



2025:DHC:8206-DB



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

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*Judgment reserved on: 03.09.2025*

*Judgment pronounced on: 17.09.2025*

+ EFA(COMM) 4/2024

**M/S CHOPRA MARKETING PRIVATE LIMITED**

.....Appellant

Through: Mr. Amulya Dhingra, Mr.  
Aashutosh Jagtap, Advocates.

versus

**M/S DRISHTICON PROPERTIES PRIVATE LIMITED &**

**ANR.**

.....Respondents

Through: Mr. Jayesh Kain, Mr. Vinayak  
Batta, Mr. Yogendra Kumar  
Verma, Mr. Jayesh Kain, Mr.  
V.S. Dubey, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN  
SHANKAR**

## **J U D G M E N T**

### **HARISH VAIDYANATHAN SHANKAR, J.**

1. The present Execution First Appeal has been filed under Section 13 of the **Commercial Courts Act, 2015<sup>1</sup>**, against the **Impugned Order dated 17.05.2024<sup>2</sup>** passed by the learned **District Judge (Commercial Court - 08), Central District, Tis Hazari**

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<sup>1</sup> CC Act

<sup>2</sup> Impugned Order



**Courts, Delhi**<sup>3</sup>, in Execution (Comm) No. 88/2024 titled “*M/s Chopra Marketing Pvt. Ltd. v. M/s Drishticon Properties Pvt. Ltd. & Ors.*”.

2. By the said order, the learned Commercial Court dismissed the execution application on the ground that the dispute between the parties does not qualify as a 'commercial dispute' within the meaning of the CC Act and, therefore, is not executable by the Commercial Court under Section 6 of the said Act.

**BRIEF FACTS:**

3. The Appellant (*Decree Holder*) and the Respondent (*Judgment Debtor*) are duly incorporated companies under the Companies Act, engaged in commercial activities, including the real estate business.

4. Disputes arose pursuant to an Agreement to Sell dated 18.07.2006 in respect of property bearing No. 4, Ata-Ur-Rehman Lane, Under Hill Road, Rajpur Road, Delhi-110054. Upon failure of the transaction, the Appellant invoked arbitration before the learned Sole Arbitrator.

5. By an Arbitral Award dated 25.07.2015, the learned Sole Arbitrator declined the relief of specific performance but directed the Respondent to pay the Appellant a sum of Rs. 94,00,000/- along with interest at 12% per annum from 25.07.2015 until realization.

6. The Appellant challenged the Award by filing a petition under Section 34 of the **Arbitration and Conciliation Act, 1996**<sup>4</sup> before a learned Single Judge of this Court, registered as OMP (Comm.) No. 3/2016. The petition was disposed of by order dated 01.08.2019.

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<sup>3</sup> Commercial Court

<sup>4</sup> A&C Act.



7. Dissatisfied, the Appellant preferred an appeal under Section 37 of the A&C Act, registered as FAO(OS)(Comm.) No. 213/2019, which was disposed of by a Division Bench of this Court on 31.10.2019.

8. Thereafter, the Appellant carried the matter to the Hon'ble Supreme Court by way of **Special Leave Petition<sup>5</sup>**, bearing No. SLP (C) No. 5855/2020. The Hon'ble Supreme Court disposed of the SLP by order dated 22.01.2024.

9. With the disposal of the SLP, the Award dated 25.07.2015 attained finality. The Appellant, therefore, initiated execution proceedings by filing Execution (Comm.) No. 88/2024 on 06.03.2024 before the learned Commercial Court.

10. The learned Commercial Court, however, on the objections raised by the Respondent/ Judgement Debtor, dismissed the execution application, by the Impugned Order dated 17.05.2024, holding that the dispute related to a residential property and, therefore, did not fall within the ambit of '*commercial dispute*' as defined under Section 2(1)(c) of the CC Act. On this reasoning, it concluded that it lacked jurisdiction under Section 6 of the CC Act to proceed with the execution. The relevant portion of the Impugned Order is as follows:

“This Award was challenged upto the Hon'ble Supreme Court, but was not modified. The claimant has filed this execution seeking recovery of the award amount with interest. The JD/respondent filed the objections under Section 47 of CPC stating that this court does not have jurisdiction to entertain this execution as the subject matter of the Award was not a commercial dispute as contemplated under Section 2 (c) of the Commercial Courts Act. It was stated that the subject matter of the agreement to sell was not a commercial property and the agreement between the parties was in respect of a residential property and it is an ordinary civil dispute.

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<sup>5</sup> SLP



Ld. Counsel for the petitioner/DH on the other hand argued that as per the Award, the parties are carrying on business in Real Estate having financial dealings and therefore, the Award was in respect of a commercial disputes covered under Section 2 (c) of the Act and this court has jurisdiction.

Admittedly, the property for which the parties before me entered into arbitration was a residential property. What has to be seen is whether the dispute was a commercial dispute as contemplated under Section 2 (c) of the Commercial Courts Act. Section 2 (c) (vii) relates to the agreement for the immovable properties used exclusively in trade and commerce. An agreement to sell relating to a residential property does not fall within the ambit of this Section. Ld. Counsel for the DH has failed to draw attention of the court as to under which specific clause of Section 2 (c) of the Act, this dispute is covered. I find merits in the objections raised by the JD regarding jurisdiction of this court. The dispute between the parties in respect of a residential property is not governed by the Commercial Courts Act even if the parties are in Real Estate Business. It is the nature of the immovable property which is relevant. This court as per Section 6 of the Commercial Courts Act has jurisdiction exclusively only for the commercial disputes contemplated under Section 2 (c) of the Act. The execution petition is therefore, not maintainable in this court and the same is dismissed for want of jurisdiction. DH shall be at liberty to approach the appropriate court as per law.”

*(emphasis supplied)*

### **CONTENTION OF THE PARTIES:**

11. Learned counsel for the Appellant would contend that the Commercial Court, while acting as the Executing Court, erred in dismissing the execution petition on the ground of lack of jurisdiction.

12. He would further submit that the dispute had already been treated as a commercial dispute in earlier proceedings under Sections 34 and 37 of the A&C Act, which were duly registered and adjudicated as commercial matters and the Respondent never raised any objection to jurisdiction in those proceedings, and having acquiesced to the same, is now estopped from re-agitating the issue at the stage of execution.



13. Learned counsel for the Appellant would further submit that the Commercial Court committed a manifest error in holding the execution petition to be not maintainable, and emphasized that the arbitral award itself, which stood upheld under Section 34, recorded that the property was treated as security for a commercial loan transaction between the parties, and therefore, once the matter was admitted, registered, and adjudicated as a commercial dispute in OMP (Comm.) No. 3/2016 and FAO(OS)(Comm.) No. 213/2019, the Respondent is precluded from reopening the issue of jurisdiction at the execution stage.

14. It would also be urged that the objection regarding the “non-commercial” nature of the dispute is an afterthought and *mala fide*, and is intended only to obstruct and delay execution of the award. He would further submit that the Respondent never challenged the award itself, which clearly recorded the transaction as an unsecured loan between two companies; hence, the Respondent cannot now be allowed to contend that the matter falls outside the Commercial Courts Act.

15. *Per contra*, learned counsel for the Respondent would support the Impugned Order and argue that, although the proceedings arose under the A&C Act, the dispute is essentially an ordinary civil dispute concerning a residential property, and therefore, it could not be treated as a commercial dispute.

16. He would further submit that the mere fact that the parties are engaged in the real estate business would not convert the present dispute into a commercial one under the CC Act, and the decisive factor remains the residential character of the property.



**ANALYSIS:**

17. Having heard the submissions advanced by learned counsel for both parties, and upon a careful consideration of the pleadings, documents, and the impugned findings, this Court now proceeds to address the questions arising for determination.

18. The solitary issue arising in the present matter is confined to the determination of whether the Execution Petition was maintainable.

19. The learned Commercial Court, in the Impugned Order, held that the Execution application filed by the Appellant was not maintainable by placing reliance upon Section 2(1)(c)(vii) of the CC Act.

20. Section 2(1)(c) of the CC Act reads as follows:

- “(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;”

21. Relying on the above provision, the learned Commercial Court dismissed the Execution Petition for want of jurisdiction, holding that since the agreement to sell in question pertained to a residential property, the dispute did not fall within the ambit of a “commercial dispute” as defined under Section 2(1)(c) of the CC Act.

22. The learned Commercial Court reasoned that the determinative test under Section 2(1)(c)(vii) is whether the immovable property forming the subject matter of the dispute is used exclusively in trade or commerce, and consequently, an agreement in respect of a residential property cannot be treated as a “commercial dispute”. It further observed that what is material is the *nature of the property* and not the *business of the parties*, meaning thereby that the learned executing Court did not really consider the underlying transaction.

23. At this juncture, it becomes necessary to examine the findings of the learned Arbitral Tribunal regarding the true nature of the



transaction and the role of the property forming the subject matter of the present dispute. The relevant observations of the learned Arbitral Tribunal in the Arbitral Award dated 25.07.2015 are as follows:

“The position that emerges may be thus summed up:

1. Before the execution of the Agreement to Sell dated July 18, 2006, there were financial dealings between the parties whereunder Claimant had been advancing money as unsecured loan to the Respondent company. At the time of the execution of the Agreement in question, the amount of unsecured loan was Rs.94,00,000=00.

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4. The Claimant had the practice of obtaining property papers when advances were made by the Claimant to its Directors.

The only inference that can be drawn in the light of the circumstances mentioned above is that though the Agreement dated July 18, 2006 purports to be an Agreement to Sell but, in fact and reality, it is not an Agreement to Sell and appears to have been got executed by the Claimant from the Respondent company to be retained as security to ensure repayment of the advance of Rs.94,00,000=00.”

*(emphasis supplied)*

24. The above findings of the learned Arbitral Tribunal were duly affirmed by the learned Single Judge of this Court *vide* judgment dated 01.08.2016. The Single Judge in the said judgment noted, as follows:

“29.7 The learned arbitrator, thus, summarized the position which had emerged upon the perusal of the material placed before him by making the following observations:

“The position that emerges may be thus summed up:

1. Before the execution of the Agreement to Sell dated July 18, 2006, there were financial dealings between the parties whereunder Claimant had been advancing money as unsecured loan to the Respondent company. At the time of the execution of the Agreement in question, the amount of unsecured loan was Rs.94,00,000=00.

2. The Agreement to Sell is one-sided and is weighted in favour of the Claimant and against the Respondent. The document is of a composite nature containing clauses which are normally found in an agreement providing for



execution of Sale deed for transfer of title at a later date and also contains clauses which are found in a document for transfer of title in presenti.

3. The price of Rs.4,00,00,000=00 mentioned in the Agreement to Sell as consideration for the property in question, free from all encumbrances is less than half of the value of the said property at the time of the execution of the Agreement.

4. The Claimant had the practice of obtaining property papers when advances were made by the Claimant to its Directors.

5. The Respondent company before the execution of the Agreement to Sell dated July 18, 2006 as well as after the execution of the said Agreement had commenced negotiations with the heirs/and legal representatives of Keshav Swaroop Bhatnagali for obtaining assignment in respect of the share of each of them in area of the property covered by the Decree passed in favour of Keshav Swaroop Bhatnagar in the suit for Specific Performance of the agreement dated May 30, 1966. The Respondent company has paid an amount of Rs.5,67,00,000=00 in this regard.

6. The Claimant did not make any offer to pay the balance amount of the consideration and seek execution of the document of transfer on the basis of the Agreement to Sell dated July 18, 2006.

7. No objection was raised by the Claimant for the sale of an area of 2700 Sq. Yds. out of property in question by the Respondent company to Smt. Kaushalya Rani by Sale Deed dated February 19, 2008 even though Naresh Chandra, a Director in the Claimant was also a Director in the Respondent company at that time.

8. No proceedings have been initiated in an appropriate forum to challenge the validity of the Sale Deed executed by the Respondent company in favour of Mrs. Kaushalya Rani.”

*(emphasis supplied)*

25. The Division Bench, while deciding the Section 37 appeal, in the judgement dated 31.10.2019, endorsed the view taken by both the learned Arbitrator and the learned Single Judge. It emphasized that the document dated 18.07.2006 could not, in substance, be regarded as an agreement to sell immovable property. Instead, it was nothing more than a security arrangement securing repayment of an unsecured loan



of Rs. 94 lakhs. The relevant portion of the judgment dated 31.10.2019 reads as under:

“14. It is also significant to note that the Sole Arbitrator has given sound reasons for treating the aforesaid document as being one executed in respect of an unsecured loan of Rs.94 lacs extended by CMPL. The learned Single Judge has referred to this summing up done in the Arbitral Award, which need not be reproduced here for sake of brevity. Suffice it is to state that the Sole Arbitrator noted that the document was one sided and weighed in favour of CMPL and against DPPL as the consideration of Rs.4 crores mentioned therein was far below the actual value of the property, determined on circle rates, which may have come to about Rs.10 crores. Reference was also made to the sale of 2700 square yards out of the said property to Smt. Kaushalya Devi for a consideration of Rs.6.30 crores and the fact that the amount of Rs.4 crores, mentioned as the sale consideration for the subject property in the Agreement to Sell dated 18.07.2006, was less than half of the value of the said property at the relevant time. For the said reason too, it was held that the document could not have been an Agreement to Sell and was rather, a document executed towards an unsecured loan. We see no reason to differ with the said view.”

*(emphasis supplied)*

26. Thus, the Arbitral Tribunal, the learned Single Judge, and the Division Bench have returned concurrent and consistent findings that the transaction in question was not, in reality, an agreement to sell residential property but a financial arrangement wherein the so-called Agreement to Sell was executed as collateral security for repayment of monetary advances.

27. Once the transaction is so characterised, the dispute clearly falls within the ambit of a “*commercial dispute*” under Section 2(1)(c)(i) of the CC Act, which expressly includes “*ordinary transactions of merchants, bankers, financiers and traders, including those relating to mercantile documents, and their enforcement and interpretation*”.

28. The Explanation to Section 2(1)(c) further clarifies that the involvement of immovable property does not alter the commercial



nature of a dispute if, in substance, the dispute arises out of a commercial transaction. In the present case, it stands conclusively established that the document in question was executed merely as security for a loan and not as a genuine agreement to sell property.

29. Although the Appellant has also sought to contend that the matter may fall within Section 2(1)(c)(xv), we find that the transaction is more appropriately relatable to Section 2(1)(c)(i) of the CC Act.

30. In light of the statutory scheme, and in view of the concurrent findings recorded in proceedings under Sections 34 and 37 of the A&C Act, the conclusion is inescapable that the dispute partakes of the character of a “*commercial dispute*”. The reliance placed by the learned Commercial Court upon Section 2(1)(c)(vii) was clearly misplaced, for the present *lis* concerns financial dealings where the property documents were merely ancillary and collateral to secure repayment of advances.

31. The fundamental error committed by the Executing Court is manifest in its conclusion that it is the nature of the immovable property which is relevant for the purposes of determining the jurisdiction of a Commercial Court. We have no hesitation in holding that, what is determinative is the nature of the transaction and not that of the underlying property. The clear and unambiguous terms of the statute and that of Section 2(1)(c) are determinative of the nature of the transaction and as to whether the *lis* pertains to a transaction that is commercial in nature or not.

32. We are also of the firm opinion that the learned Executing Court, in an execution proceeding, cannot delve into and re-determine the character of the transaction. Once the same has been



determinatively held to be a “commercial transaction”, the learned Executing Court could not have proceeded to render a finding on the nature of the transaction which was clearly at variance with the determination made by the Courts at the time of adjudicating the *lis*. To our mind, this would obliterate the very substratum of the decree and the further decisions, which conclusively hold the transaction to be commercial in nature.

33. The nature and scope of jurisdiction exercisable by executing Courts are circumscribed by the rigors of Section 47 of the Code of Civil Procedure, 1908. By entering into the arena of seeking to re-examine the nature of the transaction, the learned Executing Court transgressed into an arena that was beyond the four corners of the decree and, in fact, undermined its very foundation.

34. By the Impugned Order, the learned Executing Court has upheld the very contention that has been negated by all the Courts prior, *viz*, that the Agreement to sell was in respect of a transaction for the sale of property and not as security in respect of a loan transaction. The consistent finding of the learned Arbitral Tribunal as well as the Courts was that the transaction between the parties was, in essence, a financial arrangement, wherein the Agreement to Sell was executed as collateral security for advances made in furtherance of a loan. The Impugned Order is a complete overreach on the part of the executing Court.

### **CONCLUSION:**

35. For the reasons discussed hereinabove, we are of the considered view that the Impugned Order dated 17.05.2024, passed by the learned Commercial Court, dismissing the execution application filed by the



2025:DHC:8206-DB



Decree Holder/ Appellant and holding that the dispute between the parties does not constitute a “*commercial dispute*” and, therefore, is not executable before the Commercial Court under Section 6 of the CC Act, is legally unsustainable and cannot be upheld.

36. Consequently, the present appeal is allowed and the Impugned Order is set aside. The learned Commercial Court is directed to proceed with the execution application filed by the Decree Holder/ Appellant and dispose of the same in accordance with law.

37. The present Appeal, along with pending application, if any, is disposed of in the above terms.

38. No order as to costs.

**ANIL KSHETARPAL, J.**

**HARISHVAIDYANATHANSHANKAR, J.**  
**SEPTEMBER 17, 2025/nd/sm/kr**