IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

Present:
The Hon'ble Justice Ananya Bandyopadhyay

EC 351 Of 2022

IA No: GA/1/2026

CITYSCAPE DEVELOPERS PRIVATE LIMITED
-Vs-
AKLA BUILDERS PRIVATE LIMITED AND ANR.

For the Decree Holder : Mr. Ritoban Sarkar, Adv.
Mr. Samriddha Sen, Adv.
Mr. Souradeep Banerjee, Adv.

Special Officer : Mr. Aniruddha Singh, Adv.

Judgment on : 12.10.2026

Ananya Bandyopadhyay, J.:-

1. The instant application, designated as E.C. No. 351 of 2022, has been presented on behalf of the Decree-Holder seeking execution and realization of rights conferred under a compromise decree dated 9th September, 2014. Proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 (A.P. No. 525 of 2008) generated this decree, pursuant to an order of this Court dated 30th June, 2014.
2. Written Terms of Settlement dated 21st June, 2014 formally structured and recorded the rights and financial obligations of the litigating parties. Comprehensive redevelopment, leasehold rights, and allotment of designated commercial spaces within the New Alipore Market Complex (NAM Complex) constitute the subject matter.
3. In accordance with the decreed settlement, Judgment-Debtor No.2 (Banani Properties Private Limited) received an allotment of super built-up office space

comprising 17,590 square feet on the entire 4th Floor (excluding common areas) of Phase-II of the NAM Complex, subject to the discharge of a balance consideration amount of Rs.1,00,00,000/- (Rupees One Crore), along with arrears accrued towards lease rent, maintenance, and electricity consumption. Default or delay in liquidating the balance sum explicitly mandates interest at the rate of 18% per annum from the due date until full payment.

4. Partial release of Rs.20,00,000/- (Rupees Twenty Lakhs) by the Judgment-Debtors left an outstanding principal decretal balance of Rs.80,00,000/- (Rupees Eighty Lakhs) alongside accrued interest.
5. Transmission of the present execution proceeding, initiated in the Ordinary Original Civil Division, to the Commercial Division under Section 15 of the Commercial Courts Act, 2015 presents a preliminary issue of significance for determination.
6. Resisting the transmission of the execution petition to the Commercial Division, Learned Counsel appearing on behalf of the Decree-Holder submits a detailed note of arguments and relies upon an array of judicial pronouncements.
7. Under Section 2(1)(c) of the Commercial Courts Act, 2015, an active "dispute" constitutes an indispensable condition precedent to invoke the jurisdiction of the Commercial Division.
8. Elaborating on the concept of a "dispute", reliance upon *Canara Bank v. National Thermal Power Corporation*, (2001) 1 SCC 43, and *Techi Tagi Tara v. Rajendra Singh Bhandara*, (2018) 11 SCC 734 (para 21), asserts that a dispute requires positive assertions of a claim on one side and denial on the other. Definition provided in Black's Law Dictionary supports this contention.

9. Execution of the Terms of Settlement and passing of the compromise decree on 9th September, 2014 explicitly recording under Clause 20 that *"save as hereinbefore stated, there remains no dispute or claim of any nature whatsoever by and between the parties"* - extinguished controversy, leaving no live dispute.
10. Reliance upon *Beta Exim Logistics v. Central Railside Warehouse Co.*, 2023 SCC OnLine Ker 1392 (paras 13, 14, 15 and 17), *Shafji Augustine v. Chitra Woods Manor Owners Welfare Association*, 2021 SCC OnLine Ker 9840 (paras 22–27), and an unreported decision of this Court in *India Media Services Pvt. Ltd. v. Indian Express Newspaper (Bombay) Ltd.* (APOT/164/2021 in CS/190/2017) anchors the argument.
11. Reliance was placed upon *Lokanathan V. Narayanaswamy (2015 SCC OnLine Mad 650)* to assert that merger of the settlement terms into the consent decree deprives them of independent existence, preventing survival of a dispute unless a competent court sets aside the compromise decree.
12. An execution petition does not constitute an independent suit *de hors* the compromise decree.
13. Proviso to Section 15(2) of the Commercial Courts Act, 2015 bars transfer of any suit or application if final judgment was reserved or passed prior to the constitution of the Commercial Court.
14. Passing of the compromise decree occurred on 9th September, 2014, whereas establishment of the Commercial Division of this Court occurred subsequently by notification dated 16th July, 2016.
15. *Southeastern Coalfields Limited v. M/s. Tirupathi Construction*, 2018 SCC OnLine Chh 63 (paras 2–5), supports the proposition that the legislature did not contemplate transfer of execution applications pertaining to pre-2015 decrees.

16. *Canara Bank* (2001 1 SCC 43) and *Techi Tagi Tara* (2018 11 SCC 734) affirm that a "dispute" involves opposing claims. A clear line of demarcation exists between substantive trial adjudication and post-decree enforcement.
17. Termination of necessity for further trial on the merits between Cityscape, Akla, and Banani Properties resulted from the consent decree dated 9th September, 2014. Execution proceedings under Order XXI of the Code of Civil Procedure, 1908 convert crystallized rights into tangible realization.
18. *Beta Exim Logistics* (supra) and *Lokanathan v. Narayanaswamy* (supra) apply to instances where parties attempt re-agitation of settled issues by filing fresh suits. Enforcement of an established commercial decree through appropriate procedural channels remains permissible.
19. Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 encompasses *"agreements relating to immovable property used exclusively in trade or commerce"*.
20. Commercial development rights, office allocations measuring 17,590 sq. ft. and 26,209 sq. ft., car parking slots, and commercial lease arrears govern the Terms of Settlement.
21. Culmination of a suit into a compromise decree does not alter, erase, or strip the litigation of its commercial origin; the decree retains the commercial character of the suit. Persistence of commercial character extends throughout the execution stage.
22. *Southeastern Coalfields Ltd.* (2018 SCC OnLine Chh 63) considered applicability of Section 15 of the Commercial Courts Act, 2015 to applications pending determination prior to enactment of the said Act.

23. Proviso to Section 15(2) of the said Act guards against disruption of matters where final judgment was reserved or delivered prior to constitution of the Commercial Division.

24. Institution of E.C. No. 351 of 2022 in 2022 represents a fresh enforcement proceeding instituted well after establishment of the Commercial Division in 2016.

25. Transmitting the file to the Commercial Division to execute a commercial decree exceeding the specified pecuniary threshold avoids reopening of settled issues or going behind the decree; adherence to expedited timelines envisioned by Legislature under the aforesaid 2015 Act is ensured in view of the statutory mandate under Section 2(1)(c) and Section 15 of the Commercial Courts Act, 2015, read with Order XXI of the Code of Civil Procedure, 1908.

26. The submission that the Commercial Division cannot entertain the present execution application for want of a live dispute is rejected. The decree retains the commercial character of the suit, and execution represents the designated legal mechanism to translate the decree into action.

27. E.C. No. 351 of 2022 shall be transmitted to the Court of appropriate jurisdiction by the Registry within Six (6) weeks from today.

28. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(ANANYA BANDYOPADHYAY, J.)

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