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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment reserved on : 16.09.2025*

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Judgment delivered on: 23.09.2025

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FAO (COMM) 245/2024

CHAND MEHRA & ANR.

.....Appellants

Through: Ms. Shaini Bhardwaj, Mr. Aditya Sharma, Mr. Avichal Mishra, Mr. Vedic Thukral and Ms. Rukhsar, Advocates.

versus

BRITISH AIRWAYS PLC

.....Respondent

Through: Ms. Ritu Singh Mann, Advocate.

CORAM:**HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****J U D G M E N T****DEVENDRA KUMAR UPADHYAYA, CJ**

1. The appellants-plaintiffs by instituting the instant appeal challenges an order dated 14.11.2024 passed by the learned District Judge (Commercial Court-03), South-East, Saket Courts, Delhi, whereby an application moved by the respondent/defendant under Order VII Rule 10 & Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC) has been allowed and the learned Commercial Court below has ordered for return of the plaint to the appellants-plaintiffs with liberty to file the same before a Court of competent jurisdiction.

2. By means of the order under appeal the learned Commercial Court has passed the order for returning the plaint under Order VII Rule 10 CPC holding that the nature of dispute raised in the suit filed by the appellants-



plaintiffs does not in any manner constitute commercial dispute within the meaning of the said term under Section 2 (1) (c) of the Commercial Courts Act, 2015 (hereinafter referred to as Act) and as such the Commercial Court does not have any jurisdiction to entertain the suit.

3. A suit bearing CS (COMM) 185/2024 was filed by the appellants/plaintiffs with the prayer for passing a decree for recovery of Rs.5,09,918/- against the respondent-defendant, along with interest of Rs.63,872/- @ 18% per annum on the principal amount of Rs.5,09,918/- to be calculated from 29.05.2023 till 10.03.2024. The appellants-plaintiffs also prayed for award of *pendente lite* and future interest @ 18% per annum from 10.03.2024 till the date of payment, along with costs. It was also prayed that the respondent-defendant be saddled with payment of punitive damages to the tune of Rs.10,19,836/- for allegedly indulging in unethical and tortious conduct in order to earn unjust enrichment at the expense of plaintiffs-appellants.

4. The suit was filed with the assertion in the plaint that appellants-plaintiffs had reserved two seats with the respondent-defendant for their air travel from New Delhi to New York on 02.06.2023 and for return from New York to New Delhi on 05.07.2023, whereafter they purchased two business class air tickets from the respondent-defendant for an amount of Rs.5,09,918/-. As per the assertion in the plaint, in early May, 2023 mother of the appellant no.1, who is 80 years of age, was admitted to the Intensive Care Unit (ICU) of a hospital in Delhi and thereafter she was advised to take further medical care at home and because of these circumstances the appellants-plaintiffs decided to cancel their travel to New York.



5. The appellants-plaintiffs further asserted in the plaint that an e-mail was sent to the respondent-defendant on 01.06.2023 to cancel the tickets, which was followed by another e-mail requesting refund of the tickets on 06.06.2023. It was also stated by the appellants-plaintiffs that they followed up the matter with the Call Centre of the respondent-defendant, requesting for refund of the tickets; however, it was informed to them by the respondent-defendant that in the event the appellants-plaintiffs seek a refund of the tickets, they will be levied cancellation charges of Rs.3,05,042/- and shall refund a sum of Rs.2,04,876/-. Various other assertions were also made in the plaint stating that levying cancellation charges of Rs.3,05,042/- was contrary to rules and regulations framed by the Directorate General of Civil Aviation/Ministry of Civil Aviation. It was stated further that the appellants-plaintiffs were informed that instead of issuing the refund of Rs.5,09,918/-, the respondent-defendant converted the said amount into a Future Travel Voucher (FTV) to be utilised in case of any future travel.

6. A legal notice was sent on 09.10.2023 to the respondent/defendant calling upon it to refund the full value of the tickets, i.e. Rs.5,09,918/-, along with interest @ 18% per annum from the date the refund was sought till payment, within seven days of the receipt of the legal notice. To the said legal notice, the appellants-plaintiffs are said to have received a response letter confirming receipt of the legal notice dated 09.10.2023 and further stating that the same shall be responded to shortly. On 31.10.2023, the appellants-plaintiffs filed an application for pre-institution mediation with South East District Legal Services Authority at Saket District Court, however, despite putting in appearance in the said proceedings, the respondent-defendant did not provide any response, leaving the appellants-



plaintiffs with no option but to institute the legal proceedings, and it is in these circumstances that the suit was filed. The respondent-defendant filed a written statement denying the plaint averments and also raising a preliminary objection on the maintainability of the suit, stating therein that transaction in question is not a commercial transaction and therefore, the claim of the appellants-plaintiffs was not governed within Section 2 (1) (c) of the Act.

7. An application was also moved by the respondent-defendant under Order VII Rule 10 and/or Rule 11 CPC with the prayer that having regard to the fact that the dispute between the parties does not qualify to be a commercial dispute within Section 2 (1) (c) of the Act, the plaint may be returned under Order VII Rule 10 of the CPC to be filed before the Court of competent jurisdiction or the same be rejected under Order VII Rule 11 CPC. It is this application on which the order under appeal has been passed by the learned Commercial Court on 14.11.2024, whereby the suit has been held to be not maintainable and accordingly it has been ordered to be returned to the appellants-plaintiffs with liberty to file the same before a Court of competent jurisdiction.

8. The Court below relying upon the judgment of the Hon'ble Supreme Court in *Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP & Anr.* [(2020) 15 SCC 585] has held that the dispute raised in the suit does not fall in any manner under a commercial dispute, and as such Court further ordered for return of the plaint with liberty to file the same before the court of competent jurisdiction.

9. We have heard the learned counsel for the parties and have also perused the records available before us on this appeal.



10. The sole question which falls for our consideration in this appeal is as to whether the nature of dispute raised by the appellants-plaintiffs by instituting the proceedings of the commercial suit constitutes any commercial dispute within the meaning of the said expression occurring under Section 2 (1) (c) of the Act or not.

11. Learned counsel for the appellants-plaintiffs has heavily relied upon Section 2 (1) (c) (xviii) of the Act according to which agreement for sale of goods or provision of service constitute a commercial dispute, and since the issue raised in the suit of the appellants-plaintiffs related to services to be provided by the respondent-defendant as such, the dispute would fall within the meaning of “commercial dispute” and accordingly the learned Commercial Court has erred in law in holding that the dispute in question is not a commercial dispute.

12. Elaborating further, it has been argued on behalf of the appellants-plaintiffs that Section 2 (1) (c) (xviii) contains two phrases, namely, one, *agreement for sale of goods* and second, *provision of services*. It is further submitted that once the tickets were booked by the plaintiffs-appellants for travel from New Delhi to New York, it confirms a contract containing *provision of services* would be provided by the respondent-defendant as such the dispute shall be covered by commercial dispute as defined in Section 2 (1) (c) (xviii) of the Act. It is further been argued by the learned counsel for the appellants-plaintiffs that General Conditions of Carriage issued by the respondent-defendant clearly state that, ‘when you buy a ticket to travel on a flight we operate, you enter into a contract of carriage with us’, and as such in view of the said admission that on buying a ticket to travel on a flight, the buyer of the ticket enters into a contract of carriage, it cannot be



said that the dispute raised before the Court below was not a commercial dispute.

13. Further submission on behalf of the appellants-plaintiffs is that the respondent-defendant is registered with GST Department having a distinct GST number and further that the respondent-defendant has been filing GST returns and as such it cannot be said that the transaction between the appellants-plaintiffs and the respondent-defendant is not a commercial transaction, and therefore, any dispute arising out of such commercial transaction has to be construed as commercial dispute.

14. Our attention has been drawn to a notification dated 28.06.2017 issued by the Ministry of Finance, Government of India, under the relevant provisions of the Central Goods and Services Act, 2017, whereby the services of providing transport of passengers by air with or without complete belongings in other than Economy Class have been held to be leviable for GST. In this view, the submission is that once the respondent-defendant has been paying GST for providing services of transport of passengers by air, the dispute raised before the learned Court below cannot be said to be 'not a commercial dispute', and accordingly, the learned Court below has erred in law.

15. Learned counsel representing the appellants-plaintiffs has also argued that in terms of the provisions contained in Section 3 of the Carriage of Air Act, 1972 read with Clauses 3(1) & 3(2) of Chapter II of the Schedule appended to the said Act, once a passenger buys a ticket for air travel, a contract of carriage comes into existence between the buyer of the ticket and the service provider, and therefore, this contention of the respondent-



defendant that the dispute raised in the suit filed by the appellants-plaintiffs did not constitute commercial dispute, is unfounded.

16. Referring to the definition of “contract of carriage” from the law dictionary, it has been argued by the learned counsel representing the appellants-plaintiffs that the contract of carriage is a binding contract, which is demonstrated by any airway bill or lading bill or ticket of a passenger and includes terms of transportation and the duties and privileges of the transporter and a passenger as well. It is thus the submission on behalf of the appellants-plaintiffs that on buying the ticket contract of carriage was entered into between the parties and further that in terms of the provisions of Section 2 (1) (c) (xviii) of the Act such contract provided a provision of service hence the dispute raised by the appellants-plaintiffs will constitute a commercial dispute within the meaning of the said term Section 2 (1) (c) of the Act. Accordingly, the submission is that the learned Court has erred in law in not appreciating the aforesaid aspects of the matter which vitiate the order under appeal.

17. Learned counsel for the respondent-defendant on the other hand has vehemently argued that the dispute raised by the appellants-plaintiffs cannot be termed to be a commercial dispute within Section 2 (1) (c) of the Act, for the reason that transaction between the parties is not a commercial transaction, and therefore, any dispute arising of such transaction is not a commercial dispute. It has also been argued that for constituting a dispute to be a commercial dispute, there has to be some element of commerce and business involved between the parties and in the instant case, no such element of commerce or business was involved; rather, it was a simple



contract of providing service *sans* any commercial or business consideration.

18. The following judgments have been relied upon by the learned counsel for the respondents in support of her submissions:-

- i.) ***Ambalal Sarabhai Enterprises Ltd. vs. K.S. Infraspace LLP and Anr., (2020) 15 SCC 585***
- ii.) ***Meena Vohra vs. Master Hosts Pvt. Ltd. and Ors., 2025 SCC OnLine Del 1758***
- iii.) ***Pushpshree Hospitals & Research Centre and Anr vs. Kothari Chemist and Anr. 2024 SCC OnLine MP 9626***
- iv.) ***Bharat Huddanna Shetty vs. Ahuja Properties & Developers and Ors., 2021 SCC OnLine Bom 13984***
- v.) ***Glasswood Realty Pvt. Ltd. and Ors. vs. Chandravilas Kailashkumar Kothari 2021SCC OnLine Bom 5032***

19. In ***Ambalal Sarabhai Enterprises Ltd. (supra)*** the jurisdiction of the Commercial Courts has elaborately been discussed and it has been held that the dispute which actually answer the “commercial dispute” as provided under Section 2 (1) (c) of the Act are to be entertained by the Commercial Courts and further that a strict construction to the provision of the Commercial Courts Act is required otherwise any liberal interpretation shall defeat the very objection and purpose of the said Act, i.e. speedy disposal of the high value commercial disputes.

20. Taking note of this submission that strict interpretation in the case of taxing institute will not be appropriate for interpreting the provisions of the



Commercial Courts Act, the Hon'ble Supreme Court in ***Ambalal Sarabhai Enterprises Ltd. (supra)*** has held that the very purpose for which the Commercial Courts Act has been enacted will be defeated if every other suit merely because it is filed before the Commercial Court is entertained. It is for the reason that suits which are not actually related to commercial dispute, but are being filed merely because of high value with intention of seeking early disposal, would only clog the system and block the way for genuine commercial dispute to be entertained by the Commercial Courts. Paragraphs 13 and 36 of the said judgment are extracted hereinbelow:-

“13. The learned Senior Advocate for the appellant would however, contend that a strict interpretation as in the case of taxing statutes would not be appropriate in the instant case where the issue relates to jurisdiction. In that regard, the learned Senior Advocate has referred to the Statement of Objects and Reasons with which the Commercial Courts Act, 2015 is enacted so as to provide speedy disposal of high value commercial disputes so as to create the positive image to the investors world about the independent and responsive Indian legal system. Hence, he contends that a purposive interpretation be made. It is contended that a wider purport and meaning is to be assigned while entertaining the suit and considering the dispute to be a commercial dispute. Having taken note of the submission we feel that the very purpose for which the CC Act of 2015 has been enacted would be defeated if every other suit merely because it is filed before the Commercial Court is entertained. This is for the reason that the suits which are not actually relating to commercial dispute but being filed merely because of the high value and with the intention of seeking early disposal would only clog the system and block the way for the genuine commercial disputes which may have to be entertained by the Commercial Courts as intended by the 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.

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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 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.”

21. A learned Single Judge of this Court in ***Meena Vohra (supra)*** has held that a dispute to be categorized as ‘commercial dispute’ the transaction should be supported by a document that records, governs, or evidences trade, commerce, or business activities, and further that absence of such a document, raises doubt as to whether a dispute can be qualified as a commercial dispute. The Court has further observed that a dispute shall qualify as a commercial dispute when it arises from a transaction involving merchants, bankers, financiers or traders and relates to mercantile documents, including their enforcement and interpretation, etc. The Court also states that the essence of a ‘commercial dispute’ inherently carries a



commercial flavor, encompassing elements of trade and business. Para 31 of the said judgment is apposite to be quoted which reads as under:-

“31. Reference can be made to Black's Law Dictionary, 8th Edn., 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 categorised 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.”

22. The High Court of Bombay in ***Bharat Huddanna Shetty (supra)*** after discussing the definition of the term ‘commercial dispute’ occurring Section 2 (1) (c) of the Act and further taking into account the law laid down by the Hon’ble Supreme Court in ***Ambalal Sarabhai Enterprises Ltd.(supra)*** has held that to constitute a dispute as commercial dispute, the transaction has to be ordinary transaction of merchants, bankers, financiers and traders such as those relating to mercantile documents including enforcement and interpretation of such documents etc. In the light of the discussions made in this judgment, the Bombay High Court held that if a friendly loan was lent to another needy friend, the same would not amount to a transaction between them in the course of their ordinary business.

23. In ***Glasswood Realty Pvt. Ltd. (supra)***, the Bombay High Court has held that dispute which are in nature of ordinary transaction of merchants,



bankers, financiers and traders will fall within the purview of ‘commercial dispute’, and it shall cover the ordinary/normal transaction carried out by the entities mentioned in Section 2 (1) (c) (i) of the Act such transaction will also include buying, selling or trading goods, etc. Any such transaction by financiers will also be included in the commercial disputes. Discussing *Ambalal Sarabhai Enterprises Ltd. (supra)* it was held by the Court that transaction of advancing an amount as a friendly loan cannot be termed to be commercial in nature and accordingly any such dispute arising out of any such transaction will not be covered within the meaning of term ‘commercial dispute’ as per Section 2 (1) (c) of the Act.

24. It is trite law that prayer for return of plaint or rejection of plaint moved under Order VII Rule 10 or Rule 11 respectively has to be considered only on the basis of the averments made in the plaint and if we examine the plaint assertions in the instant case, what we find is the dispute sought to be raised by the appellants-plaintiffs with the respondent-defendant does not qualify to be ‘commercial dispute’ within the meaning of the said term occurring in Section 2 (1) (c) of the Act.

25. It is not in dispute that once the appellants-plaintiffs bought the air ticket a contract was entered into, however merely because the said contract came into existence it cannot be said that any commercial transaction took place between the parties. The contract only provides that on buying the ticket the respondent-defendant will be obligated to take the passenger to his-her destination. Such transaction, in our opinion, sans any element of business, trade or commerce, cannot be termed to be ordinary transaction of merchants or bankers or financiers or traders, it can also not be termed to be export or import of mercantile or services.



26. In fact, the dispute which occurred between the parties in this case cannot be said to be a dispute arising out of any of the transactions mentioned in various sub-clause of Section 2 (1) (c) of the Act. Reliance placed by learned counsel for the appellants-plaintiffs on Section 2 (1) (c) (xviii) of the Act is highly misplaced. Section 2 (1) (c) (xviii) reads as under:-

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

*a. ****

*b. ****

(c) “commercial dispute” means a dispute arising out of—

*(i) to (xvii) ****

(xviii) agreements for sale of goods or provision of services;”

27. The aforequoted provision of Section 2 (1) (c) (xviii) provides that any dispute arising out of agreement for sale of goods or arising out of agreement for provision of services will constitute commercial dispute. In the instant case there is no agreement for sale of goods; it is only a contract for providing services, however dispute arising out of such a contract for providing services can be construed to be a commercial dispute only in case it involves some or the other kind of trade or business or financing etc.

28. An agreement containing a provision for providing mere services on payment of certain charges cannot, in every case, be termed to be an agreement, dispute in respect of which can be said to be a commercial dispute. To constitute a dispute to be a commercial dispute arising out of an agreement which contains a provision of services, the agreement or



transaction is to necessarily contain an element of commerce or trade or business.

29. For the reasons aforesaid, we are of the considered opinion that the dispute raised in the instant case by the appellants-plaintiffs instituting the suit cannot be said to be commercial dispute as it did not arise out of the transaction or agreement involving some element of trade or business or financing or commercial etc.

30. As has been held in *Ambalal Sarabhai Enterprises Ltd.*(*supra*) by Hon'ble Supreme Court, Commercial Courts Act has been enacted for a specific purpose of creating judicial forum to provide for speedy disposal of high value commercial dispute. The crucial aspect, thus, for instituting a suit under the Commercial Courts Act is commercial or business or trading activity and any suit of high valuation minus these elements cannot be instituted in the Commercial Courts Act.

31. We thus do not find any error or illegality in the order passed by the learned Commercial Court so as to call for any interference in this appeal.

32. Resultantly, the appeal fails, which is hereby dismissed.

33. No orders as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

SEPTEMBER 23, 2025/S.Rawat