$~

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

% ***Judgment reserved on: 06.11.2025***
Judgment pronounced on: 17.11.2025

\+ FAO (COMM) 2/2025

TCNS CLOTHING COMPANY LIMITED .....Appellant

Through: Mr. Mukesh Aggarwal, Advocate

versus

SUNIL KUMAR & ANR. .....Respondents

Through: Mr. Jitender Solanki, Mr.Praveen Sehrawat and Mr.Hitesh Shastri, Advocates

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G E M E N T

HARISH VAIDYANATHAN SHANKAR J.

1. The present Appeal, under Order XLIII Rule 1(a) read with Section 151 of the **Code of Civil Procedure, 1908**[1]**,** has been preferred by the Appellant against the **Judgement dated 24.09.2024**[2] passed by the learned **District Judge (Commercial Court)-02, Patiala House Court, New Delhi, in Civil Suit (Commercial) No. 696 of 2024**[3], titled *"TCNS Clothing Company Limited vs. Sunil Kumar and Another"*.

[1] CPC
[2] Impugned Judgement
[3] District Judge

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

BRIEF FACTS:

2. The short question involved in the present matter pertains to the interpretation of the term *"commercial dispute"* as defined under **Section 2(1)(c)(vii)** of the **Commercial Courts Act, 2015**[4].

3. Shorn of unnecessary details, the brief facts relevant for adjudication of the present Appeal are as follows:

i. The parties herein entered into an agreement for the purpose of leasing out property bearing **No. 338/2, Ground Floor, NH-8, Rangpuri, New Delhi Garden, Mahipalpur, New Delhi**[5], for the purpose of opening a showroom and using the said property for carrying out the business of a retail showroom/outlet under the brand of TCNS, *vide* **Lease Deed dated 04.10.2016**[6], for a period of nine years with effect from 04.10.2016. As per the agreement between the parties, the initial rent for the first three years was ₹3,80,000/- per month, with an increase of 15% every three years thereafter. The Lease Deed also provided for an interest-free refundable security deposit of ₹7,60,000/-, which was liable to be refunded at the time of vacation of the suit premises.

ii. Unfortunately, the suit premises became the subject matter of sealing by the concerned authorities, *namely*, the Municipal Corporation of Delhi, on 31.05.2018, whereupon the Appellant terminated the Lease Deed by its communication dated 11.06.2018, with effect from the date of sealing, and thereupon invoked the relevant provisions of the Lease Deed for refund of the security deposit.

---

[4] CC Act
[5] Subject Property
[6] Lease Deed

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

iii. The Respondents herein failed to repay the said security amount as sought for, resulting in the filing of Civil Suit (Commercial) No. 696 of 2022. In the said suit, an Application was preferred under Order VII Rule 11(d) of the CPC, on the ground that the suit was liable to be rejected, since according to the Applicants/Respondents herein, the dispute between the parties was not a commercial dispute and was not covered under the provisions of Section 2(1)(c)(vii) of the CC Act, which only includes disputes arising out of agreements relating to immovable property used exclusively in trade or commerce and thereby qualify as a '*commercial dispute*'.

iv. In the said application, the Applicants therein/Respondents herein relied upon the judgment of the learned Single Judge of this Court in ***Soni Dave v. Trans Asian Industries Exposition Pvt. Ltd.***[7]. The said application was disposed of by the learned District Judge by Order dated 21.02.2024, holding therein that the averments in the suit, *prima facie,* demonstrated that the suit property was leased out for a commercial purpose and essentially involved a commercial transaction between the parties. While dismissing the Application, the learned District Judge also referred to and relied upon the Lease Deed in question to substantiate the conclusion. It appears that the said order was never challenged.

v. The matter thereafter progressed further before the learned District Judge, and after hearing the arguments and perusing the pleadings and the evidence led by the parties, the learned Judge

[7] 2016 SCC OnLine Del 4282

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

rendered the Judgement impugned herein in the following terms:

"**11.** Before discussing the merits of the present case, it is necessary to deal with the legal objection raised by defendants that this Court lacks inherent jurisdiction to entertain and try the present suit on the ground that the subject matter of the suit does not constitute 'commercial dispute' within the meaning of Section 2(1)(c) of The Commercial Courts Act, 2015.

12. The term "*commercial dispute*" is defined in Section 2(1)(c) of The Commercial Courts Act, 2015 as a dispute arising out of transactions/relationships as described in Clauses (i) to (xxii) thereunder. The only clause on which the plaintiff can rely upon and to which Ld, counsel for the plaintiff has drawn attention of this Court, is Clause (vii) which reads as under:

> *"(vii) agreements relating to immovable property used exclusively in trade or commerce;"*

13. Further, the explanation appended to Section 2(1)(c) provides as under:

> *"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 ipdy carrying out public functions;"*

14. In this regard, it would be necessary to reproduce the relevant terms and conditions of the lease deed dated 04.10.2016 (Ex. PW1/3). The relevant portion thereof is extracted here as under:-

> *"That the LESSORS is granting this Lease to the LESSEE for the purpose of running a Ready Made Garment Retail Showroom/Outlet under the brands of TCNS and for no other purpose whatsoever. The Lessors shall provide the following facilities before the handover of the possession:-*
> *a. Construction of internally connected floor staircase to be built from GF to FF to SF.*
> *b. SS Railing & Marble on the staircase leading from GF to FF to SF.*
> *c. Free Hoarding (FF & SF), Signage & Lollipop space to be provided by the lessor.*
> *d. Lessor to provide toilet on the SF in working condition.*
> *e. Toughed Glazing on GF, FF, SF.*
> *f. Shutter with locks in working condition."*
> *18. That the LESSEE shall observe and comply with all statutory laws including but not limited to the rules, regulations and bye-laws as are /or may be made*

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

applicable by the Government agencies under the sales tax, Vat, service tax, income tax, Provident Fund Act, Standards of Weights and Measures Act, Employees/State Insurance Act etc., and any other Laws in force with regard to the said business to be carried on by the LESSEE. The LESSEE shall be responsible to obtain at its own cost and expenses all applicable License(s) and aprovals from the designated Government and or other Authorities for the running of the said business."

15. Thus, it is quite evident that the suit premises were leased out by defendants to the plaintiff for the purpose of running a ready made garment retail showroom/outlet under the brand of TCNS, for which the defendants also agreed to provide certain facilities including Free Hoarding (FF & SF), Signage and Lollipop Space, besides Shutter with locks in working condition. At the same time, it was also agreed between the parties that the plaintiff shall observe and comply with all statutory laws in force with regard to the business to be carried out by the plaintiff, which shall also be responsible to obtain all applicable License(s) and approvals from the designated Government and/or other Authorities for running of the said business.

In other words, the permission granted by defendants to the plaintiff for carrying on commercial activity in the suit premises was essentially made dependent upon obtaining the requisite License(s) and approvals from the Government Authorities in the light of applicable law, rules and regulations as are in force.

and regulations as are in force.

16. It is an undisputed position from both the sides that the suit premises has been sealed by the Local Authority i.e., Municipal Corporation of Delhi on 31.05.2018, only because same was being put to commercial use and it was of residential nature. In this backdrop, this Court agrees with the argument advanced on behalf of defendants that the suit premises, being residential in nature, as per Master Plan, cannot partake the character of commercial property even if same was being used for commercial purposes.

17. The judgment in the case of Jagmohan Behl (supra) relied on behalf of plaintiff, is entirely distinguishable on facts and circumstances of the present case. In the said cited judgment, Division Bench of Hon'ble Delhi High Court dealt with the interpetation regarding scope and ambit of sub clause (vii) and its explanation, thereby emphasizing that the disputes relating to recovery of rent or mesne profit, security deposit, etc., pertaining to immovable property exclusively used in trade or commerce should be treated as commercial dispute under the Commercial Courts Act, 2015. However, in the present case, the question involved is altogether different in the sense that the suit premises which is essentially of residential nature as per Master Plan and local laws of MCD, was leased out for commercial purposes and in this backdrop, it has to be ascertained as to whether the commercial suit

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

filed for refund of security deposit would fall within the ambit of the term ' *commercial dispute* as provided in Section 2 (1)(c) of The Commercial Courts Act, 2015.

18. In the case titled as Mrs. Soni Dave (supra), Hon'ble Delhi High Court has held as under:-

> *"15. I may in this regard also observe that a property, prescribed user whereof as per the law i.e. the Master Plan and the municipal laws is residential, even if let out for use exclusively in trade or commerce or when, without being so let out, is used exclusively in trade or commerce, the same would still not qualify as an immovable property used exclusively in trade or commerce within the meaning of Section 2(1) (c)(vii) of the Commercial Courts Act. The Commercial Courts Act has brought only disputes arising out of transactions relating to immovable property used exclusively in trade or commerce within the ambit of a commercial dispute. The legislature could not have intended to bring disputes arising out of transactions relating to immovable property illegally used exclusively in trade or commerce within the ambit of commercial disputes. The principle, as enunciated in the context of the provisions in the municipal laws, of determination of rateable value /annual value (for payment of property tax/house tax on the basis of) the rent at which the property can reasonably be expected to let, will be applicable. It has been held that where, under the law i.e. the Rent Acts, the landlord is prohibited from charging from the tenant anything more than the standard rent the municipal authority cannot, determine the rateable value / annual value at a rent more than the standard rent, even if the owner / landlord is actually receiving rent more than standard rent. Reference in this regard can be made to Dr. Balbir Singh Vs. M.C.D. (1985) / SCC 167. It was held that the owner / landlord could not reasonably expect to get more than the maximum rent permitted in law."*

19. The facts of the present case, in the opinion of this Court, are squarely covered by the above-mentioned observations made by Hon'ble Delhi High Court. In the case in hand also, the prescribed use of suit premises as per Master Plan and the municipal laws, is residential. Thus, even if it was let out by the defendants for being used exclusively in trade or commerce, the same would still not qualify as an immovable property used exclusively in trade or commerce within the meaning of Section 2(1)(c)(vii) of The Commercial Courts Act, 2015. It is so held accordingly.

20. In view of the foregoing reasons and the discussions made herein above, this Court is of the view that since, the subject matter of the suit does not constitute *'commercial dispute'*, and thus, this Court lacks jurisdiction to entertain and decide the present matter. Resultantly, the plaint is hereby ordered to be returned to the

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

> plaintiff in terms of Order VII Rule 10 CPC. for being presented as non commercial suit before the concerned Court of competent jurisdiction, in accordance with law. It is directed that the plaintiff shall so present the plaint on or before 15.10.2024 after giving advance notice thereof to the defendants, in view of the provision contained in Order VII Rule 10A CPC, if so chosen and advised under the law."

4. A perusal of the Impugned Judgement extracted hereinabove makes it evident that considerable weight was accorded by the learned District Judge to the judgment of the learned Single Judge of this Court in ***Soni Dave*** *(supra)*.

CONTENTIONS OF THE APPELLANT:

5. Learned counsel for the Appellant would contend that the suit clearly fell within the ambit of Section 2(1)(c)(vii) of the CC Act since the Lease Deed/Agreement pertained to the lease of premises intended for the purpose of carrying out trade or commerce.

6. He would rely upon the various terms of the Lease Deed to substantiate that the substratum of the same was commercial and clearly fell within the four corners of the provisions of Section 2(1)(c)(vii) of the CC Act.

7. He would further rely upon the Order dated 21.02.2024 of the learned District Judge by which the application under Order VII Rule 11 of the CPC came to be dismissed, and would contend that the same operated as *res judicata* as no challenge had been preferred by the Respondents herein against the said Order.

8. He would also contend that the learned District Judge was bound by the earlier decision rendered in the Application under Order VII Rule 11 of the CPC, since the Court had already held that there was a *prima facie* case made out for entertaining the suit under the provisions of the CC Act.

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

CONTENTIONS OF RESPONDENTS:

9. Learned counsel for the Respondents would contend that there is no infirmity in the judgment passed by the learned District Judge. He would contend that the present matter clearly does not fall within the ambit of Section 2(1)(c)(vii) of the CC Act since the said property was not one which was "*used exclusively in trade or commerce*". He would further contend that the said property was, in fact, a residential property which was given on lease, and owing to the residential nature of the same, it could not be used for commercial purposes and thereby fell foul of the definition of a commercial dispute under Section 2(1)(c)(vii) of the CC Act.

10. Learned counsel for the Respondents would strenuously urge that the present matter stood covered by the judgment of the learned Single Judge in ***Soni Dave*** *(supra).* He would further contend that since in that judgment it had been held that where an immovable property, i.e. a residential property is being used exclusively in trade or commerce, but such use is not sanctioned by the law, i.e., the residential property is being used illegally in trade or commerce, even if used exclusively for that purpose, would not permit a dispute in respect of such property to be brought within the ambit of a commercial dispute.

ANALYSIS:

11. We have heard learned counsel for the parties and with their able assistance, perused the relevant record. For the purpose of convenience, we consider it necessary to extract the provisions of Section 2(1)(c)(vii) of the CC Act as follows:

> ""commercial dispute" means a dispute arising out of—

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

(vii) agreements relating to immovable property used exclusively in trade or commerce;"

12. At the outset, we also consider it appropriate to extract the relevant portions of the Statement of Objects and Reasons of the CC Act, which read as under:

"**INTRODUCTION**

The Law Commission of India, in its 253rd Report, had recommended for the establishment of the Commercial Courts, the Commercial Division and the Commercial Appellate Divisions in the High Courts for disposal of commercial disputes of Specified Value.

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 was introduced in the Rajya Sabha in April, 2015. The Bill was referred to the Standing Committee by the Rajya Sabha. As Parliament was not in session and urgent steps were needed to be taken, the Commercial Courts, Commercial Division and Commercial Appellate Division in High Courts Ordinance, 2015 was promulgated on 23rd October, 2015.

In the winter session of the Parliament, the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 was introduced to replace the said Ordinance. The Bill was passed in Lok Sabha on 16th December, 2015.

Under the Bill, State governments may constitute, after consultation with concerned High Courts, Commercial Division and Commercial Appellate Division in High Courts and Commercial Courts at district level. The Bill also determines specified value of the subject-matter of the commercial dispute, Appeals, transfer of pending suits, etc.

In addition, the Bill also amends the provisions of the Code of Civil Procedure, 1908.

STATEMENT OF OBJECTS AND REASONS

The proposal to provide for speedy disposal of high value commercial disputes has been under consideration of the Government for quite some time. The high value commercial disputes involve complex facts and question of law. Therefore, there is a need to provide for an independent mechanism for their early resolution. Early resolution of commercial disputes shall create a positive image to the investor world about the independent and responsive Indian legal system.

2. The Law Commission of India in its 188th Report had recommended the constitution of the Commercial Division in each High Court. Accordingly, the Commercial Division of High Courts Bill, 2009 was introduced and passed by the Lok Sabha. However,

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

during the discussion of the aforesaid Bill in the Rajya Sabha, some Members raised certain issues and in view thereof, the matter was again referred to the Law Commission of India for its examination. The Law Commission of India, in its 253d Report, has recommended for the establishment of the Commercial Courts, the Commercial Division and the Commercial Appellate Divisions in the High Courts for disposal of commercial disputes of specified value.

3. Based on the recommendations of the Law Commission made in its 253rd Report, a Bill namely, the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 was introduced in the Rajya Sabha on 24th April, 2015 and the same is at present under the consideration of the Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. As provided in the said Bill, 2015, all the suits, appeals or applications related to commercial disputes of specified value i.e. one crore or above, are to be dealt with by the Commercial Courts or the Commercial Division of the High Court.

4. By way of the Delhi High Court (Amendment) Act, 2015, the ordinary original jurisdiction of the Delhi High Court has been increased from rupees twenty lakhs to rupees two crore and there is a provision for transfer of pending case from the Delhi High Court to District Courts. On the enactment of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015, some of the Commercial Disputes which are to be transferred to the District Courts from the Delhi High Court may again be required to be transferred to the Commercial Division of the High Court of Delhi. It would cause delay. in the disposal of cases as well as inconvenience to the parties and counsels and may also result in confusion. Therefore, it became necessary that the provisions of the Delhi High Court (Amendment) Act, 2015 and establishment of the Commercial Courts and Commercial Division of the High Courts may be brought into force simultaneously.

5. As Parliament was not in session and urgent steps were needed to be taken, the Commercial Courts, Commercial Division and Commercial Appellate Division in High Courts Ordinance, 2015 was promulgated on 23rd October, 2015.

6. It is proposed to introduce the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 to replace the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015 which inter alia, provides for the following namely:

(i) constitution of the Commercial Courts at District level except for the territory over which any High Court is having ordinary original civil jurisdiction;

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

(ii) constitution of the Commercial Divisions in those High Courts which are already exercising ordinary civil jurisdiction and they shall have territorial jurisdiction over such areas on which it has original jurisdiction;

(iii) constitution of the Commercial Appellate Division in all the High Courts to hear the appeals against the Orders of the Commercial Courts and the Orders of the Commercial Division of the High Court;

(iv) the minimum pecuniary jurisdiction of such Commercial Courts and Commercial Division is proposed as one crore rupees; and

(v) to amend the Code of Civil Procedure, 1908 as applicable to the Commercial Courts and Commercial Divisions which shall prevail over the existing High Courts Rules and other provisions of the Code of Civil Procedure, 1908 so as to improve the efficiency and reduce delays in disposal of commercial cases.

7. The proposed Bill shall accelerate economic growth, improve the international image of the Indian Justice delivery system, and the faith of the investor world in the legal culture of the nation.

8. The Bill seeks to replace the aforesaid Ordinance."

13. The provisions of the CC Act, and in particular, Section 2(1)(c)(vii), received considerable and detailed attention by the Hon'ble Supreme Court in the judgment of ***Ambalal Sarabhai Enterprises Ltd. v. Kanoria Chemicals and Industries Ltd.***[8]**.** We would consider it necessary to extract the relevant paragraphs of the said judgment, which are as follows:

"**10.** Be that as it may, the learned Senior Advocates on both sides have sought to rely on the legal position decided by the various High Courts in the absence of the pronouncement of this Court. The learned Senior Advocate in that regard have referred to the various decisions on the same point. However, we do not find it appropriate to refer to each of them and over burden this order since we notice that the High Court in fact has referred to various decisions while deciding the instant case and has thereafter arrived at its conclusion. The discussion as made by the High Court with reference to the various decisions is also justified. In that view, we would refer to the decision of a Division Bench in ***Jagmohan Behl* v. *State Bank of Indore*** **[*Jagmohan Behl* v. *State Bank of Indore*, 2017 SCC OnLine Del 10706]** relied on by the learned Senior Advocate for the appellant. In that regard, it is noticed that

[8] *(2020) 15 SCC 585*

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

in the said case on taking note of the provision contained in Section 2(1)(*c*)(*vii*) of the CC Act, 2015 it is held that the dispute involved therein would constitute a commercial dispute and the expression "arising out of" and "in relation to immovable property" should not be given the narrow and restricted meaning and the expression would include all matters relating agreements in connection with the immovable properties. The said conclusion reached was in a circumstance where the immovable property in question was undoubtedly being used for a trade or commerce and it was held so when the claim in the suit is for recovery of rent or mesne profit, security deposit, etc. for the use of such immovable property.

11. On the other hand, the learned Senior Advocate for the respondents has relied on the decision of a Division Bench of the Gujarat High Court in ***Vasu Healthcare (P) Ltd.* v. *Gujarat Akruti TCG Biotech Ltd.*** **[*Vasu Healthcare (P) Ltd.* v. *Gujarat Akruti TCG Biotech Ltd.*, 2017 SCC OnLine Guj 724 : AIR 2017 Guj 153]** wherein a detailed consideration has been made and the conclusion reached therein by taking note of an earlier decision is that on a plain reading of Section 2(1)(*c*) of the CC Act, 2015 the expression "used" must mean "actually used" or "being used". It is further explained that if the intention of the legislature was to expand the scope, in that case the phraseology "likely to be used" or "to be used" would have been employed. The verbatim consideration therein is as hereunder: (SCC OnLine Guj para 33)

> "*33*. Therefore, if the dispute falls within any of the Section 2(*c*) the dispute can be said to be "commercial dispute" for which the Commercial Court would have jurisdiction. It is required to be noted that before the learned Commercial Court the original plaintiff relied upon Sections 2(*c*)(*i*), 2(*c*)(*ii*) and 2(*c*)(*xx*) of the Commercial Courts Act only. The learned counsel appearing on behalf of the original plaintiff has candidly admitted and/or conceded that the case shall not fall within Sections 2(*c*)(*i*); 2(*c*)(*ii*) or 2(*c*)(*xx*) of the Commercial Courts Act. It is required to be noted that before the learned Commercial Court it was never the case on behalf of the original plaintiff that the case would fall within Section 2(*c*)(*vii*) of the learned Commercial Court. Despite the above we have considered on merits whether even considering Section 2(*c*)(*vii*) of the Commercial Courts Act, the dispute between the parties can be said to be "commercial dispute" within the definition of Section 2(*c*) of the Commercial Courts Act or not? Considering Section 2(*c*)(*vii*), "commercial dispute" means a dispute arising out of the agreements relating to *immovable property used exclusively in trade or commerce*. As observed hereinabove, at the time of filing of the suit and even so pleaded in the plaint, the *immovable property/plots* the agreements between the parties cannot be said to be

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

agreements relating to *immovable property used exclusively in trade or commerce*. As per the agreement between the party after getting the plots on lease from the GIDC, the same was required to be thereafter developed by the original Defendant 1 and after providing all infrastructural facilities and sub-plotting it, the same is required to be given to other persons like the original plaintiff. It is the case on behalf of the original plaintiff that as the original Defendant 1 has failed to provide any infrastructural facilities and develop the plots and therefore, a civil suit for specific performance of the agreement has been filed. There are other alternative prayers also. Therefore, it cannot be said that the agreement is as such relating to immovable property used exclusively in trade or commerce. It is the case on behalf of the original plaintiff that as in clause (*vii*) of Section 2(*c*), the phraseology used is not "actually used" or "being used" and therefore, even if at present the plot is not used and even if it is likely to be used even in future, in that case also, Section 2(*c*)(*vii*) shall be applicable and therefore, the Commercial Court would have jurisdiction. The aforesaid has no substance. As per the cardinal principle of law while interpreting a particular statute or the provision, the literal and strict interpretation has to be applied. It may be noted that important words used in the relevant provisions are "*immovable property used exclusively in trade or commerce*". If the submission on behalf of the original plaintiff is accepted in that case it would be adding something in the statute which is not there in the statute, which is not permissible. On plain reading of the relevant clause it is clear that the expression "used" must mean "actually used" or "being used". If the intention of the legislature was to expand the scope, in that case the phraseology used would have been different as for example, "likely to be used" or "to be used". The word "used" denotes "actually used" and it cannot be said to be either "ready for use" or "likely to be used"; or "to be used". Similar view has been taken by the Bombay High Court (Nagpur Bench) in ***Dineshkumar Gulabchand Agrawal*** **[*Dineshkumar Gulabchand Agrawal* v. *CIT*, 2003 SCC OnLine Bom 1289 : (2004) 267 ITR 768]** and it is observed and held that the word "used" denotes "actually used" and not merely "ready for use". It is reported that SLP against the said decision has been dismissed **[*Dineshkumar Gulabchand Agrawal* v. *CIT*, 2004 SCC OnLine SC 13]** by the Hon'ble Supreme Court."

12. Though we are informed that the said decision is assailed before this Court in a special leave petition we are inclined to agree

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

with the view expressed therein. This is for the reason that this Court while examining the issue relating to exclusive land use, though in the different context has laid emphasis on the present user of the land either for agriculture or non-agriculture purpose being relevant. In that regard, the decision relied on by the learned Senior Advocate for the respondent in ***Federation of A.P. Chambers of Commerce & Industry* v. *State of A.P.* [*Federation of A.P. Chambers of Commerce & Industry* v. *State of A.P.*, (2000) 6 SCC 550]** is noticed, wherein it is observed as under: (SCC pp. 552-53, paras 6 & 9)

> *"**6.*** Section 3 of the said Act speaks of "land is used for any industrial purpose", "land is used for any commercial purpose" and "land is used for any other non-agricultural purpose". *The emphasis is on the words "is used*". For the purposes of levy of assessment on non-agricultural lands at the rate specified in the Schedule for land used for industrial purposes, *therefore, there has to be a finding as a fact that the land is in fact in praesenti in use for an industrial purpose*. The same would apply to a commercial purpose or any other non-agricultural purpose
>
> ***
>
> **9.** We are in no doubt whatever, therefore, that it is only land which is actually in use for an industrial purpose as defined in the said Act that can be assessed to non-agricultural assessment at the rate specified for land used for industrial purposes. The wider meaning given to the word "used" in the judgment under challenge is untenable. Having regard to the fact that the said Act is a taxing statute, no court is justified in imputing to the legislature an intention that it has not clearly expressed in the language it has employed."

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

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

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 **[*K.S. Infraspace LLP* v. *Ambalal Sarabhai Enterprises Ltd.*, 2019 SCC OnLine Guj 1926]** impugned herein. The Commercial Court shall therefore return the plaint indicating a date for its presentation before the Court having jurisdiction.

***

R. Banumathi, J. (*concurring*)— I have gone through the judgment of my esteemed Brother A.S. Bopanna, J. I am in full agreement with the conclusion that in order to fall within Section 2(1)(*c*)(*vii*) of the Commercial Courts Act, the immovable property must be "used exclusively" or "being used exclusively" in trade or commerce. However, in view of the importance of the question involved, I would like to give my reasonings for concurring with the conclusion of my esteemed Brother.

17. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Act No. 4 of 2016) was published in the Gazette of India on 1-1-2016. The Act is deemed to have come into force w.e.f. 23-10-2015. Act No. 4 of 2016 was amended by Central Act 28 of 2018, the Commercial Courts Act.

18. We may refer to the Law Commission's 253rd Report, which inter alia made various recommendations. Para 4.2 of Chapter IV—"Conclusions and Summary of Recommendations" of the Law Commission's 253rd Report reads as under:

> "**4.2.** The Commercial Courts, the Commercial Divisions and the Commercial Appellate Divisions of High Courts

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

that have been recommended are intended to serve as a pilot project in the larger goal of reforming the civil justice system in India. The goal is to ensure that cases are disposed of expeditiously, fairly and at reasonable cost to the litigant. Not only does this benefit the litigant, other potential litigants (especially those engaged in trade and commerce) are also advantaged by the reduction in backlog caused by the quick resolution of commercial disputes. In turn, this will further economic growth, increase foreign investment, and make India an attractive place to do business. Further, it also benefits the economy as a whole given that a robust dispute resolution mechanism is a sine qua non for the all-round development of an economy." *[See* Para 4.2 of Chapter IV—'Conclusions and Summary of Recommendations' of Law Commission's 253rd Report — Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015 (January 2015).]

After the Law Commission's 253rd Report, Act No. 4 of 2016 was amended by Central Act 28 of 2018."

***

35. Various provisions of the Act, namely, case management hearing and other provisions makes the court to adopt a pro-active 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 the 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 the 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 Statement of Objects and Reasons and various amendments to the 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

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

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.

usual procedural delays plaguing our traditional legal system.

37. A dispute relating to immovable property per se may not be a commercial dispute. But it becomes a commercial dispute, if it falls under sub-clause (*vii*) of Section 2(1)(*c*) of the Act viz. "the agreements relating to immovable property used exclusively in trade or commerce". The words "used exclusively in trade or commerce" are to be interpreted purposefully. The word "used" denotes "actually used" and it cannot be either "ready for use" or "likely to be used" or "to be used". It should be "actually used". Such a wide interpretation would defeat the objects of the Act and the fast tracking procedure discussed above.

***

41. In ***Vasu Healthcare (P) Ltd.* v. *Gujarat Akruti TCG Biotech Ltd.* [*Vasu Healthcare (P) Ltd.* v. *Gujarat Akruti TCG Biotech Ltd.*, 2017 SCC OnLine Guj 724: AIR 2017 Guj 153]**, referred to in extenso by my learned Brother, it was held that: (SCC OnLine Guj para 33)

> *"**33.*** … On plain reading of the relevant clause, it is clear that the expression "used" must mean "actually used" or "being used". If the intention of the legislature was to expand the scope, in that case the phraseology used would have been different as for example, "likely to be used" or "to be used". The word "used" denotes "actually used" and it cannot be said to be either "ready for use" or "likely to be used"; or "to be used.*"*

We entirely agree with the above purposive interpretation adopted by the Gujarat High Court.

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 A.S. Bopanna, J."

(emphasis supplied)

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

14. A reading of the paragraphs extracted hereinabove in ***Ambalal Sarabhai*** *(supra)* would lead us to conclude that the Hon'ble Supreme Court has emphasized on the fact that for the purpose of exercising jurisdiction under the CC Act and in particular Section 2(1)(c)(vii), the immovable property must be "*actually used*" or is "*being used*" "*exclusively in trade or commerce*". Both the Hon'ble Judges have clearly concurred that the manner in which the said section would need to be construed is based on a determination as to whether the property was "*actually used*" or "*being used*" for the purpose of trade or commerce.

15. To our mind, the said interpretation is clearly in consonance with the Statement of Objects and Reasons as well as the intent of the legislature in promulgating the CC Act. The intent is to ensure that commercial disputes, as between the parties, would be accorded a special status and a special infrastructure be created for the purpose of dealing with and disposing of matters of commercial nature expeditiously.

16. To our mind, the judgment of the learned Single Judge in ***Soni Dave*** *(supra)*, particularly with respect to the observations in paragraphs 16 and 17, though perhaps not *strictu sensu* applicable in the present case, would nonetheless need to be dealt with. The said paragraphs are reproduced as under:

> "**16.** I may in this regard also observe that a property, prescribed user whereof as per the law i.e. the Master Plan and the municipal laws is residential, even if let out for use exclusively in trade or commerce or when, without being so let out, is used exclusively in trade or commerce, the same would still not qualify as an immovable property used exclusively in trade or commerce within the meaning of Section 2 (1)(c)(vii) of the Commercial Courts Act. The Commercial Courts Act has brought only disputes arising out of transactions relating to immovable property used exclusively in trade or commerce within the ambit of a 'commercial dispute'. The

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

> legislature could not have intended to bring disputes arising out of transactions relating to immovable property illegally used exclusively in trade or commerce within the ambit of commercial disputes. The principle, as enunciated in the context of the provisions in the municipal laws, of determination of rateable value/annual value (for payment of property tax/house tax on the basis of) the rent at which the property can reasonably be expected to let, will be applicable. It has been held that where, under the law i.e. the Rent Acts, the landlord is prohibited from charging from the tenant anything more than the 'standard rent' the municipal authority cannot, determine the rateable value/annual value at a rent more than the standard rent, even if the owner/landlord is actually receiving rent more than standard rent. Reference in this regard can be made to Dr. Balbir Singh v. M.C.D. (1985) 1 SCC 167. It was held that the owner/landlord could not reasonably expect to get more than the maximum rent permitted in law.
>
> **17.** Justice G.P. Singh in his 'Principles of Statutory Interpretation', 13th Edition in Chapter 5 titled 'Subsidiary Rules' and under the head 'Construction of General Words' has referred to 'Principle of Legality', as the general words of a statute are not to be construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the previous policy untouched. It is further authored that there are many presumptions which an interpreter is entitled to raise which are not readily displaced merely by use of general words, unless there is the clearest provision to the contrary. The Principle of Legality has also been described as an aspect of the rule of law known both to Parliament and the Courts, upon which statutory language will be interpreted. Similarly, in Chapter 2 titled 'Guiding Rules' and under the head 'The Rule of Literal Construction' Lord Macnaghten has been quoted as opining that 'in construing acts of Parliament', it is a general rule that 'words must be taken in their legal sense unless the contrary intention appears.'
>
> **18.** Following the said principles, Section 2(1)(c)(vii) has to be read and interpreted as 'immovable property which is in accordance with law, used exclusively in trade or commerce' and not as 'immovable property which, in contravention of law, is used exclusively in trade or commerce'."

17. In the present case, the terms of the Lease Deed clearly provide that the said property was to be used for trade and commerce, in particular for the establishment of a showroom for readymade garments. There are numerous clauses wherein both parties acknowledge the use and purpose of entering into the said lease. The

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

Respondents, in fact, also undertook to provide various facilities which involved construction work for the purpose of facilitating the running of the readymade garments' retail showroom/outlet. The lease deed also records that the Appellant had already invested a considerable amount towards making numerous fitments and modifications to the premises for such commercial use of the premises. Of particular relevance is Clause 18 of the Lease Deed, which casts upon the lessee the obligation to comply with the required statutory laws governing commercial establishments and to obtain, at its own cost, the requisite licenses and approvals for running the said business. The relevant extracts of the Lease Deed are reproduced as under:

> "WHEREAS the LESSEE is *inter-alia* in the business of ready-made garments for men and women and is also into manufacture and sale of Garments under the Brand Name of TCNS and its related brand.
> WHEREAS the LESSEE is desirous of obtaining on Lease from the LESSORS the Leased Premises, for running a readymade garments retail showroom under its brand names and has accordingly approached the LESSORS to give to the LESSEE on Lease the Leased Premises and the LESSORS has agreed to give on Lease to the LESSEE the Leased Premises on the terms and conditions hereinafter contained:
> ****
> 12. *That the LESSORS is granting this Lease to the LESSEE for the purpose of running a Ready Made Garment Retail Showroom/Outlet under the brands of TCNS and for no other purpose whatsoever. The Lessors shall provide the following facilities before the handover of the possession:-*
> *a. Construction of internally connected floor staircase to be built from GF to FF to SF.*
> *b. SS Railing & Marble on the staircase leading from GF to FF to SF.*
> *c. Free Hoarding (FF & SF), Signage & Lollipop space to be provided by the lessor.*
> *d. Lessor to provide toilet on the SF in working condition.*
> *e. Toughed Glazing on GF, FF, SF.*
> *f. Shutter with locks in working condition*
> *****

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

> 18. That the LESSEE shall observe and comply with all statutory laws, including but not limited to the rules, regulation and bylaws as are/or maybe made applicable to the government agencies under the sales tax, Vat, service tax, income tax, Provident Fund Act, Standards of Weights and Measures Act, Employees/State Insurance Act, etc., and any other laws in force with regard to the same business to be carried on by the LESSEE. The LESSEE shall be responsible to obtain at its own cost and expenses all applicable License(s) and approvals from the designated Government and or other Authorities for the running of the said business.
>
> ****
>
> 20. That the LESSEE shall at its own cost be entitled to put up Signage/affix a Board at such place as designated by the LESSORS in the Leased Premises. However any taxes or duties levied by any statutory authority for putting such signages will be borne by the Lessee.
>
> ****
>
> 22. The LESSEE shall be entitled to trade 24 hours per day, 7 days a week in accordance to the rules and regulations laid down by the Statutory Authorities."

18. As is apparent, the Lease Deed only records that the relevant permissions/approvals would be applied for, and permission would be sought for the purpose of running the commercial activity. The conclusion of the learned Single Judge in ***Soni Dave*** *(supra)* with respect to the interpretation of Section 2(1)(c)(vii) of the CC Act, which is set out at Para 18, to our mind cannot be accepted in the factual scenario of the present case.

19. As is apparent, there is no absolute prohibition on two parties entering into an agreement for the purpose of leasing out the premises for commercial activity. In the present case, although the property is situated in a residential area, that in itself does not necessarily lead to the inference that, it could not have been used for running a commercial establishment. This Court takes judicial notice of the fact that there are a number of areas where such permissions, if sought for, have been granted and on the basis of which commercial establishments are permitted to operate in residential areas.

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

20. Merely because in the present case, permission had not been granted or perhaps not sought for, the same would not amount to the dispute being disqualified from being termed a "commercial dispute". We are of the opinion that if the actual agreement as between the parties relates to the carrying out of some trade or commerce from an immoveable premises, which activity of trade or commerce itself, is *per se*, neither illegal nor prohibited, the mere fact that the agreement for such an activity pertains to the carrying out of the same from an immoveable property, where such activity may not be permitted to be carried out, would not, by itself remove such disputes from the ambit of the CC Act.

21. We are afraid that we are unable to agree with the observations in ***Soni Dave*** *(supra)* for the following reasons:

a) Such interpretation, if permitted, would necessarily mean a re-engineering of the CC Act itself, meaning thereby that the same would necessitate the reading of the provisions as "(vii) agreements relating to immoveable property <u>legally meant/permitted to be</u> used exclusively in trade or commerce". Such a reading, as is well known, is neither possible nor permissible. The Courts have to give effect to provisions as they are expressed in the Statute, without reading into it any further or additional words. The Judgment in ***Soni Dave*** *(supra)* commends us to read the Statute thus and in our opinion, such a reading is unsustainable;

b) Assuming that the provision were to be given an extremely strict reading, then, even areas where "mixed land use" were to be permitted would not fall within the ambit of the provision, since the provision reads "*used <u>exclusively</u> in trade or*

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

commerce". In which event, since the said property would be capable of use for both residential as well as commercial purposes, the property would fall outside the ambit of the definition clause.

c) The practical and factual nature of tenancies in India and more so, in places like Delhi, is such that, large number of agreements are entered into, for carrying on, trade and commerce in properties or areas that may not be earmarked for such purpose. If the statute were to be accorded an interpretation as espoused in ***Soni Dave*** *(supra)*, it would take out of its ambit a large number of establishments which are currently in operation, from the provisions of the CC Act. We do not believe that the legislature was unaware of, or disconnected from the ground realities. An interpretation that is in consonance with practical considerations has to be accorded to the statute and we believe that the Judgment in ***Soni Dave*** *(supra)* makes a departure from the same.

d) The most important aspect that leads us to disagree with ***Soni Dave*** *(supra)* is that the illegal or impermissible use of an immovable property is regulated by the concerned municipal authority(ies) and enforced by them. Any illegal or unauthorized use of an immovable property would make a person using it unauthorizedly, liable to such consequences as are prescribed under the relevant municipal laws. The alleged restriction on commercial use of the premises emanates from municipal or zoning regulations, which are regulatory in nature and primarily require the obtaining of appropriate licenses and permits, as has been provided for in Clause 18 of the Lease

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

Deed. Such restrictions, even if breached, may invite administrative action, action under the Municipal laws or necessitate regularization; however, they do not, *per se*, render the underlying contract void within the meaning of Section 23 of the Indian Contract Act, 1872.

22. We are also of the considered view that the observations made in paragraphs 16 to 18 of the judgment in ***Soni Dave*** *(supra)* appear to be in the nature of *obiter dicta* and do not form part of the binding *ratio decidendi.*

23. We are also of the view that what seems to have weighed in the mind of the learned Single Judge in ***Soni Dave*** *(supra)* was that there was no pleading that the transaction related to an immovable property was used exclusively for trade or commerce.

24. Further, we find no merit in the contention of the Respondents that the lease in question cannot be regarded to be of commercial use on the ground that the said property is residential in nature. Having consciously executed a Lease Deed permitting the Appellant to use the premises for commercial purposes and having continued to receive rent thereunder, as also permitting the Appellant to carry out modifications and alterations and having carried out certain works for facilitating the use of the premises as a Garment showroom, the Respondents cannot now be heard to plead that such use was impermissible. The principle embodied in the maxim *nullus commodum capere potest de injuria sua propria* - no man can take advantage of his own wrong - squarely applies. The Hon'ble Supreme Court in ***Eureka Forbes Ltd. v. Allahabad Bank*** [9], observed the scope and content of this maxim in the following terms:

[9] (2010) 6 SCC 193

Signature Not Verified
Digitally Signed By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

> "**66.** The maxim *nullus commodum capere potest de injuria sua propria* has a clear mandate of law that, a person who by manipulation of a process frustrates the legal rights of others, should not be permitted to take advantage of his wrong or manipulations. In the present case Respondents 2 and 3 and the appellant have acted together while disposing off the hypothecated goods, and now, they cannot be permitted to turn back to argue, that since the goods have been sold, liability cannot be fastened upon Respondents 2 and 3 and in any case on the appellant. The Bench of this Court in ***Ashok Kapil* v. *Sana Ullah*** **[(1996) 6 SCC 342]** referred to rule of mischief and while explaining the word "building", held as under: (SCC p. 346, para 11)
>
> > "***11.*** *Stroud's Judicial Dictionary* (Vol. I of the 5th Edn.) states that 'what is a building must always be a question of degree and circumstances'. Quoting from *Victoria City Corpn.* v. *Bishop of Vancouver Island* [(1921) 2 AC 384 (PC)] (AC at p. 390), the celebrated lexicographer commented that 'the ordinary and natural meaning of the word "building" includes the fabric and the ground on which it stands'. In *Black's Law Dictionary* (5th Edn.) the meaning of 'building' is given as 'A structure or edifice enclosing a space within its walls, and usually, *but not necessarily*, covered with a roof'. (emphasis in original). The said description is a recognition of the fact that roof is not a necessary and indispensable adjunct for a building because there can be roofless buildings. So a building, even after losing the roof, can continue to be a building in its general meaning. Taking recourse to such general meaning in the present context would help to prevent a mischief."

25. Having themselves executed and derived benefit under a lease for commercial use of the premises, the Respondents are estopped and cannot now be permitted to disavow the commercial nature of the terms of the lease.

26. The application of the principle of illegality in running a business from a premises not meant "*exclusively for trade or commerce*" as espoused in ***Soni Dave*** *(supra)* may not *stricto sensu*, apply to the present case, since it is not as if the Lease Deed was premised on a complete or absolute prohibition on the carrying out of any commercial activity and the apparent impossibility of such

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

commercial activity being permissible in the premises, in the event of approval, if sought for, were granted by the concerned authority.

27. We re-iterate that the interpretation that requires to be accorded to Section 2(1)(c)(vii) of the CC Act would have to be synoptic to the practical considerations of commercial activity as carried out across the country and that in the event that we were to approve the interpretation as accorded to the provisions in ***Soni Dave*** *(supra)*, it would lead to a situation where a large number of disputes pertaining to commercial arrangements as between the parties, which are or have been carried out in various localities, at least in Delhi, would effectively be shunted out or excluded from the purview of the CC Act.

28. In any event, given the facts of the present case, considering that neither party believed that the property in question was conclusively unavailable for commercial use, to hold that the dispute raised herein would not fall within the domain of the CC Act is unjustified.

29. We once again reiterate the principles and the interpretation as accorded to the said provision in ***Ambalal Sarabhai*** *(supra)*, which upheld the judgment of the Hon'ble High Court of Gujarat in ***Vasu Healthcare Private Limited v. Gujarat Akruti TCG Biotch Limited***[10]**,** where the Hon'ble Supreme Court has clearly held that what needs to be considered is the purpose for which the property was "actually used". Since, admittedly, in the present case, the leased premises were actually used for trade and commerce (Garment Showroom), the dispute herein would fall within the four corners of Section 2(1)(c)(vii) of the CC Act.

[10] 2017 SCC OnLine Guj 724

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38

30. Resultantly, the present Appeal is allowed and the Impugned Judgement passed by the learned District Judge is set aside.

31. The present Appeal, along with the pending applications, if any, stands disposed of in the above terms.

ANIL KSHETARPAL
(JUDGE)

HARISH VAIDYANATHAN SHANKAR
(JUDGE)

NOVEMBER 17, 2025/rk/her/hs

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:18.11.2025 15:38:38