC Act, the expression "used" must mean "actually used" or "being used". It was elaborated in the aforesaid decision that if the legislature had intended to expand the scope of the definition, it would have employed phrases such as "likely to be used" or "to be used". The Respondents also relied on ***Federation of A.P. Chambers of Commerce and Industry and Others v. State of A.P. and Others [(2000) 6 SCC 550]*** (**"Respondent's Case Law No. 2"**) wherein, the Supreme Court had observed that the terminology "land is used for any industrial purpose" and "land is used for any other non-agricultural purpose" meant that there has to be a finding of the fact that the land at present, is being used for an industrial purpose, or a commercial purpose, or any other non-agricultural purpose. The Supreme Court has also observed that such juxtaposition was important to ascertain whether a piece of land should be assessed at the rate specified for a land used for an industrial purpose.

The Appellant Company argued that the strict interpretation applied in the facts of Respondent's Case Law No. 2 emanated from the point that in the particular instance, it was the case of a taxing statute. It was argued that unlike the strict interpretation applied in taxing statutes, it would not be appropriate to adopt an identical approach in issues relating to jurisdiction. The Appellant Company contended that the statements of objects and reasons of the CC Act provided that the reason for enacting the CC Act was the speedy disposal of high value commercial disputes so as to create a positive image to the investors world about the independent and responsive Indian legal systems. It was also argued that a wider purport must be assigned while considering the dispute to be a 'commercial dispute'.

Observations of the Supreme Court

The Supreme Court was of the view that since the dispute is a civil suit, the nature of the dispute and the jurisdiction to try the dispute should be reflected in the plaint. However, the Supreme Court observed that the plaint filed in the Commercial Court had neither mentioned the nature of the land nor the type of use to which it was being put to, as on the date of Agreement or MOU or as on the date of the Suit.

Para 22 of the plaint which provided for the jurisdiction of the Commercial Court is reproduced herein below:

"22. Jurisdiction: The Plaintiff states that the Defendants having their office at Vadodara land which is the subject matter of the instant suit is situated within the territorial jurisdiction of this Hon'ble Court and hence this Hon'ble Court has the jurisdiction to hear and decide the matter."

The Supreme Court was of the view that the Appellant Company had not mentioned any reason as to why the Commercial Court had exclusive jurisdiction to try the said dispute. It would not suffice to point that simply because the office of the Respondents and the Said Land is situated at Vadodara, it would automatically confer

jurisdiction upon the Commercial Court. It was also noted that the plaint sought for specific performance of the terms of the MOU, particularly, wherein it was agreed that the Mortgage Deed will be executed. The Supreme Court stated that even if the immovable property under the Mortgage Deed was the subject matter of dispute, it was necessary to plead and indicate that such immovable property was being used for trade or commerce purposes as only in such cases, can the jurisdiction of a Commercial Court be invoked.

The Supreme Court observed that the Appellant Company's Case Law pertained to those immovable properties which were undoubtedly being used for either trade or commerce, and where the suit was instituted for recovery of rent or mesne profit, security deposit, etc. for the use of such immovable property. The Supreme Court, therefore, concurred with the views expressed by the High Court in Respondent's Case Law No. 1.

Referring to the purpose of the CC Act, the Supreme Court is of the firm belief that the purpose of the CC Act would be defeated if a wider interpretation is given to the term 'commercial disputes'. The reason being that every suit which is filed because of its high value and with the intention of seeking an early disposal, would lead to clogging of the systems and blocking the way for genuine commercial disputes. Moreover, even if the CC Act is strictly interpreted, it would not mean that litigants will be excluded from any other remedy. It is notable that such litigants can always approach an ordinary Civil Court.

Justice Bhanumati has written a concurring opinion offering strong reasoning as to the true intention of the CC Act. With immense transparency, it was brought to fore that the CC Act is to be interpreted to enable quick disposal of commercial litigations, at a fair and reasonable cost. It was noted that merely because an immovable property is likely to be used in relation to trade or commerce, it cannot attract the jurisdiction of the Commercial Court. It was brought to fore that the expression "used exclusively in trade or commerce" is to be interpreted purposefully. It was reiterated that the expression "used" should only mean "actually used", and not "ready for use", "likely to be used" or "to be used". A wide interpretation would essentially defeat the objects of the CC Act and implementation of its fast track procedure.

Decision of the Supreme Court

The Supreme Court dismissed the appeal stating that neither the Agreement mentioned that the immovable property was exclusively used for the purpose of trade or commerce, nor was there any pleading to that effect in the plaint filed before the Commercial Court. Furthermore, the relief sought by the Appellant Company is for execution of the Mortgage Deed in the manner of specific performance of the terms of the MOU. Herein also, there is no reference to the immovable property being used in trade or commerce as on the date of the Suit.

VA View

It is quite discernible from the judgement of the Supreme Court that a plaint filed in a Commercial Court is required to have a certain degree of specification. It was pointed out that the plaint did not provide substantial reasoning as to why a Commercial Court was to be conferred with jurisdiction. It is one thing to claim that an immovable property happens to be within the territorial jurisdiction because of a mere address and an entirely different thing to establish with staunch reasoning as to how dispute relating to an immovable property at hand fits the bill for a 'commercial dispute' within the meaning of the CC Act. There can be innumerable disputes of different forms that have remedies at ordinary Civil Courts. However, it is the nature of current usage of the property that gives the dispute relating to it, a certain level of credibility to qualify into a 'commercial dispute'.

The judgement has also affirmatively cleared the coast as to the true interpretation of the expression "used", that the expression indicates actual and current usage and not a hypothetical likelihood or a distant historical association with trade or commercial usage. It is also pertinent for the parties that the commercial documents relating to immovable property be appropriately registered and clauses be drafted with skill to reflect on record as to how an immovable property is indeed exclusively, being used for trade or commercial purposes. The disputes that may possibly spiral out with reference to an immoveable property would not automatically be a commercial dispute merely because of its high value or some underlying assumption. This development definitely provides a judicious insight to parties that plan on approaching Commercial Courts.

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