



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO. 6341 OF 2024
IN
SUMMARY SUIT NO. 18 OF 2023

VARANIUM CLOUD LIMITED	...APPLICANT
<u>IN THE MATTER BETWEEN</u>	
ROLTA PRIVATE LIMITED AND ANR.	...PLAINTIFFS
VS	
VARANIUM CLOUD LIMITED AND ANR.	...DEFENDANTS

Mr. Ankit Lohia with Ms. Kamini Pansare i/b VM Legal for Plaintiff.
Mr. Hrushi Narvekar with Mr. Feroze Patel and Ms. Rinu Kallan i/b
Integrum Legal for Defendant No.1/Applicant.
Mr. Feroze Patel with Ms. Rinu Kallan i/b Integrum Legal for Defendant
No.2.

CORAM :ABHAY AHUJA, J.
RESERVED ON : 4TH SEPTEMBER, 2024
PRONOUNCED ON: 11TH NOVEMBER, 2024

ORDER:-

1. This Interim Application seeks return of the Plaint under Order VII Rule 10 of the Code of Civil Procedure, 1908 ("CPC") on the ground that the Summary Suit falls within the scope and ambit of the Commercial Courts Act, 2015 (the "said Act") and has been incorrectly instituted as an Ordinary Summary Suit on the Ordinary Original Civil Jurisdiction of this

Court, but ought to have been filed before the Commercial Division of this Court as a Commercial Summary Suit under the said Act.

2. Mr. Narvekar, learned Counsel appearing for the Applicant-Defendant No.1 would submit that considering that the Plaintiff No.1 had advanced the loan in the course of its business to Rolta India Limited having acted as a financier and then has sought to assign it to the Defendant No.1 viz the Applicant, is only acting as a Financier/Trader which falls within the definition of commercial dispute in terms of Section 2(1)(c)(i) of the said Act and that therefore, the Plaint should be returned to the Court in which it should have been instituted viz. the Commercial Court Division of this Court as a Commercial Summary Suit as the dispute set out in the Plaint is a commercial dispute of a specified value viz. more than Rs. 3 lacs.

3. Mr. Narvekar has submitted that in view of the dictionary meanings of the words Ordinary, Financier, Trader and Mercantile as appearing in Section 2(1)(c)(i) of the said Act, the present dispute is a commercial dispute. That the said term had to be seen in their expansive sense and not

in the narrow sense in view of the use of the words arising out of Section 2(1)(c)(i) of the said Act.

4. Mr. Narvekar would submit that the Plaintiff No. 1 has acted as a financier and financed monies to Rolta India Limited, which was to be assigned to the Defendant No.1 and for purely commercial purposes as admitted in paragraph 4.3 of the Plaint. That the present dispute is of a specified value has been admitted by the Plaintiffs.

5. Mr. Narvekar would submit that if it is shown from the Plaint that the dispute is a commercial dispute of specified value then the suit has to be mandatorily tried as such by the Commercial Division of the High Court as the exclusive jurisdiction lies with the commercial division. Mr. Narvekar has taken this Court through the preamble to the said Act as well as Sections 4, 7 and 15 of the said Act.

6. As noted above, Mr. Narvekar has relied upon the dictionary meanings of the words Ordinary, Transaction, Financer, Trader, Mercantile, Commerce in support of his submissions. In support of his contentions Mr. Narvekar has also relied upon the decisions in the following cases:-

- i) **State of Mysore Vs. T. V. Sundaram Iyengar**¹
- ii) **M/s Doypack Systems Pvt. Ltd. Vs. Union of India**²
- iii) **Ambalal Sarabhai Enterprises Ltd. Vs. K. S. Infraspace LLP & Anr.**³

7. Mr. Narvekar would therefore submit that the Complaint be therefore returned under Order VII Rule 10 of the CPC to be filed before the Commercial Division of this Court.

8. On the other hand, Mr. Ankit Lohia, learned Counsel appearing for the Plaintiffs has opposed the said submissions. Mr. Lohia has submitted that the Application filed under Order VII Rule 10 is nothing but a dilatory tactic to prevent this Court from adjudicating the Suit.

9. Mr. Lohia would submit that this Interim Application is a delayed attempt to correct the false assumptions in Interim Applications (L) No. 3102 of 2024 which has been filed seeking dismissal of the Suit on account of the purported non-compliance with Section 12A of the said Act.

10. Mr. Lohia would submit that it is denied that the present Summary Suit falls within the ambit of the said Act as the said Act is only applicable

1 (1980) 1 SCC 66
2 (1988) 2 SCC 299
3 (2020) 15 SCC 585

to a Summary Suit with respect to a commercial dispute as defined under Section 2(1)(c)(i) of the said Act. That the subject dispute in the present Summary Suit does not fall within a ambit of “Commercial Disputes” as defined under the said Act and therefore, the Summary Suit is not a Commercial Summary Suit as it is not born out of a commercial dispute. Mr. Lohia has submitted that in the ordinary course of business the Plaintiff No.1 is neither a financier nor a trader and draws the attention of this Court to paragraphs 1, 3 and 4 of the Plaint as well as the agreement between the Plaintiffs and the Defendants at Exhibit B to the Plaint. Mr. Lohia has also relied upon Memorandum of Association of the Plaintiff No. 1 in support of his contentions.

11. Mr. Lohia would submit that merely because the agreement is a commercial contract for the purposes of interest does not mean that the test of Section 2(1)(c)(i) of the said Act is satisfied. Mr. Lohia would submit that the Plaintiff No. 1 is engaged in the business providing leasing services and the transaction entered into between the Plaintiff No.1 and the Defendant No.1 is not a leasing service, but an agreement whereby the Defendant No.1 had agreed to acquire the first Plaintiff’s secured financial debt in Rolta India Limited for Rs. 800 Crs. That since there was a breach

of the said agreement as the Defendant No.1 did not make payment, this Summary Suit based on the said agreement has been filed. Mr. Lohia relies upon the Memorandum of the Association of the Plaintiff No.1 in support of his contention.

12. Mr. Lohia submits that assignment of the debt by the Plaintiff No.1 to the Defendant No.1 is not a normal activity and business of the Plaintiff No. 1 company. The normal activity is leasing services. Therefore, this is not an ordinary transaction between the Plaintiff No.1 and the Defendant No.1. That the Plaintiff No. 1 is not a merchant or a banker or a financier or a trader, who ordinarily lends money even though the Plaintiff No. 1 may be authorized to do so in its objects clause. That, therefore, the dispute is not a commercial dispute as defined under Section 2(1)(c)(i) or under any other provision of the said Act. Mr. Lohia has relied upon the following decisions in support of his contentions:-

- i) **Seksaria Biswan Sugar Factory Ltd. Vs. Commissioner of Income-Tax, Bombay⁴**
- ii) **M/s Bharti Televentures Ltd. Vs. Addl.Jt. Commissioner of Income Tax⁵**
- iii) **M/s Glasswood Realty Pvt. Ltd. Vs. Mrs. Chandravilas Kailashkumar Kothari⁶**

4 (1949

5 2012:DHC:7539-DB

6 Civil WP 8393 of 2021 (Coram : Bharati Dangre, J.)

13. I have heard the learned Counsel and considered their submissions.

14. The Plaintiff No.1, it is not in dispute, is in the business of providing leasing services. The Defendant No.1 is a public listed company statedly listed on the National Stock Exchange involved in the business of the information technology and web solutions. The Plaintiffs were statedly approached by the Defendants No. 1 and 2 to acquire the Plaintiff No. 1's secured financial debt in Rolta India Limited. Thereafter, the Plaintiff No.1 and the Plaintiff No. 2 entered into an agreement dated 7th July, 2023 with the Defendant No.1. The Defendant No. 2 is the Managing Director of the Defendant No.1. It can be seen from paragraphs 1 and 2 of the said agreement that in consideration of an assignment of debt, the Defendant No. 1 would pay an amount of Rs. 800 Crores to the Plaintiff No. 1 by the 17th July, 2023. Since the said amount was not paid, the Plaintiffs have filed this Summary Suit seeking to recover the amount of Rs. 800 Crores along with interest under the said agreement. The suit has been filed as a Summary Suit on the basis of the said agreement.

15. The Defendant No.1 had earlier filed Interim Application (L) No. 3102 of 2024 on the ground that the suit be dismissed on account of non-

compliance with Section 12A of the said Act. While the said Application was pending, this Application under Order VII Rule 10 of the CPC has been taken out seeking return of the Plaint on the ground that the suit being filed on the basis of a dispute which is a commercial dispute as defined under Section 2(1)(c)(i) of the said Act, the Plaint be returned and be instituted in the Commercial Court Division of this Court. I will come back on the application filed for non-compliance of Section 12 A of the said Act a little later, but first it needs to be examined whether the dispute on the basis of which the captioned suit has been filed is a commercial dispute as contemplated or defined under Section 2 (1)(c)(i) of the said Act.

15A. A matter will fall under the jurisdiction of the Commercial Court or the Commercial Division of the High Court on the following factors:-

(i) it shall be a commercial dispute within the meaning of Section 2(1)(c) of the said Act and (ii) such commercial disputes are of a specified value as per Section 2 (i) of the said Act.

16. Section 2(1)(c)(i) of the said Act is usefully quoted as under:-

2. Definitions.- (1) In this Act, unless the context otherwise requires,-

(a) ...

(aa) ...

(b) ...

(c) “Commercial dispute” means a dispute arising out of-

(i) Ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents.

... ..”

17. Therefore, what is contemplated are ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents including enforcement and interpretation of such documents. Reliance has been placed on the dictionary meanings of the said words to submit that “Commercial dispute” means a dispute arising out of - (i) ordinary i.e. normal or usual⁷ / regular course of events⁸ / according to established order⁹ transactions of merchants, banker, financiers, a person who lends a large amount of money to a business to other entity for a project or activity¹⁰ and traders, one engaged, in merchandise or commerce¹¹ -commerce means the carrying of any trade,

⁷ Concise Oxford English Dictionary.

⁸ Black's Law Dictionary.

⁹ P. Ramanatha Aiyar- Advanced Law Lexicon

¹⁰ Black's Law Dictionary.

¹¹ P. Ramanatha Aiyar- Advanced Law Lexicon

business or profession¹², such as those relating to mercantile documents, mercantile means having to do with trade or commerce¹³ and interpretation of such documents.

18. Accordingly, Mr. Narvekar, learned Counsel for the Defendant No.1 has submitted that the Plaintiff No. 1 in the course of its business, has advanced a loan to Rolta India Limited and has acted as a financier, and then has sought to assign the loan to Defendant No.1 and as such acted as a trader / financier.

19. While the endeavour by Mr. Narvekar to demonstrate that the transaction whereby the Plaintiff No. 1 has sought to assign its debt in Rolta India Limited for a sum of Rs. 800 crores to the Defendant No.1 is a commercial transaction arising out of the commercial contract any dispute would obviously be a commercial dispute, is laudable, I am afraid I am unable to agree with him as until an unless the dispute arises out of an ordinary transaction of merchants, bankers, financiers and traders, the dispute would not be a commercial dispute. As noted above, the Plaintiff No.1 is in the business of providing leasing services and therefore, it

¹² P. Ramanatha Aiyar- Advanced Law Lexicon

¹³ P. Ramanatha Aiyar- Advanced Law Lexicon

cannot by any stretch of imagination be said that the Plaintiff No. 1 is ordinarily transacting as a merchant or as a banker or as a financier or a trader or ordinarily in such business. Even if the dictionary meanings are accepted, it cannot be said that the Plaintiff No.1 normally or usually or in the regular course of events or even according to established order transacts as a merchant or as a banker or as a financier. The dictionary meaning cited by the learned Counsel for the Defendant No. 1 viz. a person who lends a large amount of money to a business or other entity for a project or activity does not describe that activity of leasing normally or usually carried out by the Plaintiff No. 1 nor does it even remotely describe the transaction of assignment of debt as recorded in the agreement on the basis of which the Summary Suit has been filed.

20. In the case of *Seksaria Biswan Sugar Factory Ltd. Vs. Commissioner of Income-Tax, Bombay (supra)* this Court (Authored by: The Chief Justice M. C. Chagla, as His Lordship then was) has held that if the normal activity and business of a company is manufacture and sale of sugar, the solitary act that monies were lent to its own managing agents cannot be considered to be in the ordinary course of business or that the company was in the business of money lending even if one of its objects would have

been money lending and the company could have carried on the said business of money lending. The decision of the Delhi High Court in the case of *M/s Bharti Televentures Ltd. Vs. Addl.Jt. Commissioner of Income Tax (supra)* also lends credence to these findings. Paragraphs 10 and 11 thereof are usefully quoted as under:-

“10. Counsel for the assessee had urged that the Tribunal fell into error in holding that the memorandum of association of the assessee could not bind the income tax authorities which had to discern what was its real and true business. Counsel emphasised the fact that the term "business" is wide. He relied upon the decisions in *Krishna Prasad & co. Ltd. Vs. CIT*, (1955) 27 ITR 49 (SC); *CIT Vs. Tamil Nadu Dairy Development Corporation Ltd.*, (1955) 216 ITR 535 (Mad.), wherein the Madras High Court held as under: -

"The term "business" is a word of very wide, though by no means determinate, scope. It has rightly been observed in judicial decisions of high authority that it is neither practicable nor desirable to make any attempt at de-limiting the ambit of its connotation. Each case has to be determined with reference to the particular kind of activity and occupation of the person concerned. Though ordinarily "business" implies a continuous activity in carrying on a particular trade or avocation, it may also include an activity which may be called, "quiescent"."

11. In *CIT Vs. Motilal Haribhai Spinning and Weaving Co. Ltd.*, (1978) 113 ITR 173 (Guj.), it was held as under: -

"In *Oriental Investment Co. Ltd. Vs Commissioner of Income Tax*, (1957) 32 ITR 664 (SC), it was observed that merely because the company had within its objects the dealing in investment in shares does not give to it the characteristics of a dealer in shares. But if other circumstances are proved, it may be a relevant circumstance for the purpose of determining the nature of activities of an assessee. It would thus appear that for the purpose of judging whether the transactions in advances of

monies were in the nature of business or investment, the Tribunal was entitled to rely upon the objects clauses along with other circumstances and to arrive at the conclusion that it did.”

This Court has considered the submissions. The Tribunal held as follows on this issue: -

"Though it is true that Memorandum and Articles of Association of the company is not conclusive on the question whether activities of a company amounts to carrying on the question whether activities of a company amounts to carrying on of business, but it shows sufficiently the intention of the assessee to pursue certain main objects. The frequency of the activity is sought to be highlighted as giving rise to a continuous and organized activity. We have already noticed that it is the first year of business operation of the company and it cannot be said that it was a continuous activity carried out in a normal organized manner. As held by the assessing officer, the main activity of the assessee company was the business of promoting, establishing telecom services. By no stretch of imagination can it be said that the assessee was engaged in the business of money lending. Since the business of the assessee was not that of money lending, it cannot be said that the sum in question represents money lent in the ordinary course of the business of money lending carried on by the assessee. Therefore, the claim of the assessee did not fall within the parameters of provisions of section 36(1)(vii) read with section 36(2) of the Act. The alternative claim of the assessee that the sum in question should be allowed as a deduction as a business loss cannot also be accepted, since the sum in question was not incurred as expenditure in the ordinary course of business of the assessee. The sum in question has, therefore, to be considered as a capital loss and the assessee was not entitled to claim the same as deduction. It may also be mentioned here that everything associated or connected with the business cannot be said to be incidental thereto. It is not enough if there is some close proximity of the deposit to the business carried on by the assessee, as such but it should also be an integral part of the carrying on of the business. For the reasons stated above, we are of the view that the disallowance made by the assessing officer

was proper and the CIT (Appeals) was justified in confirming the order of the assessing officer. We may also clarify that the CIT (Appeals)'s observations that the claim of the assessee was pre-mature is without any basis and we have already discussed the reasons for our conclusions. The third ground of appeal of the assessee is accordingly dismissed."

21. In the facts of this case, the assignment of debt is not the ordinary business of the Plaintiff No. 1 company. It is a singular transaction. In my view, just because the dispute arises purportedly out of a contract which has been referred to as a commercial contract for the purposes of levying interest which has not been stated in the agreement cannot be used to say that the dispute arising out of a purported breach of the said contract is a commercial dispute, even if the transaction is a commercial one in a general sense as the dispute to be a commercial dispute has to arise out of the specific items listed in Section 2(1)(c)(i) to (xiii), which is not the case here.

22. In fact the decision of this Court (Coram: Bharrati Dangare, J.) in the case of *M/s Glasswood Realty Pvt. Ltd. Vs. Mrs. Chandravilas Kailashkumar Kothari (supra)* is useful to appreciate the fact that only disputes which are in the nature of ordinary transactions of merchants, financiers and traders will fall within the purview of commercial disputes. The said decision has also interpreted the meaning of the term "merchant"

to cover a person who buys and trades in any commodity, a trader, who is necessarily a person who engages himself in trading in goods, buying and selling them at a profit, a financier who would be an administrator, collector of taxes or one who is still in levying and managing public money or as a capitalist concerned in financial operations. The Court considered the question whether a singular transaction by way of a hand loan would fall within the meaning of a commercial dispute as defined in the said Act and after considering the decision of the Hon'ble Supreme Court in the case of *Ambalal Sarabhai Enterprises Ltd. Vs. K. S. Infraspace LLP & Anr.* (*supra*) as well as the object and purpose of the Commercial Courts Act, as well as the decision of the Calcutta High Court in the case of ***Ladymoon Towers Pvt. Ltd. Vs. Mahendra Investment Advisors Pvt. Ltd.***¹⁴ held that a solitary transaction of advancing a loan would fall short of ordinary transaction of a financier. Paragraphs 7, 8, 9, 10, 11 and 13 of the said decision are usefully quoted as under:-

“7. The Commercial Courts Act 2015 is one of the modern legislation, which provide a new mechanism as distinct from the existing one, for speedy disposal of high value commercial disputes, which involve complex question of fact and law. The object in bringing the said legislation is early resolution of commercial disputes which create a positive image to the investors over the world about the independent and responsive Indian legal system. Emphasizing on the ease of doing business,

14 IA No. CA/4/2021 in CS 99/2020

the Act provide for constitution of Commercial Courts, Appellate Court and Commercial Division for adjudicating commercial disputes of specified value and matters connected therein. The definition clause clarify what would amount to a 'commercial dispute' and Section 2(c), encompass what dispute would fall within the purview of a 'commercial dispute'. Clause (i) of Section (c) cover the ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents.

The word 'commercial' as per Websters Dictionary convey, being occupied with or engaged in commerce or work intended for commerce; designed for a larger market. Commerce is the conduct of trade among economic agents. Generally, commerce refers to the exchange of goods, services, or something of value, between businesses or entities. It may thus refer to business matter involving contract, export or import, financing agreements, trade etc.

The disputes which are in the nature of ordinary transactions of merchants, business, financiers and traders will fall within the purview of 'commercial disputes', and particularly those relating to merchantile documents. Thus, it cover the ordinary/normal transactions carried out by the entities mentioned in the said clause and the term 'merchant' would cover a person who buy and trade, in any commodity and therefore, the term as explained correspond to all sort of traders, buyers and sellers. A trader is, necessarily a person who engages himself in trading in goods; buying and selling them at profit and the word 'trader' has received a liberal interpretation with passage of time, being not only one who sell goods substantially in the form in which they are bought, but it would also cover a member of stock exchange, who buy and sell securities on the exchange floor or one who buys and sells commodities and commodity futures for others, in anticipation of speculative profit. A 'financer' as per Oxford Dictionary is an administrator, collector of taxes or one who is skilled in levying and managing public money or as a capitalist concerned in financial operations. The aforesaid is an indicator that the goal of a financier is to secure ample revenue. The aforesaid terms being included,

specifically in the definition clause, 'commercial disputes' are those disputes which involve their ordinary transactions.

8 The moot question that arise for consideration is whether the singular transaction by way of 'hand loan' would fall within the meaning of 'commercial dispute', as the Act of 2015 intend to cover only 'commercial dispute'; and not any other form of dispute, where the basis of disagreement between the parties has a non-commercial cause. Necessarily, the transaction involved must have a commercial flavour and its genesis lies in the body that the parties entered into the said transaction with a commercial purpose. Dispute arising out of the transaction between the persons who are classified in clause (i) of Section 2(c), only qualify to be covered by the definition of 'commercial dispute'.

9 In *Ambala Sarabhai Enterprises Ltd Vs.K.S. Infraspace LLP and ors*, (2020) 15 SCC, 585, the Hon'ble Apex Court has expatiated about which dispute would fall within the ambit of Section 2(1)(c) in the backdrop of the statements of objects and reasons of the Act of 2015 along with various amendments in the Code of Civil Procedure, specifically made applicable to the Suits of commercial dispute. The words, in which the nature of 'commercial dispute' has been enunciated by His Lordship S. Bopanna can be reproduced as under :-

13. In that regard, the learned senior advocate has referred to the statement of objects and reasons with which the Commercial Courts Act, 2015 is enacted so as to provide speedy disposal of high value commercial disputes so as to create the positive image to the investors world about the independent and responsive Indian Legal System. Hence, he contends that a purposive interpretation be made. It is contended that a wider purport and meaning is to be assigned while entertaining the suit and considering the dispute to be a commercial dispute. Having taken note of the submission, we feel that the very purpose for which the CC Act of 2015 has been enacted would be defeated if every other suit merely because it is filed before the Commercial Court is entertained. This is for the reason that the suits

which are not actually relating to commercial dispute but being filed merely because of the high value and with the intention of seeking early disposal would only clog the system and block the way for the genuine commercial disputes which may have to be entertained by the Commercial Courts as intended by the law makers. In commercial disputes as defined a special procedure is provided for a class of litigation and a strict procedure will have to be followed to entertain only that class of litigation in that jurisdiction. If the same is strictly interpreted it is not as if those excluded will be non-suited without any remedy. The excluded class of litigation will in any event be entertained in the ordinary Civil Courts wherein the remedy has always existed.

36 A perusal of the Statement of Objects and Reasons of the Commercial Courts Act, 2015 and the various amendments to Code of Civil Procedure and insertion of new Rules to the Code applicable to suits of commercial disputes show that it has been enacted for the purpose of providing an early disposal of high value commercial disputes. A purposive interpretation of the Objects and Reasons and various amendments to Code of Civil Procedure leaves no room for doubt that the provisions of the Act require to be strictly construed. If the provisions are given a liberal interpretation, the object behind constitution of Commercial Division of Courts, viz. putting the matter on fast track and speedy resolution of commercial disputes, will be defeated. If we take a closer look at the Statement of Objects and Reasons, words such as 'early' and 'speedy' have been incorporated and reiterated. The object shall be fulfilled only if the provisions of the Act are interpreted in a narrow sense and not hampered by the usual procedural delays plaguing our traditional legal system.

10 Justice R.Banumathi (as she was then) further highlighted the purpose of the Commercial Courts and the Commercial Division in the following words:

“The object and purpose of the establishment of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of the High Court is to ensure that the cases involved in commercial disputes are disposed of expeditiously, fairly and at reasonable cost to the litigants. Keeping in view the object and purpose of the establishment of the Commercial Courts and fast tracking procedure provided under the Act, the statutory provisions of the Act and the words incorporated thereon are to be meaningfully interpreted for quick disposal of commercial litigations so as to benefit the litigants especially those who are engaged in trade and commerce which in turn will further economic growth of the country”.

In the wake of the aforesaid insight thrown on the nature of commercial dispute, it has become necessary to adopt a careful approach in scrutinizing, whether a dispute would fall within the purview of ‘commercial dispute’, as if not, it would unnecessarily consume the time of the Commercial Court, which is meant for speedy disposal of high commercial disputes and the ordinary civil disputes which cannot be classified as ‘commercial disputes’ must be permitted to be tried in normal suit, which are to be tried by a well defined procedure prescribed in the Code of Civil Procedure, by following the pursuit provided in the Code, for such types of Suit.

11 Mr.Ganesh Murthy, learned counsel is justified in placing reliance upon the decision of the Calcutta High Court in *Ladymoon Towers Pvt.Ltd Vs. Mahendra Investment Advisors Pvt.Ltd*, (IA No.GA/4/2021 in CS 99/2020 which involved identical facts and the observation of learned Single Judge of the Calcutta High Court are worth to be reproduced, as it aptly apply to the facts involved before me.

“The Delhi High Court in *Kailash Devi Khanna vs. DD Global Capital Ltd.*; 2019 SCC Online Del 9954 held that all suits for recovery of monies cannot brought

under Section 2(1)(c)(i) of the Act where the suit is not based on any transaction relating to mercantile documents. The Bombay High Court in *Bharat Huddanna Shetty vs. Ahuja Properties & Developers*; (Interim Application (L) No.14350 of 2021) rejected the contention that the suit should be treated as a commercial summary suit on the mandate that the transaction had occurred between merchants, bankers, financiers and traders and further clarified that transactions between individuals where the plaintiff gives a friendly loan to a needy friend will not be seen as a transaction in the course of ordinary business. The Madras High Court in *R. Kumar vs. T.A.S. Jawahar Ayya* (C.S. No.431 of 2019) was of the view that since the plaintiffs did not transact in the capacity of financiers, the dispute was not a "commercial dispute" and that an ordinary transaction of the four classes of persons mentioned in 2(1)(c)(i) arising out of mercantile documents alone would fall within the definition of a commercial dispute. The Calcutta High Court in *Associated Power Co. Ltd. vs. Ram Taran Roy*; AIR 1970 Cal 75 focused its gaze on a "mercantile document" within the meaning of the First Schedule of the City Civil Court Act, 1953 as a document between merchants and traders where the construction, interpretation and meanings of words and clauses of the mercantile documents would assume significance.

13 In the wake of the above, the impugned order which take a view that the transaction of advancing the amount as a friendly loan is commercial in nature, is an erroneous finding as a solitary transaction of advancing loan, on friendly terms, unlike a commercial lending with the prevailing market rate, would fall short of ordinary transaction of a financier, banker. Moreso, even the plaintiff is conscious of this position and in her response to the Application filed for return of plaint for presentation of appropriate court, she admit so. Necessarily, the order

which record the said finding deserve to be set aside and is accordingly, set aside.”

23. No doubt, the principles laid down by the Hon’ble Supreme Court in the case of *M/s Doypack Systems Pvt. Ltd. Vs. Union of India (supra)* that the expression pertaining to, in relation to and arising out of have to be used in an expansive sense as per the decisions of Courts, meaning found in standard dictionaries and the principles of broad and liberal interpretation in consonance with Article 39 (b) and (c) of the Constitution of India, I am afraid that the said principles would have no application to the facts of this case in as much as inspite of giving an expansive and a broad and liberal interpretation to the words ordinary, merchants, bankers, financiers and traders, I am unable to reconcile that the Plaintiff No. 1 is ordinarily or normally or usually a merchant or a banker or a financier or a trader by any stretch of imagination.

24. For the same reason the decision of the Hon’ble Supreme Court in the case of *State of Mysore Vs. T. V. Sundaram Iyengar (supra)* would not assist the arguments on behalf of the Defendants.

25. Mr. Narvekar has also sought to rely on the decision of the Hon'ble Supreme Court in the case of **Commissioner of Income Tax vs Calcutta National Bank limited (in Liquidation)**¹⁵ to submit that the term business is a word of very wide import though by no means determinant and though ordinarily business implies a continuous activity in carrying on a particular trade or avocation it may also include an activity which may be called "quiescent". That if the memorandum provides what the objects of the company are and the activities are provided in the said objects clause then even if the line of business activity may not be the main part of its business even then the same has to be included. Mr. Narvekar, in my view is not correct in his submission, inasmuch as while the said decision observes that the term business is of very wide import and by no means determinant in scope, it also holds that each case has to be determined with reference to the particular kind of activity and occupation of the person concerned. No doubt, ordinarily business implies a continuous activity in carrying out a particular trade or avocation and may also include an activity which is quiescent i.e., being quiet, still or inactive and that if the activity is contained in the objects clause of the Memorandum of Association, the same can be included, however, the said inclusion is for

¹⁵ (1959) 37 ITR 171

the purposes of levying tax on the income that may be earned from that line of business. I am afraid that the meaning assigned to an activity for the purposes of levying tax on the income earned from an activity and whether or not that activity is ordinarily carried out in the usual course of business by a person for the purposes of considering whether a dispute is a commercial dispute are two different purposes and should not be confused. Accordingly, the said decision in the case of *Commissioner of Income Tax vs Calcutta National bank limited (in Liquidation) (supra)* does not assist the case of the Applicant.

26. In the case of *Ambalal Sarabhai Enterprises Ltd. Vs. K. S. Infraspace LLP & Anr. (supra)* relied upon the decision by this Court in the case of *M/s Glasswood Realty Pvt. Ltd. Vs. Mrs. Chandravilas Kailashkumar Kothari (supra)* as well as by both the parties herein, the Hon'ble Supreme Court has clearly observed in paragraphs 13, 14, 35, 36 and 42 as under:-

“13. The learned senior advocate for the appellant would however, contend that a strict interpretation as in the case of taxing statutes would not be appropriate in the instant case where the issue relates to jurisdiction. In that regard, the learned senior advocate has referred to the statement of objects and reasons with which the Commercial Courts Act, 2015 is enacted so as to provide speedy disposal of high value commercial disputes so as to create the positive image to the investors world about the independent and responsive Indian Legal System.

Hence, he contends that a purposive interpretation be made. It is contended that a wider purport and meaning is to be assigned while entertaining the suit and considering the dispute to be a commercial dispute. Having taken note of the submission we feel that the very purpose for which the CC Act of 2015 has been enacted would be defeated if every other suit merely because it is filed before the Commercial Court is entertained. This is for the reason that the suits which are not actually relating to commercial dispute but being filed merely because of the high value and with the intention of seeking early disposal would only clog the system and block the way for the genuine commercial disputes which may have to be entertained by the Commercial Courts as intended by the law makers. In commercial disputes as defined a special procedure is provided for a class of litigation and a strict procedure will have to be followed to entertain only that class of litigation in that jurisdiction. If the same is strictly interpreted it is not as if those excluded will be non-suited without any remedy. The excluded class of litigation will in any event be entertained in the ordinary Civil Courts wherein the remedy has always existed.

14. In that view it is also necessary to carefully examine and entertain only disputes which actually answers the definition “commercial disputes” as provided under the Act. In the instant case, as already taken note neither the agreement between the parties refers to the nature of the immovable property being exclusively used for trade or commerce as on the date of the agreement nor is there any pleading to that effect in the plaint. Further the very relief sought in the suit is for execution of the Mortgage Deed which is in the nature of specific performance of the terms of Memorandum of Understanding without reference to nature of the use of the immovable property in trade or commerce as on the date of the suit. Therefore, if all these aspects are kept in view, we are of the opinion that in the present facts the High Court was justified in its conclusion arrived through the order dated 01.03.2019 impugned herein. The Commercial Court shall therefore return the plaint indicating a date for its presentation before the Court having jurisdiction.

35. Various provisions of the Act namely Case Management Hearing and other provisions makes the court to adopt a proactive approach in resolving the commercial dispute. A new approach for carrying out case management and strict guidelines for completion of the process has been introduced so that the adjudicatory process is not delayed. I have referred to the various provisions of the Act and the Schedule bringing in amendments brought to the Civil Procedure Code to deal with the commercial disputes, only to highlight that the trial of the commercial dispute suits is put on fast track for disposal of the suits expeditiously. Various provisions of the Act referred to above and the amendments inserted to Civil Procedure Code by the Schedule is to ensure speedy resolution of the commercial disputes in a time bound manner. The intent of the legislature seems to be to have a procedure which expedites the disposal of commercial disputes and thus creates a positive environment for investment and development and make India an attractive place to do business.

36. A perusal of the Statement of Objects and Reasons of the Commercial Courts Act, 2015 and the various amendments to Civil Procedure Code and insertion of new rules to the Code applicable to suits of commercial disputes show that it has been enacted for the purpose of providing an early disposal of high value commercial disputes. A purposive interpretation of the Objects and Reasons and various amendments to Civil Procedure Code leaves no room for doubt that the provisions of the Act require to be strictly construed. If the provisions are given a liberal interpretation, the object behind constitution of Commercial Division of Courts, viz. putting the matter on fast track and speedy resolution of commercial disputes, will be defeated. If we take a closer look at the Statement of Objects and Reasons, words such as 'early' and 'speedy' have been incorporated and reiterated. The object shall be fulfilled only if the provisions of the Act are interpreted in a narrow sense and not hampered by the usual procedural delays plaguing our traditional legal system.

42. The object and purpose of the establishment of Commercial Courts, Commercial Divisions and Commercial

Appellate Divisions of the High Court is to ensure that the cases involved in commercial disputes are disposed of expeditiously, fairly and at reasonable cost to the litigants. Keeping in view the object and purpose of the establishment of the Commercial Courts and fast tracking procedure provided under the Act, the statutory provisions of the Act and the words incorporated thereon are to be meaningfully interpreted for quick disposal of commercial litigations so as to benefit the litigants especially those who are engaged in trade and commerce which in turn will further economic growth of the country. On the above reasonings, I agree with the conclusion arrived at by my esteemed brother Justice A.S. Bopanna.”

27. In the facts of this case, the dispute relating to the transaction of assignment of debt by the Plaintiff No. 1 in favour of the Defendant No.1 not being a dispute arising out of an ordinary transaction of a merchant, financier or a trader, and obviously not a banker nor a dispute arising out of any of the items mentioned in Section 2(1)(c) (ii) to (xiii), the dispute relating to the breach of the agreement dated 7th July, 2023 would not be a commercial dispute arising out of ordinary transactions of merchants, bankers, financiers and traders as defined under Section 2(1)(c)(i) of the said Act nor any other items at (ii) to (xiii) even if the purpose be otherwise commercial and therefore, would not fall within the jurisdiction of the Commercial Division of this Court. If the dispute as held is not commercial dispute, even if the dispute is above the specified value that would be of no consequence. Also the reliance upon the other sections of

the said Act including Sections 4, 7 and 15 as well as the preamble of the said Act would in my view not assist the case of Mr. Narvekar's clients.

28. Accordingly, this Interim Application is hereby rejected. Consequently, Interim Application (L) No. 3102 of 2024 is also rejected in as much as the objection as to mandatory pre-suit mediation under Section 12 A of the said Act can only be taken up if the Suit has been filed as a Commercial Suit, which in view of what has been held, is not a case here.

29. It is also quite surprising and rather curious that the Defendants should endeavour to persuade a Court that the Summary Suit be registered as a Commercial Summary Suit as that ordinarily and usually should be the concern of a Plaintiff who is interested in adjudication of its cases in a fast track manner with strict and mandatory time lines imposed upon the Defendants as well as the Courts as stipulated under the said Act.

30. Keeping in mind the objectives of the summary procedure under Order XXXVII of the CPC, so that cases falling in the specific classes of

suits as specified in Rule 2 of Order XXXVII of the CPC, are disposed of expeditiously by following a summary procedure, I am of the view that the whole endeavour by the Defendants is to delay the progress of the Summary Suit. The very fact that this Application is filed after the Interim Application seeking dismissal of the Suit on the purported ground of breach of Section 12A of the said Act, itself is a pointer to the conduct of the Defendants in proceeding in the suit. Therefore, I also propose to impose exemplary costs of Rs. 5 lacs to be paid by the Defendants to the High Court Non Gazetted Ministerial Staff Association, Mumbai within a period of two weeks.

(ABHAY AHUJA,J.)

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signed by
NIKITA
YOGESH
GADGIL
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