

Item No.03
Regular List

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

AA No.6/2023
c/w
EXP N.1/2023

ZAFFAR ABBAS DIN

...PETITIONER(S)

Through: Mr. Shariq J Reyaz, Adv. (for petitioner in AA
No.6/2023)

Mr. Z. A. Shah, Sr. Adv. with
Mr. Hanan, Advocate (for petitioner in EXP
No.1/2023)

Vs.

NASIR HAMID KHAN

...RESPONDENT(S)

Through: Mr. Z. A. Shah, Sr. Adv. with
Mr. Hanan, Advocate (for respondent in AA
No.6/2023)

Mr. Shariq J. Reyaz, Advocate (for respondent
in EXP No.1/2023)

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

(ORDER)(ORAL)

22.08.2024

1) During the course of hearing of the afore-titled petitions, the following issues with regard to jurisdiction of this Court to entertain and decide these petitions have come to the fore:

- I. Whether, after the de-operationalization of the Constitution of Jammu and Kashmir pursuant to promulgation of the Constitution (Application to Jammu and Kashmir) Order, 2019 C.O 272, the High*

Court of Jammu & Kashmir and Ladakh retains ordinary original civil jurisdiction?

II. *If the answer to Issue No.1 is in affirmative, whether this Court has jurisdiction to entertain and decide the cases relating to arbitration in a commercial dispute of a specified value without the constitution of a Commercial Division in terms of Section 4 of the Commercial Courts Act, 2015?*

2) For the purposes of determination of the aforesaid two issues, Shri Z. A. Shah, learned Senior Counsel, and Shri Shariq Reyaz, have addressed this Court at length.

3) The aforesaid issues are taken up for determination as under:

Issue No.1: *Whether, after the de-operationalization of the Constitution of Jammu and Kashmir pursuant to promulgation of the Constitution (Application to Jammu and Kashmir) Order, 2019 C.O 272, the High Court of Jammu & Kashmir and Ladakh retains ordinary original civil jurisdiction?*

4) The High Court of Judicature for the Jammu and Kashmir State was established by His Highness Maharaja Hari Singh vide Order No.1 of 1985 (BK) (1928 AD). In the year 1939 (AD), the Maharaja promulgated the Jammu and Kashmir Constitution Act, 1996(BK), wherein the provisions relating to High Court were incorporated. Section 56 of the Constitution Act, 1996 deals with the jurisdiction of the High Court. The relevant extracts of the said provision read as under:

(i) Jurisdiction of the High Court

Section 56 of the Act dealt with the jurisdiction of the High Court and provided:

- (1) *The High Court is a court of record,*
- (2) *The High Court shall have jurisdiction to hear and determine any original civil suit or other proceeding of which the value is not less than rupees ten thousand and every such proceeding shall be instituted in the High Court;*
- (3) *The High Court shall have jurisdiction to entertain and dispose of such appeals, revisions and other cases-civil, criminal or revenue as it may be empowered to do under any enactment in force in the State.*

The High Court had jurisdiction to entertain a civil suit of value of rupees ten thousand or over and to dispose of such appeals, revisions and other cases as it was empowered to hear under any enactment in force in the State. Appeals from the lower courts lay to the High Court and section 60.....”

5) A perusal of Section 56(2) quoted hereinabove, would reveal that the High Court of Jammu and Kashmir was conferred the jurisdiction to hear and determine any original suit or other proceeding of which the value was more than Rs.10,000/. Thus, the said provision conferred original civil jurisdiction upon the High Court of Jammu and Kashmir.

6) On 28th August, 1943, Maharaja of Jammu and Kashmir granted the Letters Patent to the High Court of Jammu and Kashmir. Clause (10) of the Letters Patent provided for civil original jurisdiction of the High Court whereas Clause (11) provided for extraordinary original jurisdiction for the High Court. The same are reproduced as under:

Civil Original Jurisdiction of the High Court

10. And we do hereby ordain that the said High Court of judicature shall have jurisdiction to hear and determine any suit or original proceeding of which the

value is not less than rupees ten thousand where the said suit or original proceeding relates to any right, title or obligation rising in the towns of Srinagar and Jammu or anywhere else within our State and notwithstanding anything contained in any section of the code of civil procedure every such suit or proceeding shall be instituted in the said High Court.

Extraordinary Original Jurisdiction

11. And we do further ordain that the High Court of judicature shall have power to remove and to try and determine, as a court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any court subject to its superintendence when the said High Court shall think proper to do so, either on the agreement of the parties to that effect or for purpose of justice, the reasons for so doing being recorded in the proceedings of the said High Court.

7) From a reading of Clause (10) quoted above, it is clear that High Court of Judicature of Jammu and Kashmir State was conferred and vested with the civil original jurisdiction to hear and determine any suit or original proceeding of which the value is not less than Rs.10,000/ whereas Clause (11) quoted above, vested the High Court of Judicature for Jammu and Kashmir extraordinary original jurisdiction to remove and to try and determine any suit falling within the jurisdiction of any Court subject to the superintendence of the High Court of Judicature for Jammu and Kashmir.

8) The Jammu and Kashmir Constitution Act, 1996 (BK) was replaced by the Constitution of Jammu and Kashmir, 1957. By virtue of Section 102 of the said Constitution, the existing jurisdiction of the High Court was saved. The same reads as under:

“102. Saving of existing jurisdiction of the High Court.— Subject to the provisions of this Constitution and to the provisions of any law for the time being in force, the jurisdiction of and the law administered in the High Court and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof, sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution :

Provided that nothing in this section shall be deemed to exclude institution of original civil suits without limit as regards the value in the principal civil court of original jurisdiction in the district.”

9) From a reading of the aforesaid provision, it is clear that jurisdiction of the High Court vested in terms of Section 56 of the Constitution Act, 1939 was saved by the aforesaid provisions of the Constitution of J&K, 1957, meaning thereby that civil original jurisdiction of the High Court of Jammu and Kashmir continued to exist even after the repeal of the Constitution Act, 1939 and coming into operation of the Constitution of Jammu and Kashmir, 1957.

10) On 5th August, 2019, the President of India, in exercise of his powers under clause (1) of Article 370 of the Constitution of India, promulgated the Constitution Application to Jammu and Kashmir Order 2019, vide GSR 551 (E) C.O 272 In terms of clause (2) of the aforesaid Constitution Order, all the provisions of the Constitution of India, as amended from time to time, have been made applicable to the erstwhile State of Jammu and Kashmir, meaning thereby

that the Constitution of the Jammu and Kashmir, 1957, has been de-operationalized.

11) After the promulgation of the aforesaid Constitution Order, the Parliament of India enacted the Jammu and Kashmir Reorganization Act, 2019 (hereinafter referred to as “Act of 2019”). Part-VIII of the Act of 2019 relates to the High Court. Sections 75 and 77, which fall in Part-VIII of the Act of 2019, are relevant to the context and the same are reproduced as under:

“75. High Court of Jammu and Kashmir to be common High Court.—(1) On and from the appointed day,—

(a) the High Court of Jammu and Kashmir shall be the common High Court for the Union territory of Jammu and Kashmir and Union territory of Ladakh;

(b) the Judges of the High Court of Jammu and Kashmir for the existing State of Jammu and Kashmir holding office immediately before the appointed day shall become on that day the Judges of the common High Court.

(2) The expenditure in respect of salaries and allowances of the Judges of the common High Court shall be allocated amongst the Union territory of Jammu and Kashmir and Union territory of Ladakh on the basis of population ratio.

77. Practice and procedure in common High Court of Jammu and Kashmir.—Subject to the provisions of this Part, the law in force immediately before the date referred to in sub-section (1) of section 75 with respect to practice and procedure in the High Court of Jammu and Kashmir shall, with the necessary modifications, apply in relation to the common High Court of Jammu and Kashmir and accordingly, the common High Court of Jammu and Kashmir shall have all such powers to make rules and orders with respect to practice and procedure as are immediately before that date exercisable by the common High Court of Jammu and Kashmir:

Provided that any rules or orders which are in force immediately before the date referred to in sub-section (1) of section 75 with respect to practice and procedure in the High Court of Jammu and Kashmir shall, until varied or revoked by rules or orders made by the common High Court of Jammu and Kashmir, apply with the necessary

modifications in relation to practice and procedure in the common High Court of Jammu and Kashmir as if made by that Court.”

12) From a perusal of the aforesaid provisions, it becomes clear that the High Court of Jammu and Kashmir that was existing at the time of coming into force of the Act of 2019, is to function as a common High Court for the Union Territories of the Jammu & Kashmir and Ladakh and the Judges of the existing High Court have become the Judges of the common High Court. Section 77 of the Act provides that the law in force on the date of enforcement of Act of 2019 with respect to practice and procedure in the High Court of Jammu and Kashmir, would apply in relation to the common High Court of Jammu and Kashmir and the said Court shall have the same powers with regard to making of rules and orders with respect to practice and procedure as were immediately vested with the High Court before the enforcement of the Act of 2019. It further provides that the rules and orders in force before the enforcement of Act of 2019 with respect to practice and procedure in the High Court of Jammu and Kashmir would continue to apply unless varied or revoked.

13) Another provision which needs to be taken note of is the Jammu and Kashmir Reorganization (Removal of Difficulties) Order, 2019, issued vide S.O. 3912 (E). The clauses 2(1) and 2(14) of the said Order are relevant to the context and the same are reproduced as under:

“2. Removal of difficulties: *The difficulties arising in giving effect to the provisions of the principal Act have been removed in the following manner, namely:-*

(1) The Judges of the High Court of Jammu and Kashmir for the existing State of Jammu and Kashmir holding office immediately before the appointed day shall be deemed to have been appointed under article 217 of the Constitution and they shall be deemed to have taken oath or affirmation under article 219 of the Constitution and shall continue to function as Judges of common High Court of the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh from the appointed day.

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(14)Anything done or any action taken including any appointment or delegation made, notification, instruction or direction issued, form, bye-law or Scheme framed, certificate obtained, permit or licence granted or registration effected or agreement executed under any law shall be deemed to have been done or taken under the corresponding provisions of the Central laws now extended and applicable to the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh and shall continue to be in force accordingly, unless and until superseded by anything done or any action taken under the Central laws now extended.”

14) As per clause 2(1) quoted above, it is clear that the Judges of the High Court of the Jammu and Kashmir holding office immediately before the enforcement of the Act of 2019 are deemed to have been appointed under Article 217 of the Constitution and they shall be deemed to have taken oath or affirmation under Article 219 of the Constitution of India. So far as clause 2(14), as quoted above, is concerned, the same has saved all actions including appointments, notifications, instructions and directions under any law or authority prior to the enforcement of the Act of

2019 and it also provides that the same shall continue to be in force unless and until superseded by anything done or any action taken under the Central laws now extended.

15) From the foregoing legislative history of the High Court of Jammu and Kashmir, which is now known as High Court of Jammu & Kashmir and Ladakh, it comes to the fore that ordinary original civil jurisdiction was vested with the said High Court initially in terms of Section 56 (2) of the J&K Constitution Act 1939 (1996 BK), which was later on saved by Section 102 of the Constitution of Jammu and Kashmir, 1957. With the de-operationalization of the Constitution of Jammu and Kashmir, 1957 upon issuance of Constitution Order 272 dated 5th August, 2019, the source of jurisdiction to entertain and decide original civil suits in terms of the J&K Constitution Act, 1939, as saved by Section 102 of the Constitution of J&K, 1957, has certainly been taken away and the same is no longer available to the existing High Court of J&K and Ladakh. The question that arises for determination is as to whether after the de-operationalization of the Constitution of Jammu and Kashmir, 1957, and enactment of the Jammu and Kashmir Re-organization Act, 2019, civil original jurisdiction is still vested with the High Court of Jammu and Kashmir.

16) In the above context, certain doubts have been expressed by the learned Senior Counsel, Mr. Z. A. Shah, about the existence of ordinary original civil jurisdiction of the High Court in the absence

of any constitutional provision in this regard, particularly because the Act of 2019 does not contain any provision to this effect.

17) It is true that with the de-operationalization of Constitution of J&K, 1957, the existing High Court does not have the luxury of deriving ordinary original civil jurisdiction from any constitutional provision. It is also a fact that there is no statutory provision in the Act of 2019, which specifically confers ordinary original civil upon the existing High Court. However, the Letters Patent for the High Court of Judicature for Jammu and Kashmir issued by the Maharaja in 1943 are still in operation. This is so because in terms of Section 77 read with clause 2(14) of the Removal of Difficulties Order issued vide S.O.3912 (E), the law in force with respect to practice and procedure in the High Court of Jammu and Kashmir on the date of enforcement of the Jammu and Kashmir Reorganization Act, 2019, would continue to hold the field unless varied or revoked. The Letters Patent for the High Court of Judicature for the Jammu and Kashmir issued by the Maharaja on 28th August, 1943, governs the practice and procedure in the High Court and the same was in force as on date of enforcement of the J&K Reorganization Act, 2019. The Letters Patent including clause (10) thereof, would, therefore, continue to hold the field unless and until the same is varied or revoked.

18) A five Judge Bench of this Court in the case of **L. Tota Ram vs. State**, AIR 1975 J&K 73, has held that jurisdiction in relation

to civil suits and original proceedings in the High Court of Jammu and Kashmir is not only derived from Section 56(2) of the Jammu and Kashmir Constitution Act, 1996, which was left intact by Section 102 of the Constitution of J&K, 1957, but it is also derived from clause (10) of the Letters Patent. A similar view has been taken by a Full Bench of this Court in the case of **Ramesh Chand Kathuria and another vs. Trikuta Chemicals Pvt. Ltd and another**, AIR 2015 J&K 52.

19) In view of aforesaid legal position, it is clear that while we cannot bank upon the provisions of the J&K Constitution Act, 1939 and Constitution of J&K, 1957, so far as existence of civil original jurisdiction of this High Court is concerned, but clause (10) of the Letters Patent is still available for vesting the ordinary original civil jurisdiction with the High Court of Jammu and Kashmir. It is to be noted that powers conferred upon the High Court under the Letters Patent are akin to the constitutional powers of the High Court. (Refer **Sharda Devi vs. State of Bihar**, (2002) 3 SCC 705). Therefore, when a Letters Patent grants to the High Court power to hear and decide original civil proceedings, the same would not vanish upon de-operationalization of a constitutional provision conferring a similar jurisdiction upon the High Court.

20) The Jammu and Kashmir High Court Rules, 1999, which were in force as on date of enforcement of the J&K Reorganization Act, 2019, also continue to hold the field in view of the provisions

contained in Section 77 of the said Act. In terms of Rule 29(4) of the High Court Rules, a Single Judge of the High Court has jurisdiction to hear and dispose of a suit coming before the Court in exercise of its ordinary or extraordinary civil jurisdiction including a proceeding on the original side of the Court under any law for the time being in force. As already stated, clause (10) of the Letters Patent vests ordinary original jurisdiction and clause (11) thereof, vests extraordinary original civil jurisdiction with the High Court of Jammu and Kashmir. The said jurisdiction in terms of the Rule 29 of the Jammu and Kashmir High Court Rules is to be exercised by a Judge sitting alone. This further strengthens the proposition that civil original jurisdiction is vested with the existing High Court.

21) In view of the aforesaid position of law, there is no manner of doubt in holding that this Court even after de-operationalization of the Constitution of Jammu and Kashmir, 1957, and the enactment of the J&K Reorganization Act, 2019, is vested with the ordinary original civil jurisdiction as well as extraordinary original civil jurisdiction. The issue No.1 is answered accordingly.

Issue No.II: *If the answer to Issue No.1 is in affirmative, whether this Court has jurisdiction to entertain and decide the cases relating to arbitration in a commercial dispute of a specified value without the constitution of a Commercial Division in terms of Section 4 of the Commercial Courts Act, 2015?*

22) For answering the aforesaid question, first of all we need to take note of Section 10 of the Commercial Courts Act which relates to jurisdiction in respect of arbitration matters. It reads as under:

“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.”

23) From a perusal of the aforesaid provision, it is clear that if the subject matter of an arbitration is a commercial dispute of a specified value, if such arbitration is an international commercial arbitration, all proceedings arising out of such arbitration shall have to be heard and disposed of by the Commercial Division of the High Court and in case it is an arbitration other than an international arbitration and the same has been filed on the original side of the High Court, it is the Commercial Division of the High Court which has to hear and dispose of such proceeding. It is

further provided that in case of arbitrations other than international commercial arbitrations that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court), the same are to be decided by a Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted. Thus, it is clear that the proceedings in respect of an arbitration in a commercial dispute of specified value (other than international arbitration), if filed on the original side of the High Court, have to be heard and disposed of by the Commercial Division of the High Court, whereas such proceedings that are ordinarily filed before other civil courts, have to be heard and decided by a Commercial Court.

24) In the Union Territory of Jammu and Kashmir, the Government has, vide Notification S.O.47 dated 4th February, 2020, in exercise of its powers under sub-section (1) of Section 3 of the Commercial Courts Act, designated Courts of Additional District Judge (Bank Cases), Jammu and Srinagar, as Commercial Courts for the Districts of Jammu and Srinagar and Principal District Courts of all other districts of Union Territory of Jammu and Kashmir as Commercial Courts within their respective jurisdiction. Vide the same notification, the pecuniary value of jurisdiction i.e. specified value of the Commercial Courts has been fixed at Rs.3.00 lacs and above. It is to be noted here that in terms of Section 20 of the Civil Courts Act, the original jurisdiction of a

District Judge is unlimited and in view of the Notification S.O.47 dated 4th February, 2020, the Commercial Courts designated by the Government can entertain and decide arbitration proceedings relating to disputes of any value beyond Rs.3.00 lacs. Thus, arbitration proceedings relating to commercial disputes of the specified value can be entertained and disposed of by the respective Commercial Courts designated in the UT of J&K.

25) That takes us to the fate of arbitration proceedings relating to commercial disputes filed on the original side of the High Court. In this regard, Section 4 of the Commercial Courts Act, which provides for constitution of the Commercial Division of the High Court, needs to be noticed. It reads as under:

“4. Constitution of Commercial Division of High Court.—(1) *In all High Courts, having ordinary original civil jurisdiction, the Chief Justice of the High Court may, by order, constitute Commercial Division having one or more Benches consisting of a single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Act.*

(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Division.”

26) From a perusal of the aforesaid provision, it is clear that in High Courts having ordinary original civil jurisdiction, the Chief Justice of the High Court may, by order, constitute Commercial Division consisting of a Single Judge for the purpose of exercising the jurisdiction and powers conferred under the Act.

27) While Hon'ble the Chief Justice of the High Court of Jammu & Kashmir and Ladakh has, vide Order No.548 of 2024/RG dated 9th May, 2024, constituted Commercial Appellate Division in terms of Section 5 of the Commercial Courts Act in both wings of the High Court of Jammu & Kashmir and Ladakh, Commercial Division of the High Court in terms of Section 4 of the Commercial Courts Act has not been constituted in any wing of the High Court so far. In the absence of an order relating to constitution of Commercial Division of the High Court, the arbitration matters relating to commercial disputes of specified value filed before the High Court cannot be decided by the High Court in exercise of its original civil jurisdiction after coming into force of the Commercial Courts Act. Section 10 of the Commercial Courts Act clearly vests jurisdiction to hear such matters upon the Commercial Division.

28) For the foregoing discussion, the answer to issue No.(II) would be that unless a Commercial Division of the High Court is constituted, the arbitration proceedings relating to commercial disputes of specified value filed on original side of the High Court, cannot be heard and decided.

29) In the face of the answer to the aforesaid two issues, the next question that needs to be determined is as to what should be the way formed for dealing with the arbitration proceedings relation to commercial disputes that have been filed on the original side of this

High Court. In this behalf provisions contained in Sections 7 and 15 of the Commercial Courts Act are required to be noticed:

7. Jurisdiction of Commercial Divisions of High Courts.—All suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court:

Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed or pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court:

Provided further that all suits and applications transferred to the High Court by virtue of sub-section (4) of section 22 of the Designs Act, 2000 (16 of 2000) or section 104 of the Patents Act, 1970 (39 of 1970) shall be heard and disposed of by the Commercial Division of the High Court in all the areas over which the High Court exercises ordinary original civil jurisdiction.

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15. Transfer of pending cases.—(1) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division.

(2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court:

Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).

(3) Where any suit or application, including an application under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of

Specified Value shall stand transferred to the Commercial Division or Commercial Court under sub-section (1) or sub-section (2), the provisions of this Act shall apply to those procedures that were not complete at the time of transfer.

(4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issue such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance 3[with Order XV-A] of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the proviso to sub-rule (1) of Rule 1 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to such transferred suit or application and the court may, in its discretion, prescribe a new time period within which the written statement shall be filed.

(5) In the event that such suit or application is not transferred in the manner specified in sub-section (1), sub-section (2) or sub-section (3), the Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

30) From a perusal of Section 7 quoted above, it comes to the fore that all suits and applications relating to commercial disputes of a specified value filed in the High Court having ordinary original civil jurisdiction have to be heard and decided by the Commercial Division of the High Court. As per Section 15(1) quoted above, upon constitution of a Commercial Division, the suits and applications including arbitration proceedings relating to commercial dispute of a specified value pending in a High Court have to be transferred to the Commercial Division.

31) From a careful analysis of the aforesaid provisions contained in Commercial Courts Act, 2015, it becomes clear that constitution of a Commercial Division in a High Court, which is vested with ordinary original civil jurisdiction, is an absolute imperative to deal with the cases involving commercial disputes of specified value that may have been filed in the said High Court. Such cases have necessarily to be transferred to a Commercial Division constituted in terms of section 4 of the Act.

32) In view of what has been discussed above, the Registrar General is directed to place the matter before Hon'ble the Chief Justice for consideration of his Lordship so that an appropriate decision is taken with regard to constitution of a Commercial Division of the High Court for disposal of arbitration proceedings relating to commercial disputes of specified value pending on the original side of this Court. It is also suggested that feasibility of fixing a different higher specified value for entertaining proceedings relating to commercial disputes by the Court in its ordinary original civil jurisdiction be also explored.

33) Since a large number of arbitration proceedings relating to commercial disputes are pending in the High Court which, in the absence of a Commercial Division, cannot proceed further, as such, the Registrar General is requested to take urgent steps in the matter.

