

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

A.P.O. No. 41 of 2024

With

AP/850/2022

IA No GA/2/2023

GA/3/2024

GA/4/2024

GA/5/2025

GA/6/2025

GA/7/2025

Kedarnath Tradecomm LLP & Ors.

Vs.

Mayank Agarwal & Ors.

With

A.P.O. No. 42 of 2024

With

AP/851/2022

IA No GA/2/2023

GA/3/2024

GA/4/2024

GA/5/2025

GA/6/2025

GA/7/2025

Omkar Tradecomm LLP & Ors.

Vs.

Mayank Agarwal & Ors.

With

OCOT/3/2024

Omkar Tradecomm LLP & Ors.

Vs.

Mayank Agarwal & Ors.

With

OCOT/4/2024

Kedarnath Tradecomm LLP & Ors.

Vs.

Mayank Agarwal & Ors.

With

OCOT/5/2024

Kedarnath Tradecomm LLP & Ors.

Vs.

Mayank Agarwal & Ors.

For the Appellant
In APO/42/2024 &
OCOT/3/2024

: Mr. Dhruba Ghosh, Sr. Adv.
Mr. Ankan Rai, Adv.
Ms. Ajeya Chowdhury, Adv.
Mr. Ayan Rai, Adv.
Mr. Ratnesh Kr. Rai, Adv.
Ms. Nabanita Manna, Adv.

For the Appellant in
OCOT/4/2025

: Mr. S.N. Mookherjee, Sr. Adv.
Mr. Yash Singhi, Adv.
Mr. Dhruv Chada, Adv.
Mr. Ratnesh Kr. Rai, Adv.

For the Respondent Nos 1 & 2 : Mr. Sakya Sen, Sr. Adv.
In APO/42/2024 Mr. Chayan Gupta, Adv.
& OCOT/3/2024 Mr. Tanay Agarwal, Adv
Mr. Chitresh Saraogi, Adv.
Ms. Payel Mishra, Adv

For the Respondent Nos 1 & 2 : Mr. Krishnaraj Thaker, Sr. Adv.
In APO/41/2024, Ms. Suchismita Ghosh Chatterjee, Adv.
OCOT/4/2024 Mr. Tanay Agarwal, Adv
& OCOT/5/2024 Mr. Chitresh Saraogi, Adv.
Ms. Payel Mishra, Adv.

Hearing Concluded on : July 1, 2026
Judgement on : July 14, 2026

DEBANGSU BASAK, J.:-

1. Two appeals and three cross objections have been taken up for analogous hearing as they involve similar issues are between the same natural persons and emanate out of two proceedings in respect of two partnership firms where, the natural persons are the partners.
2. Two partnership firms and their partners are involved in the two appeals and the three cross objections. The two partnership firms are Kedarnath Tradecomm LLP and Omkar Tradecomm LLP.
3. Kedarnath Tradecomm LLP and some of its partners have filed APO No. 41 of 2024 assailing the judgment and order dated June 15, 2023 passed in AP No. 850 of 2022.

4. Omkar Tradecomm LLP and some of its partners have filed APO No. 42 of 2024 assailing the judgment and order dated June 15, 2023 passed in AP No. 851 of 2022.
5. The respondent Nos. 1 and 2 in APO No. 42 of 2024 have filed a cross objection being OCOT 3 of 2024 in such appeal.
6. Respondent No. 2 in APO No. 41 of 2024 has filed a cross objection in such appeal.
7. The respondent No. 1 in APO No. 41 of 2024 has filed a cross objection being OCOT 5 of 2024 in the appeal.
8. Two proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 against two partnership firms have resulted in two impugned judgments and orders which are the subject matter of the two appeals and the three cross objections.
9. Some of the partners along with Kedarnath Tradecomm LLP had filed a petition under Section 9 of the Act of 1996 which was registered as AP No. 850 of 2022. Some of the partners along with the partnership firm Omkar Tradecomm LLP had filed a petition under Section 9 of the Act of 1996 being AP No. 851 of 2022.
10. Petitioners in A.P No. 850 of 2022 and AP No. 851 of 2022 had filed those proceedings on December 20, 2022 in the non-Commercial Division of this Hon'ble Court.

11. By two several judgments and orders both dated June 15, 2023, learned Single Judge has disposed of both AP No. 850 of 2022 and AP No. 851 of 2022.

12. By both the impugned judgments and orders, learned Single Judge has vacated the ad interim order of injunction and dismissed the petition under Section 9 of the Act of 1996 with costs on the ground of the petitioners in the Section 9 petition having suppressed material facts.

13. Both the proceedings under Section 9 of the Act of 1996 involve disputes between partners of two limited liability partnership firms. The subject matter of the two proceedings under Section 9 of the Act of 1996 falls within the meaning of commercial disputes as defined in Section 2(1)(c)(xv) of the Commercial Courts Act, 2015.

14. Respondents in the two appeals and the cross objectors have taken up preliminary point of maintainability of the proceedings before the non-Commercial Division. Since the preliminary objection is the maintainability of the proceeding has been taken up, we propose to dispose of the same before entering into the merits of the appeal.

15. Learned Senior Advocate appearing for the appellants has referred to the timeline of the events occurring subsequent to the

filing of the petition under Section 9 of the Act of 1996. He has pointed out that, on December 20, 2022, the appellants had filed under Section 9 of the Act of 1996 in the non-Commercial Division. On such date the learned Single Judge had the determination to take up commercial matters.

16. Learned Senior Advocate appearing for the appellants has contended that on January 30, 2023, the learned Single Judge passed the ex parte order. On such date learned Single Judge had the determination to take up commercial matters. On February 20, 2023, the respondent nos. 1 and 2 had filed the application for vacating the order dated January 30, 2023 in the non-Commercial Division. On such date, learned Single Judge had the determination to take up the commercial matters.

17. Learned Senior Advocate appearing for the appellants has pointed out that on February 27, 2023 when, learned Single Judge passed the orders for treating application for vacating as the affidavit-in-opposition under Section 9 of the Act of 1996 and, when final hearing took place, learned Single Judge had determination to take up commercial matters.

18. Learned Senior Advocate appearing for the appellants has contended that, on June 15, 2023 when the learned Single Judge

passed the judgment and order impugned herein, the learned Single Judge did not have determination to take up matters pertaining to either commercial division or non-commercial division.

19. Learned Senior Advocate appearing for the appellants has contended that, the order dated June 15, 2023 passed by the learned Single Judge, in view of Sections 7 and 10 of the Act of 2015 is a nullity. In support of such contention, learned Senior Advocate appearing for the appellants has relied upon **2026: CHC – 03:120-DB (Starlift Services Pvt Ltd Vs. Shyama Prasad Mookerjee Port, Kolkata)** and **2026 SCC OnLine Cal 6425 (Bharat Heavy Electricals Limited Vs. Optimal Power Synergy India Pvt Ltd.)**. He has contended that, the impugned order was passed before coming into effect the notification dated November 11, 2025.

20. Learned Senior Advocate appearing for the appellants has contended that, the ex parte ad interim order dated January 30, 2023 was not a nullity in view of the learned Judge passing such order had the determination for commercial matter on that date. He has relied upon the decision of the Supreme Court dated April 20, 2026 in **Civil Appeal No. 006873 of 2026 [SLP (C) No. 811 of 2026 (Shri Balaji Industrial Engineering Ltd vs. Steel Authority of India Ltd.)**.

21. Learned Senior Advocate appearing for the respondents in the appeals has contended that, the disputes between the parties emanate out of the supplementary agreements to a LLP partnership agreement dated March 19, 2021. He has contended that, the disputes between the parties are commercial disputes as defined under Section 2(1)(c)(xv) of the Act of 2015.

22. Learned Senior Advocate appearing for the respondents in the appeals has contended that, the appeal is not maintainable in the non-commercial division in view of the lack of subject matter jurisdiction. He has pointed out that the Specified Value of the Commercial Division of this Hon'ble High Court was notified on November 15, 2018 and thereafter on March 20, 2020.

23. Learned Senior Advocate appearing for the respondents has contended that, the two proceedings under Section 9 of the Act of Arbitration and Conciliation Act, 1996 filed by the appellants being AP No. 850 of 2022 and AP No. 851 of 2022 were not filed in the Commercial Division of the High Court. The appellants had filed the petitions under Section 9 of the Act of 1996 in the non-Commercial Division notwithstanding the subject matter of the two petitions being Commercial disputes within meaning of the Act of 2015 and value of the reliefs being in excess of the prescribed Specified Value.

According to him, since the filing itself was bad in law, such defect cannot be cured as, the Court before which the proceeding were filed had, lacked subject matter jurisdiction.

24. Elaborating on his contention of lack of subject matter jurisdiction, learned Senior Advocate appearing for the respondents in the appeal referred to Section 15 of the Act of 2015. He has contended that, the transfer of pending proceedings provided under Section 15 of the Act of 2015 cannot be invoked for transfer of proceedings instituted after the notification prescribing the Specified Value. He has referred to Rule 4(2) of the Practice Directions framed by the High Court pursuant to Section 18 of the Act of 2015 in this regard. He has contended that such Practice Directions have binding legal force.

25. Learned Senior Advocate appearing for the respondents has contended that, the principles of Rule 9(1) of the Practice Directions would apply to arbitration applications. He has referred to Rule 9(4) of the Practice Directions and contended that, if proceeding involving Commercial disputes were wrongly filed in the non-Commercial Division, the Court would return the pleadings if an application for the same was made or reject the application if no application for return of plaint was made. He has referred to **2021 SCC OnLine Cal**

1457 (Laxmi Polyfab Pvt Ltd. Vs. Eden Reality Ventures Pvt. Ltd. & Anr) in this regard.

26. Learned Senior Advocate appearing for the respondents has contended that, on a combined reading of the Act of 2015 and the Practice Directions introduced thereunder, the appeal has to be returned to the appellants for filing in the Commercial Division. However, the same would not cure the defect of wrong filing of the Section 9 proceedings at the first instance. Consequently, the appeal has to be dismissed.

27. Learned Senior Advocate appearing for the respondents has contended that, since the proceedings under Section 9 of the Act of 1996 were filed after the notification prescribing the Specified Value, there is no provision of transfer of the same. He has contended that, principles of Order VII Rule 10 of the Code of Civil Procedure, 1908 cannot be applied since, the Court in which the proceedings were filed did not have subject matter jurisdiction to rule on the same. He has contended that, there is a difference between return and transfer of proceedings. He has referred to **Lakshmi Polyfab Pvt Ltd. (supra)** in this regard.

28. Learned Senior Advocate appearing for the respondents has submitted that, the appellants secured ex parte ad interim order on

January 30, 2023. Respondents had applied for vacating of the ex parte ad interim order by way of GA IA No. 1 of 2021. In such application, respondents had contended that the disputes were commercial disputes within the meaning of the Act of 2015 and that, Section 9 proceedings were not maintainable in non-Commercial Division. He has pointed out that, in the affidavit-in-opposition the appellants had denied such contention of the respondents. According to him, therefore, the appellants had been put on notice with regard to the issue of lack of jurisdiction. Despite the appellants being put on notice, the appellants had proceeded with the matter before a Court which did not have subject matter jurisdiction over the same.

29. Learned Senior Advocate appearing for the respondents has contended that, the learned Trial Judge has dismissed Section 9 proceedings with costs after coming to the conclusion that the appellants had relied upon forged and fabricated documents and had secured the ex parte ad interim order by misleading the Court.

30. Learned Senior Advocate appearing for the respondents has contended that, none of the judgments relied upon on behalf of the appellants are applicable in the facts and circumstances of the present case. In such judgments, the original proceeding was filed

before the notification of the Specified Value. Therefore, such proceedings were capable of being transferred under Section 15 of the Act of 2015 whereas, in the instant case the proceedings under Section 9 of the Act of 1996 could not have been transferred.

31. Appellants had filed two separate petitions under Section 9 of the Act of 1996 being AP No. 850 of 2022 and AP No. 851 of 2022 in the Non-commercial Division of the Hon'ble High Court at Calcutta on December 20, 2022.

32. Learned Single Judge had passed an ex parte order dated January 30, 2023 in both the proceedings. The respondents Nos. 1 and 2 had filed an application dated February 2, 2023 for vacating of the ex parte ad interim order dated January 30, 2023.

33. The two petitions under Section 9 of the Act of 1996 as well as the two vacating applications had been heard by the learned Single Judge and hearing in respect thereof were concluded with the judgment therein being reserved on May 11, 2023.

34. Between the date when, the petitions under Section 9 of the Act of 1996 had been filed that is on December 20, 2022 and the date of the judgments being reserved on May 11, 2023, the learned Single Judge had determination to take up commercial matters.

35. Learned Single Judge had passed the impugned judgment and order on June 15, 2023 dismissing the petitions under Section 9 of the Act of 1996 after holding that the petitioners therein were guilty of relying upon forged and fabricated documents to obtain the interim order. Learned Single Judge has also awarded costs.

36. On the date when, the impugned judgment and order was pronounced by the learned Single Judge, the Court did not have determination over commercial matters.

37. The contesting parties in the two appeals and the three cross objections have in unison contended that, the impugned judgment and order dated June 15, 2023 is a nullity in view of lack of jurisdiction. Divergence, however, between the contesting parties is with regard to the validity and legality of the institution of the proceedings under Section 9 of the Act of 1996 as also the orders that had been passed from January 30, 2023 till May 11, 2023.

38. According to the appellants, since for the period between December 20, 2022 when, the two petitions under Section 9 of the Act of 1996 were filed and May 11, 2023 when the judgments in the two petitions were reserved, the learned Single Judge had determination over commercial matters, therefore, filing in the Non-Commercial Division was immaterial in view of the ratio laid down

Shri Balaji Industrial Engineering Ltd. (supra). Such situation had continued till May 11, 2023 and therefore, there was no defect either in filing or in the orders passed by the learned Trial Judge till May 11, 2023.

39. According to the respondents Nos. 1 and 2, since, the filing of the proceedings under Section 9 of the Act of 1996 were made before the Non-Commercial Division and since the Non-Commercial Division of the High Court did not have subject matter jurisdiction, filing of the proceedings, all consequential steps taken including the orders passed therein are a nullity.

40. Parties have agreed that the subject matter of the two petitions under Section 9 of the Act of 1996 was the partnership firms and that subject matter fell under Section 2(1)(c)(xv) of the Act of 2015. Independent of such agreement, we find that the subject matter of the disputes and the value of such disputes involved in the petitions under Section 9 of the Act of 1996, had fallen within the ambit of the Commercial Division of this Hon'ble Court.

41. After the Act of 2015 had come into force, the first notification constituting the Commercial Division and Commercial Appellate Division of the High Court at Calcutta, was issued on July 16, 2016.

42. State Government has issued Notification dated March 20, 2020 under Section 3(1) of the Act of 1996 laying down the pecuniary jurisdiction of the Commercial Division of the Hon'ble Court to be an amount exceeding Rs. 10 lakhs.

43. Commercial Courts Act, 2015 has come into force on October 23, 2015. Statement of objects and reasons of the Act of 2015 has observed that, there was a proposal to provide speedy disposal of high value commercial disputes. Government has been considering such proposal for some time. Statement of objects and reason has noted that, high value commercial dispute involve complex facts and questions of law. Government has felt the need to provide an independent mechanism for their earlier proposal. Statement of objects and reason has also noted that early resolution of commercial dispute shall create a positive image to the investor world about the independent and responsive Indian Legal System.

44. The Act of 2015 has seven Chapters. Chapter I has the short title, extent and the definitions of the Act of 2015. Chapter II, has dealt with Commercial Court, Commercial Appellate Court, Commercial Divisions and Commercial Appellate Division. Under the scheme of the Act of 2015, the State Government was empowered to constitute Commercial Courts after consultation with the High Court

as deemed necessary for the purpose of exercising jurisdiction and powers conferred under those Courts under the Act of 2015. Section 3A has allowed designation of Commercial Appellate Courts while Section 4 has dealt with constitution of the Commercial Division of the High Court and Section 5 relates to the constitution of the Commercial Appellate Division.

45. Section 4 of the Act of 2015, has laid down that, in all High Courts having Ordinary Original Civil Jurisdiction, the Chief Justice of the High Court may by order constituting Commercial Division having one or more Benches constituting of Single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Act. Powers of nomination for such Judges to be presided over the Commercial Division has been given to the Chief Justice of the High Court under Section 4(2) of the Act of 2015.

46. Under Section 5 of the Act of 2015, after issuance of the Notification under Section 3(1) or Order under Section 4(1), the Chief Justice of the concerned High Court shall by order constitute a Commercial Appellate Division having one or more Division Benches for the purpose of exercising jurisdiction and powers conferred on it by the Court.

47. Section 6 of the Act of 2015 has laid down the jurisdiction of the Commercial Court while, Section 7 has dealt with the jurisdiction of the Commercial Division of the High Court.

48. Section 7 of the Act of 2015 has prescribed the jurisdiction of the Commercial Division of the High Court. It has prescribed that all suit and applications relating to commercial dispute of a Specified Value filed in the High Court having Ordinary Original Civil Jurisdiction shall be heard and disposed of by the Commercial Division of the High Court. The proviso under Section 7 are not attracted in the facts and circumstances of the present case.

49. Section 10 of the Act of 2015 has delineated the jurisdiction in respect of arbitration matters for a Commercial Court as well as Commercial Division. It has specified that, where the subject matter of an arbitration is a commercial dispute of a Specified Value and 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 filed in the Original Side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted by such High Court.

50. Reading Section 7 and 10 of the Act of 2015, in our view, the Act of 2015 has prescribed that, the jurisdiction of the Commercial Division when constituted shall be to hear and decide all suits and applications including arbitration proceedings of Specified Value, involving a commercial dispute within the meaning of the Act of 2015.

51. In other words, few conditions have to be satisfied for the Commercial Division to assume jurisdiction for a suit or an arbitration proceedings. Since, the appeal involves an order passed under Section 9 of the Act of 1996 in a proceedings which is not an international commercial arbitration, we are confining ourselves to the provisions of law in this regard.

52. Sections 7 and 10 of the Act of 2015 have prescribed that, a commercial dispute of a Specified Value must be heard and decided by the Commercial Division when constituted. In the facts and circumstances of the present case, the Commercial Division of the High Court was constituted on July 16, 2016. Pecuniary jurisdiction which was initially prescribed on November 15, 2018 subsequently has been modified on March 20, 2020.

53. It is accepted at the Bar that, the proceedings under Section 9 of the Act of 1996 in which, the impugned judgment and order was

passed involves a commercial dispute within the meaning of the Act of 2015. The proceeding under Section 9 of the Act of 2015 was instituted in 2022 much after the constitution of the Commercial Division and the prescription of the pecuniary jurisdiction and its amendment thereof.

54. On the date, when, the proceedings under Section 9 of the Act of 2015 were instituted before the High Court, in the non-Commercial Division, such Court did not have jurisdiction to receive the same. Orders passed in such proceedings, would therefore, necessarily be a nullity since, the Court did not have jurisdiction on the date, when, such proceedings were filed before it.

55. This Hon'ble Court has Ordinary Original Civil Jurisdiction. On a harmonious reading of the provisions of the Sections 4 to 11 of the Act of 2015, it can be said that, on the constitution of the Commercial Division of the High Court, all suits and proceedings relating to commercial disputes of the Specified Value have to be heard and decided by the Commercial Division.

56. Various issues including issue as to the nature of the provisions of Section 12A of the Act of 2015 had fallen for consideration in ***Laxmi Polyfab (supra). Laxmi Polyfab (supra)*** has held Section 12A of the Act of 2015 to be mandatory. It had

noted that, suits involving commercial disputes of the Specified Value filed subsequent to the Notification dated March 20, 2020 was a nullity and was required to be returned under Order VII Rule 10 of the Code of Civil Procedure, 1908.

57. *Laxmi Polyfab (supra)* has been considered in **2022 Volume 10 Supreme Court Cases 1 (Patil Automation Pvt. Ltd. vs. Rakheja Engineers Private Limited). Patil Automation (supra)** has held that Section 12A of the Act of 2015 to be mandatory. It has held that, suits filed in non-compliance with Section 12A of the Act of 2015 either on or after August 22, 2022 or after the jurisdictional High Court declared Section 12A as mandatory to be barred by law under Order VII Rule 11 of the Code of Civil Procedure, 1908.

58. *Patil Automation (supra)* has been considered by the Supreme Court in **2025 Volume 9 Supreme Court Cases 424 (Dhanbad Fuels Private Limited Vs. Union of India and Another). Dhanbad Fuels (supra)** has held that, Section 12A of the Act of 2015 is mandatory and that, commercial suits filed in non-compliance of Section 12A of the Act of 2015 are to be dismissed.

59. Section 12A of the Act of 2015 relates to a suit involving a commercial dispute of the specified value and it requires pre-institution mediation when, the plaintiff in such suit is not seeking

urgent interim relief. Once it is held that, Section 12A of the Act of 2015 is mandatory, it necessarily follows that, the provisions of Section 6, 7, 10 are also mandatory. **Patil Automation (supra)** after having held that, Section 12A of the Act of 2015 was mandatory directed that plaint filed in the Commercial Division to be evaluated on the basis of the date of filing and compliance of Section 12A of the Act of 2015.

60. Filing of the suits in Commercial Division is governed by Section 7 of the Act of 2015. Section 7 also governs the filing of applications relating to commercial dispute of a Specified Value. Section 7 of the Act of 2015, therefore, should not be dissected to mean that, so far as filing of suits are concerned, suits involving commercial dispute of a Specified Value must be filed in the Commercial Division while, an application under the Act of 1996 relating to a commercial dispute of a Specified Value can be filed either in the non-Commercial Division or in the Commercial Division. Such an interpretation would be contrary to the express provisions of Section 7 of the Act of 2015 as also the ratio of **Patil Automation (supra)** and **Dhanbad Fuels (supra)**.

61. A Commercial Division constituted under the provisions of the Act of 2015 has the sole jurisdiction to hear and decide suits and

other proceedings involving commercial dispute of the Specified Value. The Act of 2015 has amended various provisions of the Code of Civil Procedure, 1908. Such amended provisions of the Code of Civil Procedure, 1908 are tools exclusively available to a Commercial Division or the Commercial Court or the Commercial Appellate Division to expedite the disposal of the proceeding involving a commercial dispute. The Act of 2015 has also introduced measures of expedition, such as time management for hearing, petition for passing summary judgment and limiting the right of appeal. These provisions are unavailable to Courts other than Commercial Division, Commercial Court and the Commercial Appellate Division.

62. All Courts apart from the Commercial Division constituted under the Act of 2015 have lost jurisdiction to receive, try and entertain suits or proceedings involving commercial disputes of the Specified Value on the date of constitution of the Commercial Division. Any other interpretation could be misreading of the provisions of the Act of 2015.

63. Same Judge theory as enunciated by the Supreme Court in ***Shri Balaji Industrial Engineering Ltd (supra)*** has no manner of application in the facts and circumstances of the present case. In ***Shri Balaji Industrial Engineering Ltd (supra)*** the proceedings

were duly instituted and were pending on the date when, the Act of 2015 came into operation. In the present case, Section 9 proceedings were filed before a Court which did not have jurisdiction on the date of its filing.

64. In ***Starlift Services Pvt Ltd (supra)***, we have considered the nature of proceedings involved therein, the transfer architecture under Section 15 of the Act of 2015, jurisdiction of the Commercial Division, Specified Value and the Practice Directions of 2021 amongst others.

65. The High Court, in exercise of its powers under Section 18 of the Act of 2015, has issued the High Court at Calcutta, Commercial Courts Practice Direction, 2021. Such Practice Directions in Clause 1.3 has specified that, the Practice Directions were to supplement the provisions of Chapter II of the Act of 2015 and the Code of Civil Procedure, 1908 insofar as such provisions apply to the hearing of commercial disputes of or above the value as notified by the State Government from time to time.

66. The Practice Directions of 2021 in Part IV has dealt with institutions of suit applications and proceedings including those improperly filed. It has laid down that, the High Court shall not subsequent to the date of issuance of the notification of the

pecuniary value receive, try or determine any suit involving a commercial dispute of or above the Specified Value if the same is filed in the Ordinary Original Civil Jurisdiction. In the event, any such suit or proceeding is filed, in breach of the notification, then, the Court shall return the plaint and the application on the principles of Order VII Rule 10 of the Code of Civil Procedure, 1908. In the event, the suit or proceedings is barred and if neither party applies for return, the Court shall reject the plaint or the application as the case may be.

67. In the facts and circumstances of the present case, the Court passing the impugned judgment and order, did not have the jurisdiction to receive the proceedings under Section 9 of the Act of 1996. Parties could have applied for return of such proceedings to be filed before the appropriate forum. Parties had not done so. Failure of the parties to do so does not vest jurisdiction on the Court which it did not possess. Consent of the parties cannot confer jurisdiction upon a Court which it does not otherwise possess.

68. In the facts and circumstances of the present case, the respondents have taken the point of lack of jurisdiction in its affidavit-in-opposition. The appellants did not apply for return of the proceedings.

69. *Bharat Heavy Electricals Limited (supra)* has considered the issue of assumption of jurisdiction of Non-Commercial Court over a commercial dispute of a Specified Value. In the facts of that case, a challenge under Section 34 of the Act of 1996 was filed in the Non-Commercial Division. It has considered *Shri Balaji Industrial Engineering Ltd (supra)*. It has expressed the view that, *Shri Balaji Industrial Engineering Ltd (supra)* cannot be read to permit a Commercial Court to render a decision in respect of a Non-Commercial dispute without being the designated Court under Section 4(2) of the Act of 2015, in respect of matters filed subsequent to the constitution of the Commercial Division of the High Court.

70. The Trial Judge had lacked jurisdiction to receive and try the two petitions under Section 9 of the Act of 1996 proceedings. Interim orders passed in these two proceedings have merged with the final order impugned herein. As noted above, the appellants did not seek transfer to the two proceedings.

71. In view of the discussions above, the impugned judgment and order is set aside on the ground of lack of jurisdiction to receive and decide the two petitions under Section 9 of the Act of 1996 and to pass the impugned judgment and order.

72. A.P.O. No. 41 of 2024 and A.P.O. No. 42 of 2024 with OCOT 3 of 2024, OCOT 4 of 2024, OCOT 5 of 2024 along with all connected applications are disposed of without any order as to costs. AP/850/2022 and AP/851/2022 are dismissed.

[DEBANGSU BASAK, J.]

73. I agree.

[MD. SHABBAR RASHIDI, J.]