



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

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+ **FAO 383/2024, CM APPLs. 72054/2024, 56931/2025**

AMAR PURI

.....Appellant

Through: Mr.Rajat Aneja, Mr. Aditya Sharma,
Ms.Saubhagya Chauriha, Advocates

versus

SAMAR S PURI (D) THR LRS

.....Respondent

Through: Ms.Charu Dalal and Mr.Choudhary Amit
Bassoya, Advocates for LR's of respondent

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal filed under Order XLIII Rule 1 of Code of Civil Procedure, 1908(hereinafter referred to as 'CPC') is directed against the order dated 18.09.2024, passed by the Trial Court, whereby the suit was held to be a Commercial Suit and the plaint was returned under Order VII Rule 10 CPC.

2. The facts, in a nutshell, are that in the plaint, the plaintiff had asserted that *Commercial/industrial Shed bearing No.6A, D.D.A Sheds, Okhla Industrial Area, Phase-II, New Delhi* (hereinafter the '*suit property*') was allotted to him by DDA in an Auction held on 30.10.1981, whereafter he became its exclusive owner on payment of the sale consideration. A Possession Letter dated 04.08.1982 was also issued in his name. Thereafter,



the suit property was used by the plaintiff as the office of his partnership firm namely, “M/s DESCON India”. It was further claimed that the defendant, who is the elder brother of the plaintiff, was running his partnership firm in the name of “M/s Associated Engineers” from the adjacent premises bearing *Shed No. 5-A, D.D.A Sheds, Okhla Industrial Area, Phase-II, New Delhi* and requested the plaintiff to permit him to use the portion of suit property. The plaintiff claimed that he used the suit property till the year 1996-1997, whereafter his office shifted to *C-2, D.D.A. Golf View Apartments, Saket, New Delhi-110017*. On defendant’s request, plaintiff permitted him to run the latter’s partnership business on the suit property. It was further claimed that on the demise of the youngest brother of the parties, namely *Shri Rajiv Puri*, with whom the defendant was running his aforesaid business, the partnership firm got dissolved. However, despite requests, the defendant refused to vacate the suit property. In this backdrop, the claim was filed seeking recovery of possession, damages/mesne profits and permanent injunction.

3. During the pendency of the suit, the defendant filed an application under Order VII Rule 10 CPC claiming that since the suit property was being used for commercial purposes, the dispute fell within the ambit of Section 2(1)(c)(vii) of the Commercial Court Act, 2015. It was also claimed that the relief for mesne profits was covered under the said Section. While relying on the decision of this Court in Jagmohan Behl v. State Bank of Indore¹, it was submitted that the expression “arising out of” in Section 2(1)(c)(vii), in relation to agreements concerning immovable property, is wide and expansive and is not to be given a narrow or restricted

¹ 2017 SCC OnLine Del 10706



interpretation. It was contended that the said expression would include all matters relating to agreements connected with immovable property used in trade or commerce, including oral agreements. Further, reliance was placed upon Harshad Chiman Lal Modi v. DLF Universal & Anr.², learned counsel submits that the decree passed in a suit by a Court lacking subject matter jurisdiction would be a nullity.

4. The plaintiff, however, contested the said application, contending that the suit property had been permitted to be used by the defendant and was handed over out of respect and not for any commercial consideration. Hence, the requirement of Section 25 of the Indian Contract Act is not satisfied. The oral agreement cannot amount to an agreement envisaged under Section 2(1)(c)(vii) of the Commercial Courts Act, 2015.

5. The Trial Court, while considering Section 52 of the Indian Easements Act, 1882, which defines 'license' as a right granted by one person to another to do, or continue to do, in or upon the immovable property of a grantor something which would otherwise be unlawful, has observed that no consideration is required for a valid licence and that a mere agreement (oral or written) between the parties whereby such license is granted would be sufficient. The Trial Court has noted the averments made in the plaint wherein it was stated that the plaintiff had acceded to the defendant's request and had permitted him to use the suit property for business purposes. In this backdrop, it was held that the dispute was covered by a provision of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015.

6. Learned counsel for the appellant submits that no objection as to jurisdiction was raised either in the written statement or at the stage of

² (2005) 7 SCC 791



framing of issues with respect to the maintainability of the suit under the Commercial Courts Act, 2015. It is contended that the controversy lies in a narrow compass, namely, whether the arrangement pleaded in the plaint can be construed as an “agreement relating to immovable property used exclusively in trade or commerce” within the meaning of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015. The said provision reads as under:-

“(vii) agreements relating to immovable property used exclusively in trade or commerce.”

7. Pertinently, for consideration of prayer for return of plaint under Order VII Rule 10 CPC, only the averments made in the plaint alone need to be examined.

8. Before proceeding further, let me take note of the position of law noted by Supreme Court in Ambalal Sarabhai Enterprise Limited v. K.S. Infraspace LLP³, where it elaborately discussed the jurisdiction of Commercial Court and further held that a strict construction to the provisions of Commercial Court Act is required otherwise any liberal interpretation shall defeat the very objection for the purpose of the said Act i.e. speedy disposal of high value commercial disputes. It was further clarified that the expression “used exclusively in trade or commerce” refers to property which is actually being used for commercial purposes, and not property which is merely ready for use, likely to be used, or to be used for trade or commerce in future. In the present case the plaint itself shows that the suit property is a commercial/industrial shed and that the defendant was permitted to use it for business activities.

³ (2020) 15 SCC 585



9. Similarly, in Meena Vohra v. Master Hosts (P) Ltd.⁴, the learned Single Judge of this Court held 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. This Court further observed that the absence of such a document raises doubts as to whether a dispute can be classified as a ‘commercial dispute’ under the Commercial Courts Act, 2015. It was further held that a dispute shall qualify as a ‘commercial dispute’ when it arises from transactions involving merchants, bankers, financiers, or traders or relating to mercantile documents, including their enforcement and interpretation etc. The Court also held that a commercial dispute inherently carries a commercial flavour, encompassing elements of trade and business. The relevant observations of the Court are as under:-

“31. Reference can be made to Black's Law Dictionary, 8th Edition, which defines "mercantile" as "an act relating to a merchant or trading and being commercial in nature." This interpretation suggests that for a dispute to be 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.”

10. In Prabhudas Damodar Kotecha and Others v. Manhabala Jeram

⁴ 2025 SCC OnLine Del 1758



Damodar and Another⁵, the Supreme Court, while considering the nature of license as defined under Section 52 of the Indian Easement Act, 1882 and relied on its earlier decision in State of Punjab v. Brig. Sukhjit Singh, observed that *“payment of licence fee is not an essential attribute for subsistence of licence. Section 52, therefore, does not require any consideration, material or non material to be an element, under the definition of licence nor does it require the right under the licence must arise by way of contract or as a result of a mutual promise”*. It was further held as under:-

“53. We have referred to the meaning of the expressions “licence” and “licensee” in various situations rather than one that appears in Section 52 of the Indian Easements Act only to indicate that the word licence is not popularly understood to mean that it should be on payment of licence fee, it can also cover a gratuitous licensee as well. In other words, a licensor can permit a person to enter into another’s property without any consideration, it can be gratuitous as well.”

11. However, the issue in the present case is not whether a gratuitous licence is legally valid, but whether the arrangement pleaded in the plaint possesses the commercial character contemplated under Section 2(1)(c)(vii) of the Commercial Courts Act. Admittedly, the property in question is a commercial/industrial shed and, as per the plaint itself, the defendant was permitted to use the premises for running business activities. Therefore, the arrangement has a commercial character and concerns immovable property being used for commercial purposes. The alleged permissive gratuitous use will not make the agreement non-commercial for deciding the applicability of Commercial Courts Act.

⁵ (2013) 15 SCC 358



12. In *arguendo*, learned counsel has prayed that in the alternative, the suit be transferred to the Commercial Court instead of the plaint being returned.

13. In this regard, this Court takes note of the fact that the present suit was instituted in July, 2017 i.e., prior to the decision of the Supreme Court in Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd.⁶ where prospective applicability of the judgment was declared. The relevant paragraphs from the judgment on the effect of the ruling on the pending suits is as under:-

“113.1. We declare that Section 12-A of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12-A must be visited with rejection of the plaint under Order 7 Rule 11. This power can be exercised even suo moto by the court as explained earlier in the judgment. We, however, make this declaration effective from 20-08-2022 so that stakeholders concerned become sufficiently informed.

113.2. Still further, we however direct that in case complaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the plaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff.

113.3. Finally, if the plaint is filed violating Section 12-A after the jurisdictional High Court has declared Section 12-A mandatory also, the plaintiff will not be entitled to the relief.”

14. Clearly, in the present case, the suit having been filed in 2017, is saved from the fatal consequences of Section 12-A non-compliance. However, even in the pending suits that ought to have been filed as commercial suits under the Commercial Courts Act, the compliance of 12-A is mandatory, without rendering the suit not maintainable for pre-suit 12-A

⁶ (2022) 10 SCC 1



non-compliance.

15. In Namita Gupta v. Suraj Holdings Ltd.⁷ this Court has adopted a novel method to make it less inconvenient for the plaintiff in such suits, by taking recourse to Section 24 of the CPC, rather than more abrupt and disruptive consequences of Order VII Rule 10 of CPC. The Court has observed that in order to avoid the consequence of loss of all proceedings that have taken place before the earlier court, either of the parties may seek recourse to Section 24 CPC, which empowers the High Court or the District Court, on its own motion or otherwise, to transfer any Suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it; or to withdraw any such Suit, appeal or proceeding pending in any Court subordinate to it and inter alia transfer the same for trial or disposal to any Court subordinate to it and competent to try and dispose of the same. The Court further noted the difference between Section 24 and Order VII Rule 10 CPC by observing that in terms in terms of Sub-Section (2) of Section 24 in following terms:-

“58. The difference between Section 24 and Order VII Rule 10 of the CPC is that in terms of Sub-Section (2) of Section 24, where any Suit or proceeding has been transferred or withdrawn, the Court which is thereafter to try or dispose of such Suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn. Therefore, all proceedings that were undertaken before the Court where a Suit was earlier instituted, though it lacked jurisdiction to try the same, can be saved, and the Suit on its transfer can be proceeded from the point at which it was transferred.

⁷ 2024 SCC OnLine Del 143



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63. As noted hereinabove, Section 16 of the Act provides that the provisions of the CPC shall apply to any Suit in respect of Commercial Dispute of a Specified Value, subject to the amended provisions thereof as provided in the Schedule appended to the Act. Section 24 of the CPC is not a provision which has been amended by the said Schedule. It, therefore, continues to apply in full force to a Suit in respect of a Commercial Dispute of a Specified Value. If the Legislature wanted to take away this power from the Court, it would have expressly stated so by deleting the said provision in the Schedule to the Act; it did not do so. There is also no implied exclusion of this power, as this power, in no manner, is in conflict with any provisions of the Act.

64. As far as non-compliance with Section 12A of the Act is concerned, the Transferee Court shall consider the said objection on merits upon the transfer of the Suit. The transfer of the Suit does not, in any manner, affect the right of the defendant to contend that the Suit has been filed without any cause of action or is otherwise barred by any provision of law or is liable to be dismissed under Order VII Rule 11 of the CPC for any other reason, including for the failure of the plaintiff to initiate pre-suit mediation as mandated under Section 12A of the Act. These objections would remain open to the defendant even on the transfer of the Suit under Section 24 of the Act.

65. As held hereinabove, a Commercial Court, constituted under Section 3 of the Act, would be a Court subordinate to the High Court. Reference in this regard may also be made to the judgment of the Supreme Court in *Life Insurance Corporation of India v. Nandini J. Shah* (2018) 15 SCC 356. Therefore, there is no reason to exclude the applicability of Section 24 of the CPC to a Suit in relation to a Commercial dispute of a specified value. The first issue is answered accordingly.”

16. Recently, the Supreme Court in Dhanbad Fuels Private Limited v.



Union Of India⁸, observed as under:-

63. It is interesting to note that the decision impugned before us was referred to by this Court in paragraph 54 of Patil Automation while it was discussing the divergent views of different High Courts on the nature of Section 12-A of the 2015 Act. Therein, this Court had observed thus: (SCC pp. 28-29, para 54)

“54. A learned Single Judge of the High Court of Calcutta, in the decision in Dhanbad Fuels Ltd. v. Union of India, took the view that mediation in India is still at a nascent stage and requires more awareness. There was a need for mandatory training of commercial disputes. It was further found that the party cannot be denied the right to participate in the justice dispensation system. It was further noticed that there was no obligation on the part of the defendant to respond to the initiative of the plaintiff. Rejecting the plaint under Order 7 Rule 11(d) in view of Order 7 Rule 13, which enables a fresh suit to be filed upon rejection under Order VII Rule 11, would show that the power under Order VII Rule 11 should not be invoked as it would not be in accordance with the objectives of the Act and the Rules.”

17. Consequently, the impugned order is set aside.

18. Accordingly, in exercise of powers under Section 24 CPC, this Court directs that the suit be transferred and for which purpose it would be listed before the concerned Principal District and Sessions Judge at the first instance on 06.07.2026 for directions. The question of compliance of Section 12-A, is kept open for the transferee Court to deal with in accordance with law.

⁸ (2025) 9 SCC 424



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19. In view of the above, the present appeal is disposed of alongwith the pending applications.

(MANOJ KUMAR OHRI)
JUDGE

MAY 26, 2026

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