

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
COMMERCIAL APPEAL No.4 of 2025**

**In  
Miscellaneous Appeal No.264 of 2024**

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1. The Secretary, Union of India, Ministry of Railway, Rail Bhawan, New Delhi - 110001.
  2. The Chairman, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi - 110001.
  3. The General Manager, East Central Railway, Hazipur, District Vaishali, Bihar, Pin - 844101.
  4. The Chief Engineer, East Central Railway, Mahendru Ghat, District Patna, Pin - 800004.
  5. The Deputy Chief Engineer, Construction, East Central Railway, Mughalsarai, District Chandauli, Pin - 232101.

... .. Appellants

Versus

Afcon Infrastructure Limited, A Company registered under the Companies Act, 1956 with its registered office situated in the State of Maharashtra at Afcon's House, 16, Shah Industrial Estate, Veera Desai Road, Azad Nagar Post Office P.O. Box No. 11978, Andheri (W), Mumbai - 400053 through its Authorised Signatory G.C. Sinha Roy, AGM (Execution)

... .. Respondent

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**Appearance :**

For the Appellants : Dr. Mourya Vijay Chandra, CGC  
Mr. Arjun Kumar, CGC  
Mr. Barun Kumar Jha, Advocate  
Ms. Preety Ranjan, Advocate  
Mr. Gaurav Govinda, Advocate  
For the Respondent : Mr. Y.V. Giri, Senior Advocate  
Mr. Raju Giri, Senior Advocate  
Mr. Harsh Vardhan, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD  
and  
HONOURABLE MR. JUSTICE KUMAR MANISH  
CAV JUDGMENT  
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 18-06-2026**

This Commercial Appeal arises out of order dated 13.10.2023 passed in Miscellaneous (Arbitration) Case No. 37 of 2018 by learned Additional District Judge-XXVI, Patna.



2. By the order under appeal (hereinafter called the ‘impugned order’), the learned ADJ-XXVI, Patna has been pleased to uphold the award passed by learned Arbitral Tribunal in ARB No. 107 of 2016. The Tribunal has been pleased to award a sum of Rs.1,73,84,96,092/- in favour of the respondent with further award to pay the interest at the rate of 5% per annum from the date of award till the date of realization and also cost of Rs.64,68,740/-. The learned Arbitral Tribunal further directed that in case of failure of the appellants to pay the amount under the impugned award, the appellants would be liable to pay penal interest at the rate of 18% per annum till the date of actual payment and also the cost on the account of expenses will carry interest at the rate of 6% per annum till the date of actual payment. The Tribunal further directed that the bank guarantee will be released within 15 days from the date of the award failing which the bank guarantee will be realized at the interest of 3% per annum till the date of actual communication/release is confirmed.

**Submissions on behalf of the Appellant**

3. Dr. Mourya Vijay Chandra, learned counsel representing the appellants has raised various grounds challenging the impugned award and the order passed by the learned ADJ-XXVI, Patna in Miscellaneous (Arbitration) Case No. 37 of 2018.



4. At the outset, learned counsel for the appellants submits that the learned ADJ has grossly erred in deciding the matter under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996'). It is submitted that in the case of **South Bihar Power Distribution Company Limited Vs. Bhagalpur Electricity Distribution Company Private Limited (Miscellaneous Appeal No. 172 of 2018)**, a learned Single Judge of this Court had occasion to consider as to whether the court of learned Additional District Judge would be a competent court in terms of Section 3 of the Commercial Courts Act, 2015 (hereinafter referred to as the 'Act of 2015') read with notification dated 03.03.2017 issued by the Department of Law, Government of Bihar. The Court held that since the statutory court was already notified by the State Government in exercise of power under Section 3 of the Act of 2015, it was the District Judge posted in the Civil Court at Divisional Headquarter alone and no other District Judge or Additional District Judge could have jurisdiction to hear and pass order on an application under Section 34 of the Act of 1996. It is further submitted that in the case of **M/s Vishal Builtech India Private Limited Vs. The Union of India and Others (MJC No. 1323 of 2018)**, the Hon'ble Division Bench of this Court held that it is the Commercial Court alone who may



hear and dispose of an application under Section 34 of the Act of 2015. It is submitted that both the judgments of this Court were placed before the learned ADJ, Patna which have been taken note of in the impugned order but the learned court took a view that the definition of District Judge as given in Section 2(e) of the Act of 2015 read with Article 236(a) of the Constitution of India could not be brought to the notice of the Hon'ble High Court either in the case of **South Bihar Power Distribution Company Limited (supra)** or in the case of **M/s Vishal Builtech India Pvt. Ltd. (supra)**.

5. It is submitted that very recently, this Court had occasion to consider an identical issue in the case of **M/s Johnson Paints Pvt. Ltd. Vs. M/s Johnson Paints Company (Commercial Appeal No. 8 of 2024)** wherein the Hon'ble Division Bench has taken a view that by virtue of Section 21, which gives overriding effect to the Act of 2015 and also Sections 10 and 15, even in a challenge under Section 34 of the Arbitration Act, though ordinarily the jurisdiction lies before the Principal Civil Court of original jurisdiction in a district, the matter shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdictional over such arbitration where such Commercial Court has been constituted as per Section 10(3)



of the Act of 2015. In the case of **M/s Johnson (supra)**, the Hon'ble Division Bench observed that the learned District Judge erred in making over the case to the learned ADJ-XIV. The case was transferred to the learned District Judge, Patna who had been constituted as Commercial Court and the order passed by the learned ADJ has been held being without jurisdiction and *non est* in law.

6. Learned counsel submits that in the case of **M/s Bihar State Road Development Corporation Ltd. Vs. M/s MG Contractors (P) Ltd (Commercial Appeal No. 10 of 2024)**, this Court again dealt with this issue in its judgment dated 08.04.2026. This Court dealt with the notification dated 03.03.2017 and the notification dated 02.08.2019 issued by the Law Department in exercise of its power under Section 3 of the Act of 2015 (as amended up to date). This Court held that on a conjoint reading of Section 3 and Section 8 of the Bengal, Agra and Assam Civil Courts Act, 1887 (hereinafter referred to as the 'Act of 1887'), the court of the District Judge and the court of the Additional Judge are two different courts. The Courts of Additional Judges have been envisaged for the 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 all the functions of a District Judge, they shall exercise the same power as the District Judge. But having said so, this Court has referred the notifications constituting a Commercial Court under Section 3 of the Act of 2015. It has been held that the notification has got 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 District Judge who has been constituted as a Commercial Court within the meaning of the Act of 2015 does not derive any power to further transfer its adjudicatory power as a Commercial Court to the Additional Judges.

7. It is submitted that in this case, firstly, the learned District Judge, Patna erred in directing the office to transfer the arbitration case to the court of ADJ-XXVI, Patna for hearing and disposal. Thereafter, when the matter came before the learned ADJ, Patna, the learned ADJ, Patna wrongly assumed jurisdiction upon himself to decide the matter. It is submitted that the impugned order passed by the learned ADJ, Patna suffers from jurisdictional error and the impugned order is liable to be set aside on this ground alone. It is submitted that if the appeal succeeds on



this ground alone, then this Court would not be required to go into the other grounds at this stage.

**Submissions on behalf of the Respondent**

8. On the other hand, Mr. Y. V. Giri, learned Senior Counsel representing the respondent, has contested the appeal stating that the judgments of this Court in the case of **South Bihar Power Distribution Company Ltd. (supra)**, **M/s Vishal Builtech India Private Limited (supra)**, **M/s Johnson Paints Private Limited (supra)**, and **M/s Bihar State Road Development Corporation Limited (supra)** are distinguishable. It is submitted that the Act of 2015 is a special statute and in terms of Section 2(1) (e) of this Act, “District Judge” shall have the same meaning as assigned to Clause (a) of Article 236 of the Constitution of India. It is submitted that the expression “District Judge” under Article 236 of the Constitution of India includes the District Judge, Joint District Judge, Assistant District Judge, Chief Judge of a small cause court, Chief Presidency Magistrate, Additional Chief Presidency Magistrate, Sessions Judge, Additional Sessions Judge, and Assistant Sessions Judge.

9. Mr. Giri, Learned Senior Counsel, submits that in case of **M/s Bihar State Road Development Corporation Limited (supra)**, this Court has referred the Act of 1887 and held that the



court of a District Judge and that of Additional District Judge are two different courts, whereas Article 236(a) is otherwise. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Santhosh Maize and Industries Limited versus State of Tamil Nadu and Another** reported in **(2023) 20 SCC 356** to submit that if any statutory rule or statutory notification contains two expressions- one in general words and the other is in special terms, under the rule of interpretation, it has to be understood that the special terms were not meant to be included in the general expression. In other words, in a statute which contains general provision as well as special provision, the latter must prevail.

10. Learned Senior Counsel submits that in the case of **M/s Vishal Bulitech India Private Limited** (supra) and **M/s Johnson Paints Private Limited** (supra), Section 2(1)(e) of the Act of 2015 has not been taken into consideration. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Odisha State Financial Corporation versus Vigyan Chemical Industries and Another** reported in **2025 SCC OnLine SC 1609** to submit that a judgment is an authority only for what it decides. When a judgment fails to address other issues raised, it is said to be '*sub silentio*' and cannot be held as a binding precedent on those undecided issues.



11. It is submitted that an Additional District Judge is competent to decide appeals assigned to him by the District Judge for disposal, and while doing so, he exercises the same power as that of the District Judge. Reliance in this regard has been placed on the judgment of the Hon'ble Calcutta High Court in the case of **West Bengal Housing Infrastructure Development Corporation Vs. M/s Impression & Analogous Cases** reported in **AIR 2026 Calcutta 236** and on the judgment of this Court in the case of **Smt. Narmada Devi vs. State of Bihar and Others** reported in **AIR 1999 Pat 3**. It is submitted that the learned District Judge had transferred the case to the learned Additional District Judge vide order dated 7/8/2023, but the said order was not questioned by the appellant. It is, thus, submitted that in view of the judgment of the Hon'ble Supreme Court in the case of **Ishwar Dutt vs. Land Acquisition Collector and Another** reported in **(2005) 7 SCC 190**, the order has attained finality and the principle of *res judicata* shall apply.

#### Consideration

12. Having heard learned counsel for the parties, we have perused the materials available on the record, including the judgments relied upon by the parties.

13. At this stage, this Court is considering a question as to whether the ADJ Court has jurisdiction to entertain, hear, and



adjudicate the application filed under Section 34 of the Act of 1996. It is not in dispute that an arbitral award may be challenged by making an application under Section 34 of the Act of 1996 on the grounds stated under Clause (a) and Clause (b) of sub-section (2) of Section 34 of the Act of 1996. Sub-section (2-A) of Section 34 provides that an arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the court if the court finds that the award is vitiated by patent illegality appearing on the face of the award. The proviso to sub-section (2-A), however, states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.

14. The Act of 2015 came into force on the 23<sup>rd</sup> day of October 2015. The purpose behind the enactment is to provide for the constitution of Commercial Courts, Commercial Appellate Courts, Commercial Division, and Commercial Appellate Division in the High Court for adjudicating the commercial disputes of specific value and for matters connected therewith or incidental thereto. Clause (c) under Section 2 of the Act of 2015 defines “commercial dispute”. The word “District Judge” is defined under Clause (e) of Section 2. The District Judge has been defined in the following terms:



**“2. Definitions.-** (e) “District Judge” shall have the same meaning as assigned to it in clause (a) of article 236 of the Constitution of India;”

**15.** Section 3 of the Act of 2015 provides for the constitution of Commercial Courts. We reproduce Section 3 hereunder for a ready reference:-

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

<sup>3</sup>[Provided that with respect to the High Courts having ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, 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.]

<sup>4</sup>[(1-A) Notwithstanding anything contained in this Act, the State Government may, after consultation with the concerned High Court, by notification, specify such pecuniary value which shall not be less than three lakh rupees or such higher value, for whole or part of the State, as it may consider necessary.]

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3. Substituted by Act 28 of 2018, S. 6, for the proviso (w.r.e.f. 3-5-2018).

4. Inserted by Act 28 of 2018, S. 6 (w.r.e.f 3-5-2018).



(2) The State Government shall, after consultation with the concerned High Court specify, by notification, the local limits of the area to which the jurisdiction of a Commercial Court shall extend and may, from time to time, increase, reduce or alter such limits.

(3) The <sup>1</sup>[State Government may], with the concurrence of the Chief Justice of the High Court appoint one or more persons having experience in dealing with commercial disputes to be the Judge or Judges, of a <sup>2</sup>[Commercial Court either at the level of District Judge or a court below the level of a District Judge]”

**16.** The jurisdiction of Commercial court is provided under Section 6 which reads as under:-

**“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.

*Explanation.* - For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of sections 16 to 20 of the Code of Civil Procedure, 1908 (5 of 1908).”

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1. Substituted by Act 28 of 2018, S. 6 for “State Government shall” (w.r.e.f 3-5-2018).

2. Substituted by Act 28 of 2018, S. 6 for “Commercial Court, from amongst the cadre of Higher Judicial Service in the State” (w.r.e.f 3-5-2018).



17. Section 10 of the Act of 2015 lays down the provision relating to jurisdiction in respect of arbitration matters. It would be appropriate to reproduce Section 10 hereinafter:-

**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.

**18.** On a bare reading of the aforementioned provisions, it would appear that these special provisions have been brought into existence in order to expedite the resolution of commercial disputes at various levels. Where the subject matter of an arbitration is a commercial dispute of a specific value and such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Act 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. Sub-section (3) of Section 10 very clearly talks of constitution of Commercial Court and it clearly provides that in a district (not being a High Court), all applications or appeals that would ordinarily lie before any Principal Civil Court of Original Jurisdiction shall be filed in and heard and disposed of by the Commercial Court.



19. It is a matter of record which finds discussion in the judgment of this Court in the case of **M/s Bihar State Road Development Corporation** (supra) that in the State of Bihar, Commercial Court has been constituted. Previously, the notification vide Memo No. 1150/J dated 03-03-2017 of the Law Department published in the Bihar Gazette on 7 March, 2017 read as under:-

“बिहार गजट

असाधारण अंक  
बिहार सरकार द्वारा प्रकाशित

16 फाल्गुन 1938 (श०)  
(सं० पटना 189) पटना, मंगलवार, 7 मार्च 2017

विधि विभाग

अधिसूचनाएं

3 मार्च 2017

एस० ओ० 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 3<sup>rd</sup> March 2017

S.O. 11, dated the 7<sup>th</sup> 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.”

**20.** The notification dated 07<sup>th</sup> March, 2017 was, however, superseded by the notification dated 02.08.2019. We reproduce the notification dated 02.08.2019 hereunder:-

“बिहार गजट

असाधारण अंक  
बिहार सरकार द्वारा प्रकाशित

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11 श्रावण 1941 (श०)  
(सं० 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:-

- (a) 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;
- (b) 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
- (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.

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.*”

21. It is evident from the notification published on 02<sup>nd</sup> August, 2019 that the Court of Civil Judge (Senior Division) of each district and the Court of District Judge in each district has been designated as Commercial Court to exercise original



jurisdiction in respect of commercial disputes of the specific value. This Court had occasion to consider Section 2 (1)(e) of the Act of 2015 and Article 236 (a) of the Constitution of India in the case of **M/s Bihar State Road Transport Corporation** (supra). An identical argument was raised by learned counsel for the respondent in the said case which has been taken note of by this Court in paragraph '20' of the judgment. This Court noticed that under the provisions of the Act of 1887, that existed at the relevant time, Section '3' which deals with the constitution of Civil Courts provided the classes of courts and Section '8' provided that when the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the State Government may, having consulted the High Court, appoint such Additional Judges as may be requisite. According to sub-section (2) of Section 8, Additional Judges so appointed shall discharge all the functions of a District Judge, which the District Judge may assign to them, and in the discharging of those functions they shall exercise the same powers as the District Judge.

22. We reproduce Sections 3 and 8 of the Act of 1887 hereunder:-



“**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 <sup>3</sup>[Civil Judge (Senior Division)]; and
- (4) the Court of the <sup>3</sup>[Civil Judge (Junior Division)].

**8. Additional Judges.**—(1) When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the <sup>2</sup>[State] Government may, <sup>5</sup>[having consulted] the High Court <sup>4</sup>[\*\*\*] (4. The words “and with the previous sanction of the G. G. in C.”rep. by Act 16 of 1911, s. 3), 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.”

**23.** In paragraphs ‘33’, ‘34’ and ‘35’ of the judgment in the case of **M/s Bihar State Road Transport Corporation**(supra), this Court has held as under:-

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

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

5. 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.



“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 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.”

**24.** It is evident from the discussions made in the judgment of this court in the case of **M/s Bihar State Road**



**Transport Corporation** (supra) that the contention of the respondent 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 and the definition of the word “District Judge” as contained under Section 2(1)(e) of the Act of 2015 have been duly considered by this Court but did not find favour with it.

25. We, therefore, find that the contention of Mr. YV Giri, learned Senior Counsel, that the judgment of this court in the case of **M/s Bihar State Road Development Corporation Ltd.** (supra) is distinguishable, has no leg to stand.

26. Mr. Giri, learned Senior Counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Santhosh Maize & Industries Ltd.** (supra). Paragraph ‘35’ of the judgment has been referred to which reads as under:-

“35. Law is well settled that if in any statutory rule or statutory notification two expressions are used—one in general words and the other in special terms—under the rules of interpretation, it has to be understood that the special terms were not meant to be included in the general expression; alternatively, it can be said that where a statute contains both a general provision as well as a specific provision, the latter must prevail.”

27. On going through the judgment in case of **Santhosh Maize** (supra), we find that the said matter relates to Tamil Nadu



General Sales Tax Act wherein a question arose as to whether the appellant is entitled to exemption under Schedule III Part B Entry 8 by treating it as same as maize or taxable under Schedule I, Part B, Entry 61 as a distinct product derived from maize. In the said context, the observations were made in paragraph '35'. We are of the considered opinion that the contention of Mr. YV Giri, learned Senior Counsel, based on the observations of the Hon'ble Supreme Court in paragraph '35' of the judgment in case of **Santhosh Maize** (supra) is completely misconceived and misplaced as the same does not arise in this case. In the present case, it is crystal clear that the application under Section 34 of the Act of 1996 is to be heard and disposed of by a Commercial Court and such a Commercial Court is to be constituted by virtue of Section 3 of the Act of 2015. The notifications by which the Commercial Court has been constituted talks of the "court of District Judge". Therefore, the meaning of this notification cannot be extended to mean and understand that it covers the "courts of Additional District Judges", which is a distinct class of court.

28. We further find that the reliance placed on the judgments in the case of **Odisha State Financial Corporation** (supra), **West Bengal Housing Infrastructure Development Corporation** (supra), **Smt. Narmada Devi** (supra) and **Ishwar**



**Dutt** (supra) are equally misconceived and misplaced as those judgments are not dealing with identical issues. In the opinion of this Court, these judgments would not be applicable in the facts of the present case.

**29.** In the case of **Odisha State Financial Corporation** (supra), the Hon'ble Supreme Court was considering a challenge to the judgment of the High Court of Uttarakhand in **Writ Petition (M/S) No. 2314 of 2022**, which was filed by the appellant under Article 227 of the Constitution of India, challenging the civil proceedings and orders passed by the courts below. One of the contentions raised before the Hon'ble Supreme Court was that the execution application filed by Respondent No. 1 was not maintainable before the Civil Court in view of Section 15 (2) of the Act of 2015. Under the said case, the Hon'ble Supreme Court noticed that Respondent No. 1 had instituted a money suit for recovery of dues from Respondent No. 2 on account of default in payment for the supply of goods. Initially, the appellant was not a party to the suit, but subsequently Respondent No. 1 impleaded the appellant, a State Financial Corporation, which took action under Section 29 of the SFC Act, 1951, against Respondent No.2. The suit was decreed on 20.08.2001. Thereafter, Respondent No. 1 filed an application under Section 21 of the Limitation Act, 1963



before the trial court, pending appeal. The trial court allowed the application, holding that the suit against the appellant was deemed to be initiated from the original date of filing the suit. By a subsequent order, it was held by the trial court that the suit was not barred by limitation as against the appellant. The finding of the Appellate Court and the High Court on limitation alone was upheld by the Hon'ble Supreme Court. In this background, the Hon'ble Supreme Court held that the decision of the Court was confined only to the issue of limitation and remained silent on all other material questions placed. The doctrine of '*sub silentio*' has been discussed in the said background. It refers to a situation, where a rule or a principle on a particular point of law is applied or passed upon by a Court silently, without any consideration of the applicable law or without argument, and the judgment is rendered on another question of law or fact. We once again come to a conclusion that the judgment of the Hon'ble Supreme Court in the case of **Odisha State Financial Corporation** (supra) has been rendered in a completely different context and the same would have no application in the matter before this Court.

30. Mr. Y.V. Giri, learned Senior Counsel has placed reliance on an Hon'ble Larger Bench judgment of the Hon'ble Calcutta High Court in the case of **West Bengal Housing**



**Infrastructure Development Corporation** (Supra). Perusal of the said judgment would show that the short question which fell for consideration before the Larger Bench was whether the court of learned Additional District Judge is a court within the meaning of Section 2(1)(e) of the Act of 1996. The provisions of the Act of 2015 did not come up for consideration before the Larger Bench of the Hon'ble Calcutta High Court. We are afraid that the judgment of the Hon'ble Calcutta High Court, by no means, may be cited to submit that the court of Additional District Judge would be a Commercial Court within the meaning of Section 3 of the Act of 2015 read with notification dated 02.08.2019.

**31.** Reliance placed on the judgment of a learned Single Judge of this Court in case of **Smt. Narmada Devi**(supra) is equally misconceived and misplaced. The said judgment was rendered in the year 1999 when the Act of 2015 had not come into existence, therefore, there is no discussion on the provision of the Act of 2015.

**32.** Equally misconceived is the reliance placed on the judgment of the Hon'ble Supreme Court in case of **Ishwar Dutt** (supra). In the said case, the Hon'ble Supreme Court was considering a challenge to the order passed by the High Court of Himachal Pradesh dismissing claim of the appellant-claimant for



interest at the rate of 12% granted by an earlier order of the Hon'ble Division Bench of the same High Court in CWP No. 510 of 1985 dated 09.09.1985 on equitable consideration for depriving them of their lands without taking proceedings under the Land Acquisition Act and for payment of compensation. The Hon'ble Supreme Court found that there had been earlier round of litigation in the matter of fixation of the compensation amount and the High Court had awarded payment of interest only with effect from 07.05.1989 or with effect from the date of publication of the notification under Section 4(1) of the Act and not from 18.12.1968. The Hon'ble Supreme Court found that the award of the Land Acquisition Officer directing payment of additional interest had attained finality. In that context, it was held that the reference court or for that matter, the High Court exercising its appellate jurisdiction under Section 54 of the Act could not have dealt with the said question. The principle of *res judicata* is a species of the principle of estoppel and when a proceeding based on a particular cause of action has attained finality, the principle of *res judicata* shall fully apply.

**33.** This Court finds that the question relating to jurisdiction of the Additional District Judge-XXVI, Patna to deal with the present case under Section 34 of the Act of 1996 as a



Commercial Court was raised before the learned Additional District Judge Patna, the Division Bench judgments of this Court were brought to the notice of the learned Presiding Officer who took note of those judgments but then went on to take a view that in the case of **South Bihar Power Distribution Company Limited** (supra) or **M/s Vishal Builtech India Pvt. Ltd** (supra), the definition of “District Judge” as given in Section 2(e) of the Act of 2015 read with Article 236(a) of the Constitution of India could not be brought to the notice of this Court. It is evident that the learned Additional District Judge-XXVI, Patna rejected the plea of the appellant as regards his jurisdiction and proceeded to decide the matter taking upon himself the jurisdiction of the Commercial Court by ignoring the judgments of the High Court. In such circumstances, plea of *res judicata* cannot succeed. The learned Additional District Judge-XXVI, Patna, was bound by the judgment of the Hon'ble High Court in the case of **South Bihar Power Distribution Company**(supra) and **M/s Vishal** (supra) but by committing an act of judicial indiscipline, the Presiding Officer did not abide by the judgment of this Court.

34. In result, we find no merit in the contentions advanced on behalf of the respondent. The impugned order dated 13.10.2023 passed by the learned Additional District Judge-XXVI,



Patna, in Miscellaneous (Arbitration) Case No. 37 of 2018 is hereby set aside.

**35.** The records of the Miscellaneous Arbitration Case are transferred to the court of Principal District Judge, Patna, who is the Commercial Court constituted under the Act of 2015. The learned Commercial Court, Patna, shall consider the Miscellaneous Arbitration Case on its own merit after giving appropriate opportunity of hearing to the parties.

**36.** We have confined our consideration to the limited issue of jurisdiction and have not gone into the other grounds. Thus, all other contentions are left open to the parties.

**37.** This appeal is allowed to the extent indicated hereinabove.

**(Rajeev Ranjan Prasad, J)**

**(Kumar Manish, J)**

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AFR/NAFR	AFR
CAV DATE	16.06.2026
Uploading Date	19.06.2026
Transmission Date	

