



2025:DHC:1795



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**BEFORE**

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

+ **CS(COMM) 688/2021, I.A. 4179/2022, I.A. 41942/2024**  
**and I.A. 41943/2024**

MRS MEENA VOHRA  
R/O 19, DELAMERE GARDENS,  
MILL HILL, LONDON, NW7 3EA  
UNITED KINGDOM

....PLAINTIFF

*(Through: Mr. Peeyoosh Kalra, Mr. Sanad K. Jha and Mr. Vineet Nayar, Advocates.)*

Versus

MASTER HOSTS PVT LTD.  
BUSINESS PREMISES AT;  
G-69, CONNAUGHT CIRCUS,  
NEW DELHI-110001

ALSO REGD. OFFICE, AT:  
25, WATERLOO STREET,  
1<sup>st</sup> FLOOR, KOLKATA - 700069

....DEFENDANT NO.1

SAMUEL FITZE & CO. PVT. LTD.  
REGD. OFFICE:  
26, JAWAHAR LAL NEHRU ROAD,  
KOLKATA - 700087

....DEFENDANT NO.2



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MR. DEEPAK KHULLAR  
(ALSO KNOWN AS BINU KHULLAR)  
R/O 8, HO-CHI MINH SARANI,  
4<sup>th</sup> FLOOR, SUITE NO. - 20,  
KOLKATA

....DEFENDANT NO.3

*(Through: Mr. Dhruva Ghosh, Sr. Advocate with Mr. Ashutosh Dubey, Mr. Abhishek Chauhan, Ms. Rajshri A. Dubey and Mr. Amit P. Shahi, Advocates.)*

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Reserved on: 13.02.2025

Pronounced on: 18.03.2025  
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## **JUDGMENT**

### **I.A. 4178/2022 (under Order VII Rule 11 of CPC)**

1. The present application is filed by defendant no.1 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) seeking rejection of the plaint on the ground *inter alia* of it being not maintainable as a commercial suit as per Section 2(1)(c) of the Commercial Courts Act, 2015 (hereinafter referred to as “the Act of 2015”). Since the decision on this fundamental ground will have a material bearing on the nature of the suit itself, therefore, the other grounds enumerated in the instant application are not considered at present.

2. Mr. Dhruva Ghosh, learned senior counsel appearing on behalf of defendant no.1 contends, that the averments made in the plaint would clearly signify that the present suit does not fall within the ambit of



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“commercial dispute”. He further submits, without prejudice, that even if the case set up by the plaintiff is accepted as it is, at best, it would be an ordinary civil suit for recovery of a loan amount.

3. According to him, a “commercial dispute” under Section 2(1)(c)(i) of the Act of 2015 pertains to transactions typically involving merchants, financiers, and traders, often characterized by mercantile documents. He emphasises that the Bombay High Court, in *Rolta (P) Ltd. v. Varanium Cloud Ltd.*,<sup>1</sup> held that the nature of a dispute should be determined based on the substance of the case rather than procedural technicalities; and that commercial disputes must necessarily involve commercial transactions. In support of this contention, learned senior counsel relies on a decision of the High Court at Calcutta in the matter of *Ladymoon Towers (P) Ltd. v. Mahendra Investment Advisors (P) Ltd.*<sup>2</sup>.

4. *Per contra*, Mr. Peeyoosh Kalra, learned counsel for the plaintiff argues that the present application is wholly misconceived and has been filed solely to delay the trial. According to him, the application is legally untenable and devoid of merit, warranting outright dismissal. He submits that according to the plain definition of “commercial dispute” in Section 2(1)(c) of the Act of 2015, it encompasses even an ordinary transaction involving merchants, bankers, financiers, and traders described in sub-clauses (i) to (xxii). He further submits that, in the present case, the loan was advanced by the plaintiff’s deceased brother to defendant no. 1. He submits that the loan agreement dated

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<sup>1</sup> 2024 SCC OnLine Bom 3518.



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19.12.1997 clearly contained a clause specifying an interest @ 12% p.a., effective from a particular date. Learned counsel also refers to the Board Resolution dated 29.07.2010, asserting that the advancement of the loan and its repayment were affirmed in the Board meeting of the defendant's no.1's company.

5. Learned counsel places reliance on the decision of this Court in *Amanpreet Kohli v. Pankaj Dayal*<sup>3</sup> and submits that, while considering the decision in *Lady Moon Towers (P) Ltd.* of the High Court at Calcutta, this Court in *Amanpreet Kohli* clearly held that a loan transaction with an element of interest would be contrary to the primary norm and thus, would not constitute a friendly loan. He relies on paragraph no. 28 of the said decision and argues that it is binding on this Court, as it directly addresses the issue at hand. He points out that in *Lady Moon Towers Pvt. Ltd.* and *Glasswood Realty (P) Ltd. v. Chandravilas Kailashkumar Kothari*<sup>4</sup>, the High Courts at Calcutta and Bombay, respectively, dealt with suits where the plaintiffs therein extended a "friendly loan" to the defendants. However, those judgments are not applicable in the present case, as the alleged loan transaction here is supported by mercantile documents and also carries an interest. In support of his argument, he cites the decision in *Padma Logistics and Khanij (P) Ltd. v. Ideal Unique Realtors (P) Ltd.*<sup>5</sup>, and relying on paragraph 12 of the judgment, contends that it is within the parties'

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<sup>2</sup> 2021 SCC OnLine Cal 4240.

<sup>3</sup> 2023 SCC OnLine Del 1808.

<sup>4</sup> 2021 SCC OnLine Bom 5032.

<sup>5</sup> 2022 SCC OnLine Cal 126.



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commercial wisdom to determine the incorporation of terms in commercial documents.

6. Learned counsel alternatively submits that if the Court finds that the instant suit is not maintainable as a commercial suit, it can be directed to be re-registered as an ordinary civil suit, as was done in ***Kailash Devi Khanna v. DD Global Capital Ltd.***<sup>6</sup>.

7. In rejoinder submissions, Mr. Dhruba Ghosh, learned senior counsel appearing on behalf of defendant no.1, submits that the definition of “commercial dispute” under Section 2(1)(c) of the Act of 2015 should not be stretched to an extent to include all financial transactions, regardless of their actual purpose. He emphasizes that the objective of the Act of 2015 must be considered while interpreting the scope of a “commercial dispute”.

8. He further contends that a careful reading of the decision in ***Amanpreet Kohli*** reveals that the determining factor was not merely the presence of interest in a friendly loan rather, the case involved various mercantile documents, an element of interest, and the nature of the parties' business, all of which were considered in drawing the conclusion. He submits that the decision in ***Amanpreet Kohli*** is clearly distinguishable not only on facts but also on law and that the decision in ***Ladymoon Towers (P) Ltd.*** should govern the present dispute.

9. I have given thoughtful consideration to the submissions advanced by learned counsel appearing for both parties and perused the

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<sup>6</sup> 2019 SCC OnLine Del 9954.



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record. Before embarking on the merits of the case, it is pertinent to delineate the ambit of Order VII Rule 11 of the CPC.

***Delineating the jurisprudential horizon of Order VII Rule 11 of the CPC***

10. The remedy contemplated under Order VII Rule 11 CPC is based on an independent and special procedure, empowering the Court to summarily dismiss a suit at the threshold without proceeding to record evidence or conduct a trial if any of the prescribed grounds are met. The objective of this provision is to prevent unnecessary prolongation of litigation wherein no valid cause of action exists or the suit is barred by limitation. The Supreme Court in *Dahiben v. Arvindbhai Kalyanji Bhanusali*<sup>7</sup>, summed up the law applicable for the rejection of a plaint and held that a plaint shall be rejected if it fails to disclose a cause of action, is undervalued or insufficiently stamped despite court directions, appears to be barred by law, is not filed in duplicate, or if the plaintiff fails to comply with procedural requirements. The rule also includes a proviso allowing the Court to extend the time for compliance in exceptional circumstances to prevent grave injustice. This principle was reaffirmed by the Supreme Court in the case of *Shri Mukund Bhavan Trust v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle*<sup>8</sup>, underscoring the necessity of curbing frivolous litigation to ensure judicial efficiency.

11. The real object of Order VII Rule 11 CPC is to keep out irresponsible lawsuits from the Courts and it provides for an

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<sup>7</sup> (2020) 7 SCC 366.



independent remedy for the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The Supreme Court in *Sopan Sukhdeo Sable v. Asstt. Charity Commr.*<sup>9</sup>, held as under:

*“17. .. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by a searching examination of the party, in case the court is prima facie of the view that the suit is an abuse of the process of the court, in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.*

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*20....Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.”*

12. Furthermore, in *Hardesh Ores (P) Ltd. v. Hede & Co.*<sup>10</sup> the Supreme Court further held that it is not permissible to cull out a sentence or a passage and to read it in isolation. It is the substance and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint *prima facie* show a cause of action, the Court

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<sup>8</sup> 2024 SCC OnLine SC 3844.

<sup>9</sup> (2004) 3 SCC 137.

<sup>10</sup> (2007) 5 SCC 614.



cannot embark upon an enquiry whether the allegations are true in fact. Therefore, a roving inquiry akin to appreciation of evidence is not contemplated at the stage of Order VII Rule 11 of the CPC, which is contemplated as a summary stage.

13. In *Azhar Hussain v. Rajiv Gandhi*<sup>11</sup>, the Supreme Court further held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste the judicial time of the Court, in the following words :-

*“12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”*

14. Moreover, the power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint or after issuing summons to the defendant, or before the conclusion of the trial, as held by the Supreme Court in the judgment of *Saleem Bhai v. State of Maharashtra*<sup>12</sup>. Furthermore, the Supreme Court in the case of *Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.*<sup>13</sup>, reiterated that the power under Order VII Rule 11 CPC can also be exercised *suo moto* by the Court.

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<sup>11</sup> 1986 Supp SCC 315.

<sup>12</sup> (2003) 1 SCC 557.

<sup>13</sup> (2022) 10 SCC 1.



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15. Thus, on the conspectus of the settled position of law, it is crystal clear that the power vested in the Court under Order VII rule 11 CPC is not incumbent upon a formal application moved by the defendant but can also be exercised by the Court on its own. Moreover, at this stage, it is not permissible to segregate a sentence or a passage and to read it in isolation, and the plaint has to be construed as it comprehensively stands, without addition or subtraction of words. While considering an application under the aforesaid provision, the underlying intent of this remedy is to be kept in mind, that is to curb abusive or fruitless litigation which is bound to meet a dead fate. At the same time, once the conditions stipulated in the provision are found to exist in a given case, the Court must exercise the power of rejection, which is discernible from the use of the word “*shall*”.

16. The very factum of the continuation of this suit as a commercial suit is challenged, therefore, it is incumbent upon the Court to address this aspect, which clearly falls within the scope of Order VII Rule 11 of the CPC.

**Unveiling the Legal Contours of the Object and Scope of Act of 2015**

17. Before analyzing the definition of a “commercial dispute” under the Act of 2015, it is essential to understand the circumstances that led to its enactment. The 253<sup>rd</sup> Report of the Law Commission of India, presented on 29.01.2015, outlines the sequence of events that resulted in the drafting of the Act of 2015. The need for Commercial Divisions in High Courts was driven by the economic policy changes post-1991 and the international perception that the Indian judicial system was plagued



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by delays. This perception discouraged domestic and foreign investors from considering India as a favoured destination for investments. Thus, there was an air of pessimism regarding the ease of doing business in India. The 188<sup>th</sup> Law Commission Report had previously recommended establishing Commercial Divisions in High Courts to expedite the commercial cases of high pecuniary value. It proposed a “Fast-Track procedure” with strict timelines from the filing of pleadings to the delivery of judgments. Consequently, Bill No. 139 of 2009 was introduced in the Lok Sabha on 16.12.2009, proposing the establishment of Commercial Divisions to handle disputes exceeding Rs.5,00,00,000/-. The Bill also recommended transferring pending commercial disputes and arbitration-related matters to the Commercial Division of the High Courts.

18. However, upon reaching the Rajya Sabha, various concerns were raised, leading to the Bill’s referral to the Select Committee on the Commercial Division of High Courts Bill, 2009. The Committee, in its report dated 29.07.2010, recommended expanding the definition of “commercial dispute” to include joint-venture agreements, shareholder agreements, investment agreements, outsourcing services, banking, financial services, and similar transactions. This recommendation set the framework for a broader approach to commercial litigation. Following further deliberation and reconsideration, the 253<sup>rd</sup> Law Commission Report was prepared, culminating in a re-drafted Bill. The Commission stressed the importance of Commercial Courts as a specialized forum for resolving complex commercial disputes



efficiently. The primary aim was to enhance the country's trade and commerce landscape, while improving India's global reputation in commercial dispute resolution and building upon the ease of doing business.

19. The Bill received the assent of the President on 31<sup>st</sup> December, 2015 and was published in the Gazette of India on 1<sup>st</sup> January, 2016. A reading of the Statement of Objects would clearly indicate that the Bill seeks to establish Commercial Courts for the purpose of adjudicating commercial disputes. The object of the Act has been succinctly described as follows:-

*“An Act to provide for the constitution of Commercial Court, Commercial Division, and Commercial Appellate Division in High Courts for adjudicating commercial disputes of specified value and matters connected therewith or incidental thereto.”*

20. Recently, this Court in the case of ***M/s. Levitate Mobile Technologies Pvt. Ltd. v. M/s. Standard Chartered Bank Pvt. Ltd***<sup>14</sup>, also had an occasion to consider the scope and ambit of the Act of 2015 and observed as under:-

*“23. A comprehensive reading of the Statement of Objects and Reasons, along with the insights from the Law Commission's 188th and 253rd Reports, provides significant clarity on the rationale behind the enactment of the Act. The Parliament's intention was to overhaul the commercial dispute resolution framework by distinguishing it from other civil disputes, thereby achieving its core goal i.e., the expeditious disposal of commercial disputes in India, keeping in view the larger picture of preserving and boosting the economy of the country. The aim and objective of the Act of 2015 clearly reflect the intent of the Parliament for speedy disposal of high value commercial disputes while setting up an independent mechanism for their early resolution.”*

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<sup>14</sup> 2025 SCC OnLine Del 818.



21. Thus, the Act of 2015 was enacted to ensure an efficient and definite dispute resolution mechanism to aid the development of trade and commerce. The legislation is also aimed to improve the international image of the Indian justice system in the resolution and adjudication of commercial matters. It provides for setting up Commercial Divisions and Commercial Courts with specialized procedures and time-bound mechanisms. Notably, the report that preceded the legislation acknowledged that “commercial disputes” should be defined broadly to include transactions arising out of mercantile documents, joint ventures, intellectual property rights, insurance, and similar matters, as outlined in the 2015 Bill. The Select Committee of Parliament and the Law Commission Reports clearly emphasize that the Act is designed exclusively for commercial disputes, reinforcing the need for a specialized judicial mechanism to handle such cases expeditiously. Thus, commercial disputes have been demarcated as a special class, distinct from ordinary civil disputes, and the demarcation has a sound nexus with the objectives discussed above.

**Decoding the meaning of “Commercial Disputes” and “Mercantile Documents”**

22. Section 2(1)(c) of the Act of 2015, defines the expression “commercial dispute” comprehensively. Section 2(1)(c) of the Act of 2015, *inter alia*, reads as under:-

**“2. Definitions.—(1) In this Act, unless the context otherwise requires,—**

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**(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;*
- (ii) export or import of merchandise or services;*
- (iii) issues relating to admiralty and maritime law;*
- (iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;*
- (v) carriage of goods;*
- (vi) construction and infrastructure contracts, including tenders;*
- (vii) agreements relating to immovable property used exclusively in trade or commerce;*
- (viii) franchising agreements;*
- (ix) distribution and licensing agreements;*
- (x) management and consultancy agreements;*
- (xi) joint venture agreements;*
- (xii) shareholders agreements;*
- (xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;*
- (xiv) mercantile agency and mercantile usage;*
- (xv) partnership agreements;*
- (xvi) technology development agreements;*
- (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;*
- (xviii) agreements for sale of goods or provision of services;*
- (xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;*
- (xx) insurance and re-insurance;*
- (xxi) contracts of agency relating to any of the above; and*
- (xxii) such other commercial disputes as may be notified by the Central Government.*

*Explanation.—A commercial dispute shall not cease to be a commercial dispute merely because—*

- (a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;*
- (b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions.”*



23. This provision sets forth an exhaustive enumeration comprising twenty-two specific categories of disputes that qualify as commercial disputes. By providing this exhaustive list, the legislature has unequivocally articulated the scope and extent of matters falling within the definition of “commercial dispute” thereby ensuring clarity, precision, and predictability in its application. The exhaustive nature of the enumeration underscores the legislative intent to prevent ambiguity and arbitrariness by way of over-breadth or under-reach, thereby facilitating a clear demarcation of the jurisdictional boundaries of commercial courts. Consequently, disputes falling squarely within any of these stipulated categories can readily be identified and addressed under the special mechanisms envisaged by the Act of 2015, thereby streamlining litigation and enhancing judicial efficiency in commercial matters.

24. The Supreme Court in the case of *Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP*<sup>15</sup>, explained the provisions of the Act of 2015 and held that merely on account of high value, a suit cannot be filed before a Commercial Court, particularly where it does not relate to a “commercial dispute” and held 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*

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<sup>15</sup> (2020) 15 SCC 585.



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*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 lawmakers. 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 1-3-2019 impugned herein. The Commercial Court shall therefore return the plaint indicating a date for its presentation before the Court having jurisdiction.”*

25. Out of the twenty-two categories referred above, the category which is of primary relevance here is defined under Section 2(1)(c)(i) of the Act of 2015, which pertains to ordinary transactions of merchants,



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bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents.

26. In *Kailash Devi Khanna*, this Court emphasized that not all suits for monetary recovery qualify as “commercial dispute” under the Act of 2015. The Court specifically observed that for a claim to fall under Section 2(1)(c)(i) of the Act of 2015, it must pertain to “ordinary transactions of merchants, bankers, financiers, and traders,” involving mercantile documents and their enforcement or interpretation. The Court further held that a suit merely seeking recovery of money, without any connection to mercantile transactions or documents, does not meet the criteria of a “commercial dispute” and, therefore, cannot be filed as a commercial suit. Filing a civil suit under the commercial courts’ jurisdiction, without meeting these requirements, amounts to a misuse of the specialized forum meant for expeditious resolution of genuine business disputes, ultimately hindering the adjudication of legitimate commercial cases.

27. Further, the High Court at Calcutta in *Ladymoon Towers (P) Ltd.*, clarified that a “commercial dispute” involves transactions typically of merchants, financiers, and traders, and emphasized that disputes should be assessed on the substance of the case rather than procedural objections. Similarly, in *Rolta (P) Ltd.*, the High Court at Bombay reiterated that a “commercial dispute” under the Act of 2015 must relate to commercial transactions and not personal loans or other non-commercial engagements. In both these cases, the Courts ruled that



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disputes arising from personal loans, even if advanced for business purposes, do not qualify as “commercial dispute” under the definition provided in Section 2(1)(c) of the Act of 2015.

28. On a plain reading of Section 2(1)(c)(i) of the Act of 2015 juxtaposed with the judicial pronouncements discussed above, it is crystal clear that the qualification attached in Section 2(1)(c)(i) is not that of “ordinary transaction” as it clearly means that not all ordinary transactions would come under the purview of the “commercial dispute”, rather only those ordinary transactions that concern merchants, bankers, financiers and traders, and relate to mercantile documents, would come under the purview of the “commercial dispute”. Having said so, it would be apposite to note that sub-clause (i) is primarily composed of two elements – *firstly*, “ordinary transactions” between merchants, bankers, financiers and traders; *secondly*, such transactions must be based upon mercantile documents. It further clarifies that any issue regarding the interpretation or enforcement of such mercantile documents executed between merchants, bankers, financiers and traders would be covered within the ambit of “commercial dispute”. The overall scheme of the Act of 2015 and the intent underlying therein indicate that both elements must co-exist for a dispute to be termed as a “commercial dispute”.

29. At this juncture, it is now necessary to analyze the meaning and significance of “mercantile documents” within the framework of commercial disputes. The Act of 2015 does not define “mercantile documents” as such, however, the plain meaning of “mercantile”



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pertains to matters related to trade and commerce. In its ordinary usage, the term “mercantile document” refers to a document associated with merchants, trade, or commercial transactions.

30. Since the Act of 2015 does not provide a specific definition, the ordinary meaning must be assigned to it. As per Merriam-Webster Dictionary, “mercantile” is referred to as “of or relating to merchants or trade.” The Oxford English Dictionary states it as “relating to trade or commerce”. The Cambridge Dictionary describes it as “related to trade or commerce”, while the Collins Dictionary defines it as “relating to merchants or commerce”.

31. Reference can be made to Black’s Law Dictionary, 8<sup>th</sup> Edition, which defines “mercantile” as “*an act relating to a merchant or trading and being commercial in nature.*” This interpretation suggests that for a dispute to be categorized as a “commercial dispute”, the transaction should be supported by a document that records, governs, or evidences trade, commerce, or business activity. The absence of such a document certainly raises doubts as to whether a dispute can be classified as a “commercial dispute” under the provisions of the Act of 2015. A dispute qualifies as a “commercial dispute” when it arises from transactions involving merchants, bankers, financiers, or traders, and relates to mercantile documents, including their enforcement and interpretation. Pertinently, the essence of a “commercial dispute” inherently carries a commercial flavour, encompassing elements of trade and business.



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32. Understanding the role of “mercantile documents” in commercial disputes necessitates an examination of specific instruments commonly used in trade and finance. One such crucial instrument is “commercial paper”, which plays a significant role in business transactions by facilitating payments and credit arrangements. Since “commercial paper” itself forms the basis of a commercial dispute, it becomes essential to analyze how a mercantile document must fit within the definition of “commercial paper” to qualify as part of a commercial dispute. By defining “commercial paper”, the scope of mercantile documents and their significance in determining the nature of commercial disputes under the Act of 2015 can be better understood.

33. The “commercial paper” is also defined in the *Black's Law Dictionary* as an instrument other than cash for the payment of money and includes negotiable instruments of a particular kind, in the following manner:

*“commercial paper”*: 1. An instrument, other than cash, for the payment of money. “commercial paper” - typically existing in the form of a draft (such as a check) or a note (such as a certificate of deposit) - is governed by Article 3 of the UCC. But even though the UCC uses the term “commercial paper” when referring to negotiable instruments of a particular kind (drafts, checks, certificates of deposit, and notes as defined by Article 3), the term long predates the UCC as a business and legal term in common use. Before the UCC, it was generally viewed as synonymous with negotiable paper or bills and notes. It was sometimes applied even to nonnegotiable instruments. - Also termed mercantile paper; company's paper. See NEGOTIABLE INSTRUMENT.”

*“commercial paper” is rather a popular than a technical expression, often used, however, both in statutes and in decisions of courts, to*



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*designate those simple forms of contract long recognized in the world's commerce and governed by the law merchant.”*

*“Defined most broadly, “commercial paper” refers to any writing embodying rights that are customarily conveyed by transferring the writing. A large subset of “commercial paper” consists of such writings that are negotiable, which means that the law enables a transferee to acquire the embodied rights free of claims and defences against the transferor.”*

34. From the foregoing discussion, it is evident that mercantile documents, including “commercial paper”, play a pivotal role in determining the nature of a “commercial dispute” under the Act of 2015. The classification of a dispute as commercial hinges upon the presence of such documents, which serve as concrete evidence of trade and financial transactions. However, it is equally important to note that the term “mercantile documents” could not be constrained within the strict confines of judicial interpretation. The word “document” is defined in the Bharatiya Sakshya Adhinyam, 2023 (earlier “Indian Evidence Act, 1872”) and the definition is fairly expansive. Any document of a formal nature which serves as a record of a commercial transaction or trade between merchants, traders etc. could qualify as a “mercantile document”. The nature of the document may be relevant in determining the real nature of the dispute as it would reveal the element of commercial flavour, however, the real nature of a document is to be determined on a case to case basis and the general expression used by the legislature cannot be curtailed to narrow down the scope of application of the Act of 2015 in any manner. The real test to determine whether a particular document qualifies as a “mercantile document” is whether merchants, bankers, financiers or traders would ordinarily



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execute such a document to record a commercial/mercantile transaction, having regard to the prevailing practices and extant law. The presence of the word “mercantile” narrows down the scope of the word “documents” and thus, the mere presence of a document evidencing the transaction is not enough unless the document qualifies as a mercantile document in the sense discussed above.

35. After undertaking a brief sojourn through the settled position of law surrounding Order VII Rule 11 of the CPC and analyzing the object and scope of the Act of 2015, this Court shall now proceed to examine the arguments advanced on behalf of the parties herein and apply the relevant legal principles to the facts of the instant case.

36. The principal argument raised by defendant no.1 is with respect to the non-maintainability of the suit under Section 2(1)(c)(i) of the Act of 2015.

37. In the aforesaid context, if the pleadings made in the civil suit are perused, the same would indicate that on 19.12.1997, the plaintiff’s deceased brother Late Mr. Mohinder Kapur, purportedly advanced a loan of Rs. 16,50,000/- out of his own funds to defendant no.1 at an agreed interest rate of 12% per annum, intended for statutory payment to the L&DO to obtain a “No Objection Certificate”. The facts would further indicate that no fixed timeline was set for repayment, and defendant no. 1 was to repay the loan at its earliest convenience. Further, the loan amount, along with accrued interest, was acknowledged by the defendants. The defendant no.3 assured that repayment would be made once defendant no.1 generated profits



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through leasing its premises or operating as a hotel. During his lifetime, Late Mr. Mohinder Kapur executed a General Power of Attorney (POA) dated 27.12.2013, in favour of the plaintiff.

38. The factual matrix would further indicate that the plaintiff's brother was the shareholder of defendant no. 1 and defendant no. 2 company. Furthermore, as per the plaint itself, the said loan was given out of his own funds. It is the contention of the plaintiff that since the loan carries the interest element, it would qualify as a "commercial dispute". In this context, the plaintiff relied upon the decision of this Court in ***Amanpreet Kohli***. The relevant extracts of the said case read as under:-

*"25. A reading of the above judgments would show that where the loan transaction is not a 'friendly loan', but is, in fact, supported with proper documentation, like a Loan Agreement, a Promissory Note, Receipt, and the post-dated cheques for the repayment thereof, as is being alleged in the present suit; and the transaction is between two merchants, that is, persons whose job it is to buy and sell goods, in the present case - real estate; and the suit raises a dispute arising out of ordinary transactions of merchants, including enforcement of the documents executed in the course of such transaction, like in the present case, the dispute would fall within the meaning of the term 'commercial dispute' as defined in Section 2(1)(c)(i) of the Commercial Courts Act."*

39. The case of ***Amanpreet Kohli***, relied upon by the counsel for the plaintiff, does not apply to the present case. The facts and legal issues in ***Amanpreet Kohli*** are distinguishable from those at hand, as that case was decided in a different factual and legal context.

40. In ***Amanpreet Kohli***, the plaintiff and defendant were engaged in the business of real estate development and construction. A loan



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agreement and promissory note were executed, along with the issuance of post-dated cheques. The plaintiff therein claimed that the loan transaction constituted an ordinary transaction between merchants and, therefore, fell within the ambit of a “commercial dispute”.

41. In paragraph 20 of the said decision, this Court held that the loan transaction was not a mere friendly loan but was, in fact, supported by proper documentation, including a loan agreement, a promissory note, a receipt, and post-dated cheques for repayment. The Court further observed that when a transaction occurs between two merchants engaged in trade, the dispute falls within the definition of a “commercial dispute” under Section 2(1)(c)(i) of the Act of 2015.

42. If the decision in *Amanpreet Kohli* is considered in the right perspective, it would be seen that what weighed with the Court in arriving at the conclusion, was the execution of “mercantile documents” and the nature of the work being performed by the parties to the suit. The ratio of the decision establishes that when two merchants execute “mercantile documents” and extend a friendly loan with an embedded interest element, duly supported by formal mercantile documents, such a transaction would fall within the definition of a “commercial dispute”. However, this decision cannot be interpreted to mean that by default every friendly loan *qua* any parties carrying an interest element, even if not supported by mercantile documents, must necessarily be treated as a commercial suit. If such an interpretation is accepted then the entire rationale of Section 2(1)(c) of the Act of 2015 would be defeated.



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43. Furthermore, the decision in *Padma Logistics*, delivered by the High Court at Calcutta, reinforces the principle that the execution and exhibition of multiple documents by the parties support the conclusion that the dispute is commercial in nature. The Court emphasized the existence of mercantile documents and observed that negotiations and agreements entered into by merchants should not be dependent on legal technicalities but should be assessed based on their commercial wisdom.

44. A reference can also be made to the decision of the High Court at Bombay in *Bharat Muddanna Shetty v. Ahuja Properties & Developers and Ors.*<sup>16</sup>, wherein, the Court found that a friendly loan given to a needy friend, not being part of a business or an ordinary business transaction, can at best be treated as money lending *per se*. The Court emphasized that the Act of 2015 deals with a special category of cases, whereas Order XXXVII of CPC pertains to ordinary recovery suits. In *Glasswood Realty Pvt. Ltd.*, the High Court at Bombay held that for a transaction to qualify as a “commercial dispute”, it must have a commercial flavour, and its genesis must lie in the fact that the parties entered into the transaction with a commercial purpose. Advancing pure and simple friendly loans on friendly terms has been held to fall outside the definition of a commercial dispute.

45. Similarly, in the case of *M/s. AKK Entertainment Pvt. Ltd. v. Inderjit Lankesh*, the High Court of Karnataka at Bengaluru, *vide* its order dated 21.09.2023 in Writ Petition No. 24444/2022, held that a

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<sup>16</sup> 2021 SCC OnLine Bom 13984.



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loan or dispute not based on any mercantile document cannot be considered a “commercial dispute”. It was further observed that not all suits for the recovery of money fall under Section 2(1)(c) of the Act of 2015. A hand loan or a loan advanced without the execution of any document or mercantile instrument would not qualify as a “commercial dispute”. The High Court at Bombay, in the case of *Rolta Private Limited* has also followed the same reasoning.

46. Reference can also be made to Order XXXVII CPC, which applies to the Courts as specified in Rule 1 of Order XXXVII CPC. This provision covers a class of suits, including those based on bills of exchange, hundies, and promissory notes, where the plaintiff seeks to recover a debt or liquidated demand in money payable by the defendant, with or without interest. It also applies to claims arising from a written contract or an enactment where the sum sought to be recovered is a fixed amount or a debt (other than a penalty) and to suits based on guarantees where the claim against the principal is in respect of a debt or liquidated demand. Additionally, it includes suits for the recovery of receivables instituted by an assignee of a receivable.

47. The institution, procedure, and other related aspects are prescribed in detail under Order XXXVII. The provisions of the Act of 2015 do not entirely override or render the general provisions of Order XXXVII obsolete. Instead, the Act of 2015 provides for the resolution of disputes of a specific category. As a result, a large number of cases will continue to fall under Order XXXVII, whereas disputes classified



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as “commercial disputes” under the Act of 2015, will be adjudicated under its framework.

48. Considering the case in hand, the present suit is not based on any transaction involving mercantile documents, nor did the deceased act in the capacity of a financier. The transaction in question was not an ordinary transaction for the deceased as he was not commercially engaged in the activity of financing or lending. Furthermore, the terms of repayment were not determined between the parties and repayment was left to the mutual understanding of the parties, which is not indicative of a commercial transaction between merchants, financiers, traders or bankers. A one-off personal loan or a friendly loan does not fall within any of the categories enumerated under Section 2(1)(c) of the Act of 2015, merely because it carries interest. It is only the ordinary transactions involving merchants, bankers, financiers, and traders such as those relating to mercantile documents, which are covered under Section 2(1)(c)(i) of the Act of 2015. The loan was extended in a personal capacity and thus, it fell outside the purview of the specialized commercial courts' jurisdiction.

49. Moreover, if a Civil Suit is filed as a commercial suit when it does not qualify as a “commercial dispute” under the Act of 2015, it undermines the scope and object of the Act of 2015, as it essentially misuses the specialized jurisdiction of commercial courts intended for swift resolution of genuine commercial disputes, potentially delaying other legitimate commercial cases. Recently, this Court in the case of *Louis Dreyfus Company India Pvt. Ltd. v. Nutrilite Agro Products*



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*Pvt. Ltd.* in CS(COMM) 538/2020 *vide* order dated 04.02.2025, while rejecting the application under Order XI Rule 1(5) CPC observed that it is high time that commercial courts need to understand and realize the *bonafide* aim and true spirit of the legislation and instead of being mired in the web of frivolous applications supported by feeble grounds, they should be a potent weapon for the speedy resolution of high-value commercial disputes as envisaged by the legislature. It must always be kept in mind that the creation of a specialised procedure for a specific class of disputes is a reflection of a strong legislative intent. For, it essentially involves a legislative dictum for the allocation of judicial time to a certain class of cases. It must always be understood that all judicial time is meant for the consumption of the public, and the endeavour of the Courts to weed out undesirable cases from the system is essentially intended to allocate the time saved to better causes, which are actually intended to be covered by the special legislation. No doubt, it would not mean that the other causes are not important, rather, it only means that they are to be governed by the general procedure, rather than a special one.

50. In light of the foregoing discussion, this Court finds that the claim for recovery in the present suit does not qualify as a “commercial dispute” under Section 2(1)(c) of the Act of 2015, as the transaction in question pertains to a personal loan. The lender was not a merchant, trader, banker or financier. The deceased had advanced a personal loan to defendant no. 1 on certain terms and conditions, but such a loan, even if ultimately used for business purposes, does not inherently constitute a



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“commercial dispute” within the meaning of the Act of 2015 as it does not pertain to ordinary transactions involving merchants, bankers, financiers, and traders such as those relating to mercantile documents. Moreover, the loan was not advanced in the ordinary course of business and has no relation to the trade, commerce, or business of the plaintiff’s deceased brother.

51. Accordingly, I.A. 4178/2022 is allowed and stands disposed of.

52. In view of the aforesaid and considering the directions passed in *Kailash Devi Khanna*, the suit shall be re-numbered as an ordinary civil suit.

53. Accordingly, subject to the order passed by the Hon’ble Judge-In-Charge (Original Side), list the matter before the concerned Roster Bench as per applicable rules and regulations on 28.07.2025.

54. All rights and contentions of the parties, including *qua* maintainability of the civil suit even as an ordinary suit etc. on the other grounds are left open. The determination by this Court shall not be construed as a determination of the plaintiff’s claim on merits and is limited to the non-qualification of the subject dispute as a “commercial dispute” within the meaning of the Act of 2015.

**(PURUSHAINDR KUMAR KAURAV)**  
**JUDGE**

**MARCH 18, 2025**  
*nc/@m/sph*