

**IN THE HIGH COURT OF JUDICATURE AT PATNA
COMMERCIAL APPEAL No.10 of 2024**

M/s Bihar State Road Development Corporation Ltd. (Govt. of Bihar Undertaking) RCD Mechanical Workshop Campus Near Patna Airport, Sheikhpura, Patna 800014 (BSRDCL)

... .. Appellant

Versus

M/S M.G Contractors (P) Ltd. Head Office of M. G. House 1721, Sector 4, Panchkula, 134109 (Haryana)

... .. Respondent

Appearance :

For the Appellant : Mr. P.K. Shahi, Sr. Advocate
Mr. Manish Dhari Singh, Advocate
For the Respondent : Mr. Sanjeev Kumar, Advocate
Mr. Pravashankar Mishra, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and**

**HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT**

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 08-04-2026

Heard Mr. P.K. Shahi, learned Senior counsel for the appellant and Mr. Sanjeev Kumar, learned counsel for the sole respondent.

2. This appeal has been preferred under Section 37 of the Arbitration and Conciliation Act of 1996 (hereinafter referred to as 'Act of 1996') read with Section 13(1-A) of Commercial Courts Act, 2015 (in short referred to as 'the Act of 2015') for setting aside the judgment dated 30.07.2024 (hereinafter referred to as 'the impugned order') passed by the learned Additional District & Sessions Judge-VIIIth, Patna (hereinafter referred called 'the learned Court').

3. By the impugned judgment under appeal, the



learned Court has been pleased to dismiss the Miscellaneous Arbitration Case No. 171/2019 filed by the appellant under Section 34 of the Act of 1996 challenging the award dated 09.07.2019 passed by the learned Arbitral Tribunal.

Brief Facts of the Case

4. The brief facts of the case are as under:-

The appellant M/S Bihar State Road Development Corporation Ltd. (Govt. of Bihar Undertaking) hereinafter referred to as "BSRDCL", a public sector undertaking owned by the Government of Bihar, floated a tender for implementation of highway Projects, Phase-II, contract package 2, Sakaddi- Chandi Sandesh-Sahar-Bihta-Danvara-Nasriganj Road (SH-81) length 86.80 km awarded the contract to one Patel Engineering Ltd. However, the said contract was terminated by the appellant. Thereafter, the said project was divided into two parts i.e. (1) Sakaddi-Sahar Road section (0 to 44 =44 km) and (2) Sakaddi-Nasriganj Road section (from 44 km to 83.250 =39.25 km).

5. The Respondent is a company inter-alia engaged in construction of road etc. In response to the bids invited by the appellant vide its invitation number BSHP-II/9/SH-81 dated 19.01.2015 for improvement/ up-gradation of balance work in Sakadi-Nasriganj Road section (from 44 km to 83.250= 39.25



km), the respondent/claimants vide its letter dated 28.02.2015 submitted its bid for an amount of Rs. 113,82,30,756.28/-. The said bid price through competitive bidding was accepted by the appellant "BSRDCL" vide its office letter number BSRDC LTD. 1546/2014/ (Part-1)/2015-1495 and accordingly, a letter of acceptance dated 19.06.2015 ("LOA") was issued to the claimant/respondent and through the same letter notification of the award was also confirmed.

6. It appears from the pleadings available on the record that after entering into the contract the claimant/respondent submitted the work programme as required under clause 8.3 of the contract document. In course of execution, the claimant/respondent informed the appellant that the site was full of hindrances, land were yet to be acquired and there were many types of encroachments etc. and because of that the claimant was suffering huge loss for idling manpower, machinery and other incidental loss.

7. The claimant as per contract agreement served notice for appointment of Dispute Board. Since the appellant did not reply to the letter dated 29.06.2017, the claimant vide letter dated 04.07.2017 requested the Indian Road Congress to constitute a point Dispute Board for determination of interim



claim lodged by the claimant. Eventually, the appellant vide letter dated 03.04.2018 agreed that since the Dispute Board has not been constituted so far and therefore, in view of clause 20.6 of the contract agreement, the alleged dispute was referred to the arbitration directly. Accordingly, the Arbitral Tribunal was constituted.

8. The Hon'ble Arbitral Tribunal made the award on the claims preferred by the claimant/respondent as per the following details: –

Claim no.	Particulars of Claim	Amount Claim (Rs)	Amount awarded (Rs)
1.	Claim for passing declaration that the petitioner has breached the Clause 2.1 of the Contract-Agreement as it failed to provide hindrance free possession/access of site within the prescribed period as per the contract Data Document		The Arbitral Tribunal declared that Petitioner has breached Clause 2.1 and accordingly claim no.1 is answered in favour of the Respondent/claimant
2.	Compensation due to extra utilization of staffs & labour	85,13,232/-	Denied
3.	Compensation due to extra utilization Machinery & Equipment's	2,12,83,353/-	2,12,83,353/-
4.	Compensation due Loss of Profits & Overhead Costs (3 sub-claims as under) (a) Loss of profit on account of delay after 31.08.2017 i.e. scheduled date of completion – Rs. 3,23,26675/- (b) Loss of Profit on account of shortfall of profit-Rs.1,00,19,122/- (c) Loss of Profit on account of less produced work done versus capacity and overhead costs-Rs. 2,02,59,159/- +1,62,07,327/- = Rs.	7,88,11,283/- a+b+c= (3,23,26675+ 1,00,19,122+ 3,64,66,486) Total= 7,88,11,283/-	7,88,11,283/-



	3,64,66,486/-		
5.	Loss on Account of Depreciation of Machinery & Equipment's	1,55,97,173.20	Denied
6.	Interest Payable on the Claim Amount	@ 18% per annum till payment is made	12% from the date of filing of statement of claims till the date of award and also future interest at the same rate till realization.
7.	Cost of Arbitration, legal fee etc.	40,00,000/-	Rs. 24,00,000/-

9. Being aggrieved by the award of the learned Arbitral Tribunal, the appellant preferred an application under Section 34 of the Act of 1996 before the learned District Judge (now known as Principal District Judge) challenging the award on various grounds including that the award has been made without following the fundamental policies of law in India.

10. The learned District Judge/Principal District Judge transferred the case to the court of Additional District Judge/District and Additional Sessions Judge for hearing and adjudication.

Submissions on behalf of the Appellant

11. Mr. P.K. Shahi, learned Senior counsel for the appellant has canvassed a short point for consideration before this Court. It is submitted that the dispute between the parties being a “Commercial Dispute” within the meaning of Section 2 (1) (c) of the Act of 2015, Section 34 application was filed before the



Commercial Court Act the impugned award has not been passed by a Commercial Court, constituted under Section 3(1) of the Act of 2015 vide Notification S.O.351 dated 02.08.2019, published in the Bihar Gazette on 02.08.2019. It is his submission that by virtue of the notification dated 02.08.2019, the Government of Bihar in consultation with the High Court of Judicature at Patna superseded the earlier notification as contended in Memo No. 1150/J dated 03.03.2017 of the Law Department, Bihar, Patna and was pleased to constitute:-

(a) the Court of Civil Judge (Senior Division) of each district as Commercial Court to exercise original jurisdiction in respect of commercial disputes where the value of suit or dispute is not less than Rs.3 lacs and up to Rs.1 crore;

(b) the Court of District Judge in all the districts of the State of Bihar as Commercial Courts to exercise original Jurisdiction in respect of commercial disputes where the value of the suit or dispute exceeds Rs. 1 Crore in respect of the entire territorial area of the district;

(c) designate the Court of District Judge in each district as Commercial Appellate Court to exercise appellate jurisdiction and dispose of the appeals arising out of the judgments and orders passed by a Commercial Court below the level of the



District Judge.

12. It is submitted that notification dated 02.08.2019 and its importance has been discussed by a learned Single Judge of this Court in Civil Miscellaneous Jurisdiction No.752 of 2023 (Bihar State Power (Holding) Company Limited vs. Gammon India Limited) and other analogues matters. The learned Single Judge discussed the relevant provisions of the Act of 1996 and the Act of 2015 including the Notification dated 02.08.2019 and came to a conclusion that the District Judge alone would be competent to exercise original jurisdiction in respect of commercial dispute where the value of the suit or dispute exceeds Rs.1 crore in respect of the entire territorial area of the district.

13. Learned Senior counsel has further relied upon the Division Bench judgment of this Court in the case of **M/s Vishal Builtech India Pvt. Ltd. vs. The Union of India in MJC No. 1323 of 2018**. In the said judgment dated 03.08.2018, the Hon'ble Division Bench of this Court directed transfer of Arbitration Miscellaneous Case No. 01/2016 from the Court of Additional District & Sessions Judge-V, Patna to the Court of Commercial Court which is the District Judge, Patna.

14. Learned Senior Counsel has further relied upon



another Division Bench judgment of this Court in the case of **M/s Johnson Paints Pvt. Ltd. vs. M/s Johnson Paints Co. in Commercial Appeal No. 08 of 2024**, in which vide judgment dated 09.09.2024, the Hon'ble Division Bench held that it is the District Judge, Patna, who has been constituted as a Commercial Court under the Act of 2015. Accordingly, the Hon'ble Division Bench interfered with the order of the learned District Judge, Patna passed on 04.01.2024 by which he had transferred the records to the Court of learned Additional District Judge-XIV, Patna. The Hon'ble Division Bench of this Court accepted the submissions on behalf of the appellant before this Court in the said appeal that the learned District Judge erred in making over the case with the ADJ Court. Accordingly, the records were ordered to be transferred to the Court of the learned District Judge, Patna.

Submissions on behalf of the Respondent

15. Responding to the submissions of the learned senior counsel for the appellant, Mr. Sanjiv Kumar, learned counsel for the sole respondent has vehemently tried to persuade us to differ with the opinion of the Hon'ble Division Bench of this Court and to refer the matter to a Larger Bench.

16. Learned counsel submits that on a bare reading of



the notification dated 02.08.2019, it would be crystal clear that it is the court of the District Judge which has been constituted as Commercial Court under Section 3 (1) of the Act of 2015. Learned counsel has placed before this Court, Article 236 of the Constitution of India to submit that under Chapter-VI heading Sub-ordinate Courts, it is provided that the expression District Judge includes Judge of City Civil Courts, Additional District Judges, Joint District Judges, Assistant District Judges, Chief Judges of Small Cause Courts, Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges, Chief Presidency Magistrates and Additional Chief Presidency Magistrate. Thus, according to Article 236 (a) of the Constitution of India, the Additional District Judge would come within the meaning of the word 'District Judge'.

17. Learned counsel has further submitted that the Act of 2015 has adopted the meaning of the word 'District Judge' as occurring under Article 236 (a) of the Constitution of India. In this regard, he refers Section 2 (1) (e) of the Act of 2015.

18. In order to strengthen the submissions, learned counsel for the sole respondent has placed before this Court the Judgment of the Hon'ble Supreme Court in the case of **Jaycee Housing Private Limited & Another Vs. Registrar (General)**



Orissa High Court, Cuttack & Ors. (2023)1 SCC 54 and the Judgment of the Hon'ble Kerala High Court in the case of **Kasim V.K. Vs. M. Ashraf** reported in **2021 SCC OnLine Ker 1668** (Arb. A. No. 37 of 2020). Attention of this Court has been drawn towards paragraph '20' of the judgment of Kerala High Court wherein it has been held that the Additional District Judge shall exercise the same powers as the District Judge. The Kerala High Court held that there is no jurisdictional error in Additional District Judges hearing petitions filed under the Act of 1996.

19. Learned counsel has also relied upon the judgment of the Hon'ble Division Bench of Madhya Pradesh High Court in the case of **Yashwardhan Raghuwanshi vs. District and Sessions Judge and Another** reported in **2021 SCC OnLine MP 457**. It is submitted that the Hon'ble Madhya Pradesh High Court held that in respect of commercial dispute involving arbitration only the Commercial Court of the status of the District Judge or Additional District Judge would be competent court to entertain the matters under Sections 9, 14, 34 and 36 of the Arbitration Act of 1996. It has also been held that the impugned order to the extent of classifying the commercial disputes having arbitration as subject matter on the basis of mere valuation and conferring powers therefor on the Court of Civil



Judge Class-I, Bhopal would be violative of the relevant provisions of law. However, it can be sustained in so far as distribution of the work of commercial disputes as per the value of the claim in cases other than arbitration matter are concerned. It has been further held that the District Judge by virtue of Sections 7 and 15 of the Civil Courts Act of 1958 would be entitled to distribute such work amongst any of the Additional District Judges under his supervision, but not to any court of Civil Judge Class-I or Senior Civil Judge, or any other court of Small Causes.

20. Drawing strength from the aforementioned judgments of the Hon'ble High Court of Kerala and Madhya Pradesh, learned counsel for the respondent submits that perhaps the attention of the Hon'ble Divisional Benches of this Court in the case of **M/s Vishal Builtech India Pvt. Ltd.** and **M/s Johnson Paints Pvt. Ltd.** (*supra*) could not be drawn towards Article 236 (a) of the Constitution of India and Section 2 (1) (e) of the Act of 2015. It is for this reason this Court may refer this matter to a Larger Bench.

Consideration

21. This Court has heard learned senior counsel for the appellant and learned counsel for the sole respondent as also



perused the records. There is no contest that the dispute involved in this case is a commercial dispute as defined under Section 2(1) (c) of the Act of 2015.

22. The basic point which has been raised before this Court for consideration arises out of the Notification dated 02.08.2019, by which the Commercial Court has been constituted in the State of Bihar. Previously, the Notification vide Memo No. 1150/J dated 03.03.2017 of Law Department, Bihar was issued which has been superseded by the Notification dated 02.08.2019. Both the Gazette Notifications are quoted hereunder in chronological order for ready reference:-

“बिहार गजट
असाधारण अंक
बिहार सरकार द्वारा प्रकाशित

16 फाल्गुन 1938 (श0)
(सं0 पटना 189) पटना, मंगलवार, 7 मार्च 2017

विधि विभाग

अधिसूचनाएं

3 मार्च 2017

एस0 ओ0 11, दिनांक 7 मार्च 2017— ‘The Commercial Courts, Commercial Division And Commercial Appellate Division of High Courts Act, 2015’ (No.-4 of 2016) की धारा-3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, बिहार राज्य सरकार, एतद्वारा, पटना उच्च न्यायालय के परामर्श से, एक करोड़ रुपये अथवा इससे अधिक मूल्य के वाणिज्यिक विवादों की सुनवाई हेतु, राज्य के सभी प्रमंडलिय मुख्यालयों में स्थित जिला व्यवहार न्यायालयों में वाणिज्यिक न्यायालय (Commercial Courts) गठित करती है तथा प्रमंडलीय मुख्यालय स्थित व्यवहार न्यायालय में पदस्थापित जिला न्यायाधीश (District Judge) को उक्त प्रमंडल में इसके अधीन गठित वाणिज्यिक न्यायालय का न्यायाधीश नियुक्त करती है, जो अपने सामान्य कार्यों के अतिरिक्त इस न्यायालय का भी कार्य करेंगे;



(क) इन न्यायालयों की स्थानीय अधिकारिता संबंधित प्रमंडल की राजस्व सीमाएं होगी,
(ख) यह अधिसूचना राजपत्र में इसके प्रकाशन की तिथि से प्रवृत्त होगी।

(सं०सं० ए०/एक्ट-10/2016-1150/जे०)

बिहार-राज्यपाल के आदेश से

सुरेन्द्र प्रसाद शर्मा,

सरकार के सचिव।

एस०ओ० 12, एस०ओ० 11, दिनांक 7 मार्च 2017 का अंग्रेजी में निम्नलिखित अनुवाद बिहार-राज्यपाल के प्राधिकार से इसके द्वारा प्रकाशित किया जाता है, जो भारतीय संविधान के अनुच्छेद-348 के खण्ड (3) के अधीन उसका प्राधिकृत पाठ समझा जायेगा।

(सं०सं० ए०/एक्ट-10/2016-1150/जे०)

बिहार-राज्यपाल के आदेश से

सुरेन्द्र प्रसाद शर्मा,

सरकार के सचिव।

The 3rd March 2017

S.O. 11, dated the 7th March 2017- In exercise of the powers conferred by section 3 of 'The Commercial Courts, Commercial Division And Commercial Appellate Division of High Courts Act, 2015' (No.-4 of 2016), the State Government of Bihar, in consultation with the High Court of Judicature at Patna, is hereby pleased to constitute the Commercial Court in the District Civil Courts situated in all the Divisional Head quarters of the State to hear cases of Commercial disputes of the value of Rupees one crore or above and appoints the District Judge posted in the Civil Court of the Divisional Headquarter as Judge of the Commercial Court constituted hereunder in the concerned Division, who will discharge the duties of this court in addition to his normal duties;

(a) The local jurisdiction of these courts shall be the revenue limits of the concerned Division,

(b) This Notification shall come into force with effect from the date of its publication in the official Gazette.

(F.No. A/Act-10/2016-1150/J)

By Order of the Governor of Bihar

Surendra Prasad Sharma,

Secretary to the Government.



बिहार गजट
असाधारण अंक
बिहार सरकार द्वारा प्रकाशित

11 श्रावण 1941 (श0)
(सं0 पटना 912) पटना, शुक्रवार, 2 अगस्त 2019

विधि विभाग

अधिसूचना

2 अगस्त 2019

एस0ओ0 351, दिनांक 2 अगस्त 2019- विधि विभाग, बिहार, पटना के अधिसूचना संख्या 5080 दिनांक 25.07.2019 (बिहार गजट संख्या 869 दिनांक 25.07.2019 सहपठित एस0ओ0 347 दिनांक 25.07.2019 द्वारा प्रकाशित) जिसके द्वारा राज्य में वाणिज्यिक न्यायालयों एवं वाणिज्यिक अपीलीय न्यायालयों का गठन किया गया है, के अंग्रेजी भाषा के प्राधिकृत पाठ को निम्नलिखित द्वारा प्रतिस्थापित किया जाता है :-

NOTIFICATION

S. 0.351, dated 2nd August 2019-In exercise of the powers conferred by Section 3 of The Commercial Courts, Commercial Appellate Courts, Commercial Divisions and Commercial Appellate Divisions of High Courts Act, 2015 (No. 4 of 2016), the State Government of Bihar, in consultation with the High Court of Judicature at Patna superseding the previously issued notification memo no.-1150/J dated-03.03.17 of Law Department, Bihar, Patna on the subject, is hereby pleased to:-

- constitute the Court of Civil Judge (Senior Division) of each district as a Commercial Court to exercise original jurisdiction in respect of commercial disputes where the value of the suit or dispute is not less than Rs. 3 Lacs and up to Rs.1 Crore;
- constitute the Court of District Judge in all the districts of the State of Bihar as a Commercial Court to exercise original Jurisdiction in respect of commercial disputes where the value of the suit or dispute exceeds Rs.1 Crore in respect of the entire territorial area of the district; and
- designate the Court of District Judge in each district as Commercial Appellate Court to exercise appellate jurisdiction and dispose of the appeals arising out of the judgments and orders passed by a Commercial Court below the level of the District Judge.

This notification shall come into force with effect from the date of its publication in the official Gazette.

(File No.-A/act-10/2016/5250/J)

By Order of the Governor of Bihar,
MADAN KISHORE KAUSHIK,
Secretary to Government of Bihar.३



23. It is evident on going through the Hon'ble Division Bench judgments of this Court in the case of **M/s Vishal Builtech India Pvt. Ltd.** and **M/s Johnson Paints Pvt. Ltd. (supra)** that identical issue had come up for consideration before this Court on the earlier occasion. In the case of **M/s Vishal Builtech India Pvt. Ltd. (supra)**, an application was filed under Section 15(5) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (as known earlier) seeking transfer of Miscellaneous Arbitration Case No. 01/2016 from the Court of Additional District Judge-V, Patna to the Commercial Court constituted under Section 3 of the Act. This Miscellaneous Arbitration Case was registered on a petition under Section 34 of the Act of 1996 for setting aside the Award dated 17.12.2015 rendered by Arbitral Tribunal.

24. After filing of the petition, learned District Judge, Patna transferred the records to the court of the Additional District Judge-V, Patna but the learned Additional District Judge-V was of the view that under the Act of 2015, the jurisdiction to adjudicate the commercial dispute lies only with the Commercial Court notified under the Act of 2015. The learned Additional District and Sessions Judge requested the



District Judge to issue directions regarding return of the case to his court. The District and Sessions Judge, Patna replied vide letter dated 30.02.2018 informing him that he had orally called for the records of Arbitration Miscellaneous Case No. 01/2016 and had come to a conclusion that the Award dated 17.12.2015 passed by the Arbitrator was under challenge and because this arbitration has arisen out of Request Case No. 06 of 2023, hence, the matter could not come under the purview of the Commercial Court.

25. In the aforementioned background of the facts placed before the Hon'ble Division Bench of this Court, the Hon'ble Division Bench took a view that there was no ambiguity at all that the District Judge, Patna had already been notified as the Commercial Court for the Patna Division only and he would have the jurisdiction to hear, consider and decide the concerned matter. Accordingly, order was passed.

26. Similarly, this Court finds that in the case of **M/s Johnson Paints Pvt. Ltd.** (supra), the defendant in Commercial Dispute Case No. 02 of 2023 had moved this Court against the order of the learned District Judge, Patna passed on 04.01.2024 transferring the case to the Court of learned ADJ-XIV. It appears that a preliminary objection was taken on behalf



of the respondent before this Court as regards the very maintainability of the Commercial appeal against the order of transfer of the case to the court of the learned Court of ADJ-XIV. It was contended that the order of the learned District Judge, Patna passed on 04.01.2024 is not one of the orders envisaged under Order XLIII of the Civil Procedure Code, 1908 (in short 'CPC'), therefore, no appeal would lie. The Hon'ble Division Bench, even as agreed with the objection as to maintainability of the appeal, took a view that the order can be challenged under Article 226/227 of Constitution of India but refused to reject the appeal only for the reason of the aforesaid contention. The Hon'ble Division Bench took a view as under:-

“5.We would not reject the appeal only by reason of the aforesaid contention, since we are entitled to invoke the jurisdiction under Article 226/227; which we *suo motu* exercise, especially considering the fact that the very intention behind the enactment; i.e. Commercial Courts Act, is for speedy disposal of the commercial matters.”

27. The Hon'ble Division Bench noticed the notification issued by the Bihar Government under Section 3 of the Act of 2015, referred the earlier judgment of the Hon'ble Division Bench in the case of **M/s Vishal BUILTECH India Pvt. Ltd. (supra)** and **Jaycee Housing Private Limited** and concluded in



paragraph no. 25 of its judgment as under:-

“25. It is also required to be noted that even as per Section 15 of the 2015 Act, all suits and applications including applications under the 1996 Act, relating to a commercial dispute of specified value shall have to be transferred to the Commercial Court. Even as per Section 21 of the 2015 Act, the 2015 Act, shall have overriding effect. It provides that 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.”

28. At this stage, this Court would briefly take note of the judgment cited on behalf of the sole respondent at the Bar. On going through the judgment of the Hon’ble Kerala High Court in the case of **Kasim V.K. (supra)**, it is found that the Hon’ble Kerala High Court has discussed the judgment of the Hon’ble Madhya Pradesh High Court on the same question in the case of **Madhya Pradesh State Electricity Board & Anr. vs. Ansaldo Energia, S.P.A & Anr** reported in **AIR 2008 M.P. 328**. In paragraph no.20 of its judgment, the Hon’ble Kerala High Court has recorded as under:-

“20. In the context of the Kerala Civil Courts Act also such an argument of the learned counsel cannot hold good. Section 2 of the Civil Courts Act provides three category of positions namely, the court of a District Judge, the court of a Subordinate Judge and the court of a Munsiff. Section 3 provides for establishment of district court. Going by Sub-Section (2) of Section 3 of the Civil Courts Act, the



Government shall establish a district court for each district and a Judge shall be appointed to such court. Section 4 provides for appointment of Additional District Judges. Under Sub-Section (1) of Section 4 when the state of business pending before a district court so requires, one or more Additional District Judges may be appointed to that court for such period as it deemed necessary. Sub-section (2) of Section 4 says that an Additional District Judge shall discharge all or any of the functions of the District Judge under this Act in respect of all matters which the District Judge may assign to him, or which under the provision of Section 7 may be instituted before him and in the discharge of those functions he shall exercise the same powers as the District Judge. When such additional district courts are established and Additional District Judges are appointed, Sub-section (2) of Section 4 of the Civil Courts Act empowers the Additional District Judges so appointed with powers to discharge all the functions of the District Judges. It is very specific when it is provided that the Additional District Judge shall exercise the same powers as the District Judge. That is why it is stated that Principal District Judge is only first among equals among the District Judges in a district. In the circumstance, there is no jurisdictional error in Additional District Judges hearing petitions filed under the Act.”

29. It is evident on going through the judgment of the Hon’ble Kerala High Court that Section ‘2’ of the Civil Courts Act provided three categories of positions namely, (i) the Court of a District Judge (ii) the Court of a Subordinate Judge



and (iii) the Court of a Munsif. Keeping in view the said classification of the Courts, it is opined that the Government has to establish a district court for each district and a judge shall be appointed to such Court.

30. By interpreting Section '4' and its various sub-Sections, the Hon'ble Kerala High Court was of the view that the Additional District Judge shall exercise the same power as the District Judge.

31. We regret our inability to agree with the views expressed by the Hon'ble Kerala High Court in the case of **Kasim V.K. (supra)**. At this stage, we would refer the relevant provisions of the Bengal, Agra and Assam Civil Courts Act, 1887 (hereinafter referred to as the 'Act of 1887') that existed at the relevant time. Chapter II of the Act of 1887 with the heading "Constitution of Civil Courts" provides for the Classes of the Courts. Section 3 of the Act of 1887 reads as under:-

"3. Classes of Courts.-There shall be the following classes of Civil Courts under this Act, namely:-

- (1) the Court of the District Judge;
- (2) the Court of the Additional Judge;
- (3) the Court of the ³[Civil Judge (Senior Division)];
- and
- (4) the Court of the ³[Civil Judge (Junior Division)]"

3. Subs by Bihar Amdt. Act, 2013 (Act No.14 of 2014) vide Bihar Gazette (Ex. Ord.) No. 697, dt. 25.08.2014).



32. Since we are concerned with the construction and interpretation of the Notification dated 02.08.2019 and a contention has been raised that the Court of District Judge would take within its compass the Court of Additional District Judges also because they are same in status by virtue of Article 236(a) of the Constitution of India, it would be important to take note of Section '8' of the Act of 1887 hereunder:-

"8. Additional Judges.-(1) When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the ²[State] Government may, ³[having consulted] the High Court ⁴[***], appoint such Additional Judges as may be requisite.

(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and in the discharge of those functions, they shall exercise the same powers as the District Judge."

33. A conjoint reading of Section '3' and Section '8' of the Act of 1887 would leave no room for doubt that the Court of the District Judge and that of the Court of the Additional Judge are two different Courts. There is no iota of doubt that the Court of the Additional Judges have been envisaged for the

2. Subs. by the A.L.O.

3. Subs. by the A.L.O. for "upon the recommendation of."

4."And with the previous sanction of the Governor General in Council" rep. by Act 16 of 1911, S.3.



speedy disposal of the cases pending before any District Judge and once the same is assigned to an Additional Judge by the District Judge, he would discharge his duties in respect of the assigned matters and while doing so, the learned Additional Judges would carry on the functions of a District Judge, they shall exercise the same power as the District Judge.

34. To this Court, it is evident that the Notification dated 02.08.2019, constituting a Commercial Court under Section 3 of the Act of 2015 has kept itself confined to the Court of Civil Judge (Senior Division) and to the Court of District Judge, in all the Districts of the State of Bihar. The Notification dated 02.08.2019 as framed cannot be construed in the manner suggested by learned counsel for the sole respondent.

35. The District Judge (now known as 'Principal District Judge) of a District who has been constituted as a Commercial Court within the meaning of Act of 2015 does not derive any power to further transfer its adjudicatory power as a Commercial Court to the Additional Judges. This was obviously not the position under the Kerala Civil Court Rules.

36. We find no plausible reason to take a different view from that of our own Division Bench in the case of **M/s**



Johnson Paints Pvt. Ltd. (supra).

37. This appeal succeeds on this point alone. The impugned judgment dated 30.07.2024 passed by the learned Additional District & Sessions Judge-VIII, Patna is hereby set aside.

38. In the nature of the issue placed before this Court, we have not entered into the merit of the ‘award’ and the impugned judgment is being set aside on the ground stated above.

39. The records of the learned Court together with the Arbitral records and a copy of the judgment of this Court be sent down to the Court of learned Principle and District Judge, Patna for adjudication within a reasonable period.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

Devendra/harsh

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	15.04.2026
Transmission Date	15.04.2026

