

Appeals in Arbitration-Related Commercial Disputes Must Be Filed Before Commercial Appellate Court, Not The High Court: Orissa High Court

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Introduction

In a recent decision in *Jaycee Housing Pvt. Ltd. v. Neelachal Buildtech & Resorts Pvt. Ltd.*¹, the Orissa High Court addressed the issue of jurisdiction in appeals arising under Section 37 of the Arbitration and Conciliation Act, 1996 ("A&C Act") in light of the Commercial Courts Act, 2015. The case revolved around the maintainability of an appeal against an arbitral award and whether such an appeal should be heard by the High Court or the Commercial Appellate Court at the district level. The High Court ultimately ruled that the appeal should be filed before the Commercial Appellate Court rather than the High Court, reinforcing the procedural framework established under the Commercial Courts Act. In this article, we navigate through the facts of the case, and the findings of the High Court.

Factual Background

The dispute arose from a development agreement executed on September 10, 2002, between the appellants, Jaycee Housing Pvt. Ltd., and the respondent, Neelachal Buildtech & Resorts Pvt. Ltd., concerning 4 acres and 875 decimals of land in Bhubaneswar. Subsequently, a bipartite agreement was executed between the same parties on September 14, 2005, along with a tripartite agreement involving Kesari Estates Pvt. Ltd.

Over time, disputes emerged regarding the slow progress of the project and the respondent's inability to secure approval for a revised plan from the Bhubaneswar Development Authority. Despite an extension granted through a supplementary agreement, the disagreements escalated, leading the parties to arbitration as per the dispute resolution clause in the tripartite agreement.

The respondent (original claimant) submitted claims under twelve different heads before the arbitral tribunal, while the appellants filed counterclaims. The arbitral tribunal issued an award on June 30, 2015, granting ₹2,12,13,336 with 18% interest per annum in favour of the respondent and ₹15,00,000 with 18% interest per annum in favour of the appellants against their counterclaims.

Aggrieved by the award, the appellants approached the Senior Civil Judge, Commercial Court, Bhubaneswar, under Section 34 of the A&C Act, seeking modification. However, their challenge was dismissed, prompting them to file an appeal under Section 37 before the Orissa High Court.

Arguments of the Appellants

The appellants challenged both the arbitral award and the decision of the Commercial Court on several grounds. They contended that the arbitrator was ineligible under Section 80(a) of the A&C Act, as he had previously acted as a conciliator in the matter. They argued that such an appointment was void and relied on Supreme Court precedents, including *Perkins*

¹ Arb. A. 7 of 2024.

Eastman Architects DPC v. HSCC (India) Ltd. [(2020) 20 SCC 760], and ***State of Maharashtra v. Ark Builders Pvt. Ltd.*** [(2011) 4 SCC 616], to assert that a person who has acted as a conciliator cannot later serve as an arbitrator in the same dispute.

They appellants further argued that the arbitral tribunal had overstepped the contractual framework by awarding reliefs beyond the terms agreed upon in the development agreement. The appellants asserted that the Senior Civil Judge failed to adequately consider their arguments and did not provide a reasoned judgment justifying the arbitral tribunal's findings. Lastly, the appellants contended that appeals under Section 37 of the A&C Act should be heard by the High Court rather than the Commercial Appellate Court, as the Arbitration Act is a self-contained code.

Arguments of the Respondents

The respondents raised a preliminary objection to the maintainability of the appeal before the High Court, arguing that the correct forum was the Commercial Appellate Court, as per the Commercial Courts Act, 2015. The respondents pointed out that under Sections 3 and 3A of the Commercial Courts Act, appeals against orders of a Commercial Court below the level of a District Judge must be filed before the designated Commercial Appellate Court. Since the arbitration-related proceedings were conducted by the Senior Civil Judge (Commercial Court), Bhubaneswar, the appeal should have been filed before the Commercial Appellate Court at the district level.

The respondents emphasised that the Court's jurisdiction under Section 37 was limited and that it could not reappreciate evidence or factual findings of the arbitral tribunal unless the award was patently illegal or violated public policy. They also argued that the appellants had actively participated in the arbitration proceedings without raising objections regarding the arbitrator's eligibility. Raising such objections at this late stage, they contended, amounted to an afterthought and should not be entertained.

Analysis and Decision of the Court

The Orissa High Court first addressed the maintainability before considering the merits of the appeal. It held that under the Commercial Courts Act, disputes categorised as "commercial disputes of a specified value" must be adjudicated within the commercial court framework, including appeals. Since the Senior Civil Judge (Commercial Court) had adjudicated the Section 34 petition, any further appeal should be directed to the Commercial Appellate Court at the District Judge level.

The Court relied on a series of precedents to support its conclusion, including:

- (i) ***Kandla Export Corporation v. OCI Corporation*** [(2018) 14 SCC 715], wherein the Supreme Court held that the Arbitration Act is a self-contained code, but also acknowledged that arbitration-related matters could fall within the jurisdiction of the Commercial Courts Act.
- (ii) ***M.G. Mohanty v. State of Odisha*** [2022 SCC OnLine Ori 1070], where the Orissa High Court upheld the validity of notifications designating certain Courts as Commercial Courts for handling arbitration-related disputes.

- (iii) **Jaycee Housing Pvt. Ltd. v. High Court of Orissa** [2023 1 SCC 549], where the Supreme Court reaffirmed that commercial Courts must handle arbitration-related disputes when the subject matter qualifies as a commercial dispute.

Applying these principles, the High Court concluded that appeals arising from arbitration matters that fall within the commercial dispute category must be directed to the Commercial Appellate Court, not the High Court. Since the appellants had filed their appeal before the wrong forum, the High Court dismissed it as non-maintainable and directed them to file it before the appropriate Commercial Appellate Court.

Comment

The Orissa High Court's decision reinforces the jurisdictional framework under the Commercial Courts Act, 2015, holding that appeals under Section 37 of the A&C Act in case of commercial disputes must be filed before the Commercial Appellate Court, not the High Court. The ruling upholds procedural discipline and aligns with Supreme Court precedents, ensuring arbitration-related disputes are adjudicated within the specialised commercial court structure. This decision clarifies the interplay between the Arbitration Act and Commercial Courts Act, promoting efficiency in commercial dispute resolution.

Contact

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