



IN THE HIGH COURT OF ORISSA AT CUTTACK

A.F.R.

ARBA No.7 of 2024

((From the judgment dated 02.02.2024 passed by the learned Senior Civil Judge, Commercial Court, Bhubaneswar in Arbitration Petition No.79 of 2015 arising out of arbitration award dated 30.06.2015 passed by the Sh. Ajit Coomar Roy, the Ld. Arbitral Tribunal))

M/s. Jaycee Housing Private Limited, Jharpara, Cuttack Road, Bhubaneswar-6, Khurda & Ors. *Appellant (s)*

-versus-

Neelachal Buildtech & Resorts Pvt. Ltd., Bhubaneswar *Respondent (s)*

Advocates appeared in the case through Hybrid Mode:

Appellant (s) : *Mr. Yasobant Das, Sr. Adv. along with associates*

Respondent (s) : *Mr. Banshidhar Baug, Adv.*

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-03.12.2024

DATE OF JUDGMENT: -08.01.2025

Dr. S.K. Panigrahi, J.

1. This Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "A&C Act") has been filed seeking setting aside of the judgment dated 2.2.2024 passed by the learned



Senior Civil Judge, Commercial Court, Bhubaneswar in Arbitration
Petition No. 79 of 2015.

I. FACTUAL MATRIX OF THE CASE:

2. The present Appellants are the original owner of 4 acres 875 decimals of land consisting of 15 contiguous plots. On 10.9.2002, the Appellants and the Respondent entered into an agreement for development of the said land. The present Appellants also entered into an agreement with one, Kesari Estates Pvt. Ltd. for the development of a portion of their land. On 14.9.2005, the present Appellants executed a bipartite agreement with the present Respondent as well as a tripartite agreement with the present Respondent and Kesari Estates Pvt. Ltd.
3. There were concerns pertaining to slow progress of work, inability of the Respondent to obtain approval for the revised plan from the Bhubaneswar Development Authority, etc. On multiple occasions, the present Appellants expressed their dissatisfaction with reference to the slow progress of work and failure of the Respondent to adhere to the agreed upon milestones of construction. A supplementary agreement was executed between the parties for extension of time to complete the project by 31.3.2011 on part payment of compensation of Rs. 30,00,000/- by 31.3.2012.. Several communications were made for payment of compensation, after which the parties agreed to resolve the dispute by reference to arbitration. The present Respondent invoked the arbitration clause as per the tripartite agreement dated 14.9.2005.
4. The present Respondent (Original Claimant) filed its statement of claims under 12 different heads, to which the present Appellant filed its



counter statement and counter claims. Hearing commenced and in view of the pleadings and evidence led in the proceeding, the Ld. Tribunal passed the arbitral award dated 30.6.2015 in which Rs. 2,12,13,336/- at 18% interest p.a. was awarded in favour of the present Respondent and Rs. 15,00,000/- at 18% interest p.a. was awarded in favour of the present Appellants towards the counter claims.

5. Aggrieved, the Appellants approached the learned Senior Civil Judge, Commercial Court, Bhubaneswar in Arbitration Petition No. 79 of 2015 under Section 34 of the A&C Act seeking modification of the award.
6. Having heard the parties, the learned Senior Civil Judge, Commercial Court, Bhubaneswar was pleased to hold that the present Appellants had failed to make out any case for interference with the award and accordingly the application under Section 34 of the A&C Act was dismissed for being devoid of merits.
7. Now that the facts leading to the instant Appeal have been laid down, this Court shall endeavour to summarise the contentions of the Parties and the broad grounds that have been raised to seek the exercise of this Court's limited jurisdiction available under S. 37 of the A&C Act.

II. APPELLANTS' SUBMISSIONS:

8. Learned Senior Counsel for the Appellants assails the arbitral award and the judgment of the learned Senior Civil Judge, Commercial Court, Bhubaneswar mainly on the ground that the arbitrator was disqualified to arbitrate between the parties in the matter since he was a conciliator and Section 80(a) of the A&C Act, provides for a clear bar on a conciliator to arbitrate upon the matter. Therefore, it is submitted that



on account of the appointment of the arbitrator being null and void and in contravention of settled law, the resultant arbitral proceedings and the impugned judgment are non-est. In this regard, the Ld. Counsel relies upon the judgments of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*¹; *State of Maharashtra v. Ark Builders Pvt. Ltd.*²; *Benarsi Krishna Committee v. Karmyogi Shelters (P) Ltd.*³, and *Ellora Paper Mills Ltd. v. The State of Madhya Pradesh*⁴.

9. It is also contended that the Ld. Tribunal has travelled beyond the contours of the contract and the terms contained therein to arrive at its findings. It was submitted that the arbitration clause of the earlier agreement of 2002 or the Bipartite Agreement of 2005 do not provide for an unilateral appointment of an arbitrator, nor does it name any arbitrator, therefore such unilateral appointment is in gross violation to the settled position of law.

10. It is, moreover, submitted that allegedly the Ld. District Court has hastily ignored the contentions of the Appellant and did not assign any independent reason as to how the findings of the Ld. Tribunal were correct.

III. RESPONDENT'S SUBMISSIONS:

11. *Per contra*, learned counsel for the present Respondent very interestingly has raised an objection qua the maintainability of the present Appeal. It is submitted that upon establishment of the Commercial Court at

¹ (2020) 20 SCC 760

² (2011) 4 SCC 616

³ (2012) 9 SCC 496

⁴ (2022) 3 SCC 1



Bhubaneswar, when the ARBP No.79 of 2015 was transferred by the learned District Judge, Khurda at Bhubaneswar to the court of the Senior Civil Judge (Commercial Court), Bhubaneswar as per Section 15 of the Commercial Courts Act, 2015, the appellants challenged the said transfer before this Court in W.P.(C) No.31939 of 2021 and the same was dismissed by this Court by order dated 12.4.2022. Being aggrieved by the said order of this Court, the appellants had approached the Supreme Court of India wherein vide judgment and order dated 19.10.2022 in Civil Appeal No.6876 of 2022, the Appellants appeal was dismissed. After coming into force the Commercial Courts Act, 2015 and the establishment of Commercial Courts in different districts including the district of Khurda at Bhubaneswar, the Commercial Appellate Courts have also now been established. As per Section 13 of the Commercial Courts Act, 2015, any person aggrieved by the judgment/order of the Commercial Courts below the rank of a District Judge, has to file an appeal to the Commercial Appellate Court. *Vide* Notification No.930/L dated 11.1.2021 of the State Government in consultation with this Court, the Commercial Appellate Court has been established at Bhubaneswar and in some other districts of the State of Odisha. Hence, it is argued that, in view of the establishment of the Commercial Appellate Court designating the learned District Judge, Khurda at Bhubaneswar as the Commercial Appellate Court to exercise power within its jurisdiction, the impugned judgment passed by the learned Senior Civil Judge (Commercial Court), Bhubaneswar is only appealable before the learned Commercial Appellate Court-cum-



District Judge, Khurda at Bhubaneswar. Therefore, it is earnestly contended that the present appeal filed before this Court under Section 37(1)(c) of the Arbitration Act, 1996 is not maintainable before this Court.

12.The Ld. Counsel also stated that the Appellants have not been able to showcase any reasonable ground for interfering with the impugned judgment apart from making bald statements towards the same. It was vehemently submitted that the scope of interference of this Court in an application u/s Section 37 of the A&C Act is limited and this Court cannot re-appreciate evidence at this stage, therefore it may not revisit the factual findings of the Ld. Tribunal apart from testing the same on the mantle of reasonableness. It was also submitted that the Ld. District Judge had considered all the material aspects of the contentions raised by the parties and also duly regarded their submissions thereby warranting no interference with the concurrent views of the Ld. Arbitral Tribunal as well as the Ld. District Judge.

13.It was also strenuously argued that having participated in the arbitration proceedings, it was not open to the appellant to challenge the appointment of the arbitrator. It is submitted that there was no objection *qua* any personal bias/disqualification on the part of the arbitrator and any such objections cannot be permitted to be raised at such a belated stage.

14.It is submitted that the award is based on appreciation of the material and evidence that were placed before the arbitrator and it is not



open in these proceedings to re-appraise the same. It is thus prayed that the present appeal be dismissed.

IV. APPELLANTS' REBUTTAL:

15. Ld. Senior Counsel for the Appellants has in response to the question of maintainability submitted that Section 37 of the A&C Act starts with a *non obstante* clause that the appeal shall lie to the court authorized by law to hear the appeals from the original decree of the Court passing the order. It is contended that the provisions referred to by the Respondent, i.e. Section 13(1) of the Commercial Courts Act, 2015 is inconsistent with Section 37 of the A&C Act and therefore the matters relating to arbitration shall be governed by the provisions of the A&C Act itself which has been held to be a self-contained code. It is further submitted that if it is assumed to be correct that the appeal lies before the Commercial Appellate Division (District Judge) then an appeal from the said order under Article 136 of the Constitution of India would be filed before the Supreme Court bypassing this Court which could not have been the intention of the Act. Meaning thereby, the statutory remedies under Section 34 and 37 of the A& C Act would exhausted at the level of the District Court which would be straightaway be impugned before the Apex Court and the jurisdiction of this court would be skipped altogether.

V. ISSUES FOR CONSIDERATION:

16. Having heard the parties and perused the materials available on record, this court here is of the opinion that the preliminary point of maintainability has to be dealt with prior to entering into the merits of



the appeal, if such entry is even found to be permissible. Therefore, this Court has identified the following issue to be determined:

A. Whether the present Appeal under Section 37 of the A&C Act, arising out of the order dated 02.02.2024 passed by the learned Senior Civil Judge, Commercial Court, Bhubaneswar in Arbitration Petition No. 79 of 2015 being an order passed at a level lower than that of a District Judge is maintainable before this Court?

VI. Issue A: Whether the present appeal under Section 37 of the A&C Act, arising out of the order dated 02.02.2024 passed by the learned Senior Civil Judge, Commercial Court, Bhubaneswar in Arbitration Petition No.79 of 2015 being an order passed at a level lower than that of a District Judge is maintainable before this Court?

17.The Commercial Courts Act, 2015 is a comprehensive piece of legislation with an objective to provide a specialised and speedy resolution of commercial disputes, as identified under the Act, and with the larger objective being to facilitate the ease of doing commercial activities and reducing the long-pending court proceedings in connection with commercial transactions in India.

18.The salient features of the Act include defining the various types of commercial disputes, and specifying the qualifying value of such disputes, constituting Commercial Courts and Commercial Appellate Court at various levels. Apart from the above, the Act also extensively lays down the procedure for conduct of commercial cases by the designated courts.



19. I consider it apposite to refer to some provisions of the Commercial Courts Act, 2015 at this juncture.

i. *"Section 3. Constitution of Commercial Courts.—*

(1) The State Government, may after consultation with the High Court concerned, by notification, constitute such number of Commercial Courts at the District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those courts under this Act:

Provided that with respect to the High Courts having ordinary original civil jurisdiction, the State Government may, after consultation with the High Court concerned, by notification, constitute Commercial Courts at the District Judge level:

Provided further that with respect to a territory over which the High Courts have ordinary original civil jurisdiction, the State Government may, by notification, specify such pecuniary value which shall not be less than three lakh rupees and not more than the pecuniary jurisdiction exercisable by the District Courts, as it may consider necessary."

ii. *"Section 3-A. Designation of Commercial Appellate Courts.—*

Except the territories over which the High Courts have ordinary original civil jurisdiction, the State Government may, after consultation with the High Court concerned, by notification, designate such number of Commercial Appellate Courts at District Judge level, as it may deem necessary, for the purposes of exercising the jurisdiction and powers conferred on those courts under this Act."

iii. *"Section 6. Jurisdiction of Commercial Court.—*

The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a



specified value arising out of the entire territory of the State over which it has been vested territorial jurisdiction."

iv. *"Section 13. Appeals from decrees of Commercial Courts and Commercial Divisions. —*

(1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order 43 of the Civil Procedure Code, 1908 (5 of 1908) as amended by this Act and Section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996)."

v. *"Section 21. Act to have overriding effect. —*

Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than this Act."

20. A plain reading of the above sections reveals the following:

- i. Except for places where the High Court exercises original civil jurisdiction, there exists a Commercial Court (court of original jurisdiction for commercial disputes) competent to try cases with specified value at the district level. By virtue of Notification dated 13.11.2020 in the State of Odisha, 4 Commercial Courts at Sr. Civil Judge level were established at Cuttack, Bhubaneswar, Berhampur and Sambalpur and have been designated as the Commercial Courts in accordance with Section 3.



- ii. Section 3-A provides for constitution of Commercial Appellate Court at district level in such territories as abovementioned. By virtue of Notification dated 11.1.2021 in the State of Odisha, 10 Commercial Appellate Courts at District & Sessions Judge level were established at Cuttack, Khurda at Bhubaneswar, Puri, Balasore, Ganjam, Sambalpur, Bolangir, Kendrapara, Koraput and Sundargarh and have been designated as the Commercial Appellate Courts in accordance with Section 3A.
- iii. As far as territories where the High Court exercises original civil jurisdiction is concerned, a Commercial Court is constituted at the District Judge level. This situation does not arise in Odisha.
- iv. The provisions of the Commercial Courts Act shall have an overriding effect over inconsistencies with any other law for time being in force.

21. So far, the law remains unambiguous. A peculiar situation has arisen here, what is raised as a commercial dispute is also the subject-matter arising from proceedings under the Arbitration Act. The relevant provisions of the Act of 1996 are produced as below:

- i. "Section 2. (e) "Court" means —

(i) in the case of an arbitration other than international commercial arbitration, the Principal Civil Court of Original Jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court



of a grade inferior to such Principal Civil Court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court."

ii. *"Section 37. Appealable orders. —*

(1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:

(a) refusing to refer the parties to arbitration under Section 8;

(b) granting or refusing to grant any measure under Section 9; and

(c) setting aside or refusing to set aside an arbitral award under Section 34."

22.A combined reading of the above two sections indicates that as per the scheme of the Arbitration Act, the original court of competent jurisdiction would be the District Court, and the appellate court would be the High Court. The question then, whether such a cause that has arisen as per the Arbitration and Conciliation Act, 1996 debars the applicability of Commercial Courts Act, 2015 even if the dispute is one that fits within the definition of commercial dispute as per Section 3 of the Act of 2015?



23. The lawmakers have indeed taken this aspect into consideration and the answer to the question can be arrived at by taking a look at Section 10 of the Commercial Courts Act:

“10. Jurisdiction in respect of arbitration matters. — Where the subject-matter of an arbitration is a commercial dispute of a specified value and —

(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any Principal Civil Court of Original Jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.”

24. The conundrum pertaining to complexity revolving around the multi-level court system under the Commercial Courts Act even so more



particularly when the dispute arises from arbitral proceedings has been the point of discussion in a number of cases right from the onset of Commercial Courts Act.

25. One among the first many such instances is that of the Supreme Court judgment in *Kandla Export Corpn. v. OCI Corpn.*⁵, whereby the question for consideration was whether an appeal, not provided for under Section 50 of the Arbitration Act (which deals with appealable order) would nonetheless be maintainable under Section 13 of the Commercial Courts Act. The Supreme Court was of the considered view that Arbitration Act is a Code in itself and hence competency of courts as specified therein would prevail, thereby holding that appeals in respect of orders arising from the Arbitration Act will lie only to the extent provided under Section 37. It was also upheld that the Arbitration and Conciliation Act, 1996 being a special statute overrides the Commercial Courts Act, 2015, which is a general legislation. However, this point of view was made in light of the specific case pertaining to applicability of Section 13 of the Commercial Courts Act particularly on appeals in respect of Section 50 of the Arbitration Act (dealing with appealable orders) and therefore, subsequent case laws have shown deviance from following the ratio of *Kandla Exports* (supra).

26. Considering the fact that the ratio in *Kandla Exports* (supra) case was laid down in the light of the special facts and circumstances therein,

⁵ (2018) 14 SCC 715



various High Courts have taken the liberty to deviate from the same and taken a divergent view. For instance, this Court in *M.G. Mohanty v. State of Odisha*⁶ wherein the moot question was specifically regarding the validity of notification issued by the State of Orissa conferring jurisdiction on the Court of the Civil Judge (Senior Division) designated as Commercial Court, to decide applications or appeals arising out of arbitration under the provisions of the Arbitration and Conciliation Act, 1996, this Court was pleased to uphold the validity of the said notification on the premise that the Commercial Courts Act being a subsequent legislation, legislative consciousness regarding the Arbitration Act is implied and more so when there is a specific reference to the A&C Act in Sections 10 and 15 of the Commercial Courts Act, 2015. Therefore, it was conclusively held that whenever the subject-matter of an arbitration is a “commercial dispute of a specified value” and it fulfils the conditions which specified in Section 10(3), the matter shall be heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Courts have been constituted. This view was also affirmed by the Supreme Court in *Jaycee Housing (P) Ltd. v. High Court of Orissa*⁷, wherein it was also opined that the objects and reasons of enactment of the 2015 Act and establishment of Commercial Courts as well as the purposes of Sections 3, 10 and 15 shall become otiose and nugatory, if all applications/appeals arising out of arbitration under the provisions

⁶ 2022 SCC OnLine Ori 1070

⁷ 2023 1 SCC 549



of the 1996 Act, other than the international commercial arbitration, and that of a commercial nature is to lie before the Principal Civil Court of a district.

27. The High Court of Kerala had the opportunity to deliberate on the subject in question in *Shwas Homes (P) Ltd. v. Union of India*⁸, wherein the petitioners had sought to challenge the validity of Sections 2(1)(i), 3, 6, 7, 10, 11, 12, 12-A, 15, 19 and 21 of the Commercial Courts Act as the same are arbitrary, discriminatory and ultra vires the Constitution of India as also prayed for quashing the Notification dated 24-2-2020 issued by the Government of Kerala, designating subordinate courts as commercial courts. Even though the learned Single Judge had addressed the anomalous situation created with the advent of Commercial Courts, whereby a commercial dispute which arises from an award or proceeding under the Arbitration Act which is below the specified value will be considered by the District Court with an appeal lying to the High Court while an identical dispute of the specified value will have to be decided by the Commercial Court with an appeal to the District Court, after a considered view of the dictums laid down in *M.G. Mohanty case* (supra) and *Jaycee Housing case* (supra), the Court upheld the provisions of the Commercial Courts Act as such a mere distinction is not sufficient to bring out arbitrariness nor the same can be rendered to be ultra vires the Constitution.

⁸ Order dated 26.6.2023 in W.P.(C) No. 19643 of 2022



28. More so recently, in *Alexander Luke v. Aditya Birla Money Ltd.*⁹, the Division Bench of the High Court of Kerala had the opportunity to analyse the same question that is raised before this Court as to whether an appeal from an order passed by the Commercial Court/Additional Subordinate Judges Court in a matter which arises under the Arbitration and Conciliation Act, 1996 would be appealable before the High Court as an arbitration appeal. As is the case here, the issue arose is with regard to the preliminary objection regarding the maintainability of the arbitration appeal and the grounds raised by the counsel for the respondent was that Section 10(3) of the Commercial Courts Act would have an overriding effect over the provisions of the Arbitration Act and thus, the appropriate forum to raise an appeal against the order passed by the Commercial Court would be the District Court designated as Commercial Appellate Court, as per Section 3-A of the Act, 2015.

29. The above stand was, however, contested by the learned counsel for the appellant on the ground that the dispute is squarely covered by the provisions of the Arbitration and Conciliation Act and is not a commercial dispute at all and hence an appeal as under Section 37 of the Arbitration Act would only lie to the High Court. It was also contended that the entire scheme of the Arbitration Act would be undermined by the designation of Commercial Courts at the District Court level for consideration of disputes arising in arbitration as well and subjecting such disputes also to the multi-level appellate

⁹ 2024 SCC OnLine Ker 797



jurisdiction without reference to the scheme and intention of the Arbitration Act.

30.After much deliberations and consideration of the case laws prevailing on the subject-matter, the High Court was of the opinion that the Commercial Courts Act, 2015 being a subsequent Central enactment, the legislative intent can only be presumed to have taken into consideration of the prevailing provisions of the Arbitration Act. The Court further opined that a bare reading of the provisions of the Commercial Courts Act brings out the plain intent of the enactment and such intent is to be given effect to by the courts while interpreting the statute, without recourse to departure from the plain language of the statute. Such departure, if any, the Court opined that, would amount to transgression upon the legislative powers and policy-making which are not within the realm of the interpretative process which is expected of courts of law. Hence, the Court was of the satisfied view that even if the subject-matter of the commercial dispute arises from arbitration, the provisions of the Commercial Courts Act, 2015 prevails over the Arbitration and Conciliation Act, 1996, more so particularly then Section 10(3) of the Act specifically governs appeals and applications under the Arbitration and Conciliation Act, 1996.

31.It is true that Section 2(e) of the Arbitration and Conciliation Act defines 'Court' for the purpose of the Act to mean the Principal Court of civil jurisdiction in the area concerned, but Section 10(3) of the Commercial Courts Act specifically provides that applications or appeals arising out



of arbitration other than an international commercial arbitration that would ordinarily lie before the principal civil court of original jurisdiction in a district shall be filed in and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted. It is pertinent to note that the Commercial Courts Act is a central enactment which is subsequent in point of time to the Arbitration Act. Though it is contended by the learned counsel appearing for the appellants submits that the entire scheme of the Arbitration Act would be undermined by the designation of Commercial Courts at the Sub-Court level for consideration of disputes arising in arbitration as well and subjecting such disputes also to the multi-level appellate jurisdiction without reference to the scheme and intention of the Arbitration Act, this Court is of the opinion that in the light of the enactment of the Commercial Courts Act with the provisions as presently available, the plain intent of such enactments will have to be given effect to by the courts and an interpretation departing from the plain language of the statute cannot be attempted by us since that would amount to transgressing upon the legislative powers and policy making which are not within the realm of the interpretative process which is expected from the courts of law. Moreover, this Court is not considering a challenge to the provisions and is only called upon to decide the position on the basis of the statutes as they stand.



32.A plain reading of the provisions of the statute especially Sections 6 and 10(3) of the Commercial Courts Act would lead us to the inescapable conclusion that the court for the purpose of consideration of a commercial dispute even if it arises under the Arbitration and Conciliation Act, 1996 would be the commercial court and the appeal would, therefore, lie only to the Commercial Appellate Court, that is, the District Court in the instant case.

VII. CONCLUSION:

33.The application under Section 34 of the 1996 Act was filed by the appellant on 26.9.2015 before the learned District Judge, Khurda. In view of notification bearing no. Notification dated 13.11.2020, ARBP No.79 of 2015 was transferred by the learned District Judge, Khurda at Bhubaneswar to the court of the Senior Civil Judge (Commercial Court), Bhubaneswar as per Section 15 of the Commercial Courts Act, 2015. The appellants challenged the said transfer before this Court in W.P.(C) No.31939 of 2021 but the same was dismissed by this Court by order dated 12.4.2022. Being aggrieved by the said order of this Court, the appellants had approached the Supreme Court of India wherein vide judgment and order dated 19.10.2022 in Civil Appeal No.6876 of 2022, the Appellants appeal was dismissed.

34.In the meanwhile, vide Notification dated 11.1.2021 in the State of Odisha, 10 Commercial Appellate Courts at District & Sessions Judge



level were established and have been designated as the Commercial Appellate Courts in accordance with Section 3A.

35. Vide judgment and order dated 02.02.2024, the Ld. Senior Civil Judge (Commercial Court), Bhubaneswar was pleased to dismiss ARBP No.79 of 2015, leading to the instant Appeal under Section 37 of the A & C Act which was preferred on 3.5.2024 by which time the Commercial Appellate Courts have already been designated and notified.

36. Section 37 of the 1996 Act provides that an appeal shall lie to the court authorised by law to hear appeals from original decrees of the court passing the order, inter alia, refusing to set aside an arbitral award under Section 34. Section 13(1) of the 2015 Act provides that any person aggrieved by the judgment and order of a Commercial Court below the level of a District Judge may appeal to a Commercial Appellate Court within a period of sixty days from the date of judgment or order.

37. The Court of the District Judge has already been constituted as Commercial Appellate Court on 11.1.2021. The appeals against the impugned order passed by the learned Commercial Court, which was below the level of the District Judge, being the Court of the Ld. Civil Judge (Senior Division), ought to have been filed before the Commercial Appellate Court and not before this Court.

38. Consequently, the appeals are returned without examining the merits of the case to enable the Appellants to approach the Commercial Appellate Court which has the necessary jurisdiction to decide them in accordance with law.



39. The appeal is disposed of, accordingly. No order as to costs.

(Dr. S.K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 8th January, 2025/