IN THE COURT OF THE III ADDL. SENIOR CIVIL JUDGE AND J.M.F.C., VIJAYAPURA

: <u>PRESENT</u> :

Sri. Mahesh Chandrakanth.,
B.A., LL.M.

III Addl. Senior Civil Judge & J.M.F.C.,
Vijayapura

<u>O.S. No.60/2022</u>

<u>Dated this the 3rd day of May, 2025</u>

Plaintiff/s: Bank of India Vijayapura

(By Sri S.S.A. Advocate)

V/s

Defendant/s: Suresh Mahadev Pari & others

(By Sri.S.T.D. Advocate for D-2 to 20)
(Defendant No.1-Ex-parte)

<u>I.A.No.I</u>

Applicant/Ori. Defendant No.2 : D.S.S.S.S. Ltd., & others

-V/s-

Opponent/ plaintiff : Bank of India Vijayapura

<u>I.A.No.II</u>

Applicant/Proposed plaintiff : Indian Cane Power Ltd,

-V/s-

Opponent/Ori. Defendant: Suresh M.Maprit & another

ORDERS ON I.A.No.I AND II

The I.A.No.I is filed by the defendant No.2 U/s. 9 of CPC R/w Sec.6 R/w 2 (1) (i) of Commercial Courts Act R/w order VII Rule 11 (d) of CPC to reject the plaint as civil court is barred from jurisdiction to try the present suit.

2. The I.A.No.II is filed by the proposed plaintiff U/o 22 Rule 10 (1) R/w order 1 Rule 10 (2) of CPC seeking permission to the applicant to continue with the suit by deleting the original plaintiff Bank name and impleading the proposed plaintiff as plaintiff.

3. It is stated in the accompanying affidavit filed by defendant No.2 to I.A.No.I that, the transaction taken place between the plaintiff and defendants is commercial transaction and the loan amount claimed is more than Rs.3,00,000/-. Hence, this court has no jurisdiction to try the present suit. Thus, he prayed to reject the plaint.

4. The advocate for plaintiff filed objections by denying all the averments made in the accompanying affidavit to the I.A.No.I. He contended that, the plaintiff

bank advanced loan for the activities of harvesting and transportation of agricultural produces. Thus, the loan availed by the defendants is not commercial loan. Hence, the dispute is not commercial dispute and the is not coming within the definition of commercial Courts Act 2015. Further he contended that, the loan availed by the defendants is agricultural loan. Hence, this court is having jurisdiction to try the present suit. Thus, he prayed to reject I.A.No.I.

5. In the accompanying affidavit to the I.A.No.II the managing director of the proposed plaintiff company has stated that, the defendant No.2 Sugar factory recommended for sanction of loan to other defendants and accordingly the plaintiff bank advanced the loan to the defendants. Thereafter the original plaintiff bank filed suit against the defendants for recovery of amount. In the mean time the defendant No.2 sugar factory approached to the NCLT (National Company Law Tribunal) under the insolvency and Bankruptcy Code 2016 and the NCLT accepted the resolution and plan submitted by the proposed plaintiff and

accordingly it passed the order on I.A.No.I on 24.04.2024. By virtue of said order the defendant No.2 has transferred its assets to the proposed plaintiff and it cleared the loan. Hence, by virtue of said NCLT order the proposed plaintiff has to be substituted as plaintiff in place of Bank of India i.e., original plaintiff and it has right to recover the loan amount from the defendants. Hence, he prayed to allow the application.

6. The advocate for defendants filed objections by contending that, the present application is misconceived and untenable in law. Further he contended that, the defendant No.2 company is under insolvency. Hence, the proposed plaintiff who is bidder cannot maintain the present application. Further he contended that, plaintiff bank has not filed any application or say before the court stating that they settled the dues in the insolvency proceedings. Thus, the proposed plaintiff cannot maintain the present application. Further he contended that if the proposed plaintiff has any right under the law it has to file separate suit by paying court fee. He contended that the

proposed plaintiff has not filed any resolution passed by the company and no authorization letter is produced to show that the present applicant is authorized person of said company. Further he denied all the averments made in the accompanying affidavit to the I.A.No.II. Further he contended that, there is no separate contract between the plaintiff and defendants and in the event of insolvency the guarantor would not be held liable. Thus, on all these grounds he prayed to reject I.A.No.II.

7. Heard the arguments of both sides and perused the materials placed on record.

8. The following points arise for consideration;

1) ***Whether the dispute involved in the suit is commercial dispute and this court has no jurisdiction to try the suit, hence plaint is liable to be rejected?***

2) ***Whether the proposed plaintiff has made out grounds to substitute/implead it as plaintiff in the place of original plaintiff?***

3) ***What order?***

9. My answers to the above points are as follows:

Point No.1: In the Negative
Point No.2: In the Affirmative
Point No.3: As per the order
for the following:

R E A S O N S

10. **Points No.1:** The learned advocate for the defendants has vehemently argued that, the loan transaction taken place between the plaintiff and defendants is in commercial nature and the defendants are doing commercial activities. Hence, the transaction is commercial transaction. Thus, this court has no jurisdiction to try the present suit.

11. On the other hand, the learned advocate for plaintiff has argued that, the transaction of the defendants is not a commercial transaction rather the defendants are involved in a sugarcane cutting process and they availed loan to purchase harvesting equipments and vehicle for transportation of sugarcane. Thus, the said loan is not commercial loan rather it is an agricultural loan. Hence, he prayed to reject the I.A.No.I.

12 Further the advocate for plaintiff has argued that, the defendants filed similar application in other connected matters which are pending before other courts and said applications are rejected by holding that, the suit transaction is not commercial transaction and this court is having jurisdiction to try the suits. Further he argued that the defendants have not challenged said order hence they accepted the said order.

13. On careful perusal of the plaint averments it is clear that, the plaintiff bank has sanctioned loan of Rs.8,00,000/- to defendants on the request made by the defendant No.2 for harvesting and transportation of sugarcane. To the said loan the defendant No.1 offered guarantee. Further it reveals that the plaintiff bank advanced loan to the defendants for harvesting and transportation of sugar cane purpose. Further it reveals from the documents produced by the plaintiff that the said loan is covered under agricultural loan. Neither in the plaint nor in the loan documents there is no mention that, said loan transaction is commercial loan transaction.

Further on careful perusal of Sec.2 (1) (c) (1) of Commercial Courts Act, it reveals that, the suit loan transaction does not come under the commercial dispute.

14. The advocate for the plaintiff has produced the copy of the "Deed of Guarantee" executed by the defendants infavour of plaintiff Bank. On careful perusal of the same it is clear that in clause 'A' it is clearly mentioned that the loan was advanced for the purpose of ***"advance payment to harvest and transport contractors for vehicle and family maintenance expenses".***

15. Further the advocate for the plaintiff has produced one circular issued by the plaintiff's main office dated 07.12.2018. As per this document it appears that Harvesting and Transportation loan means loan granted to individual farmers/members of sugar factories and it facilitates sugar cane labours. Further it reveals from the repayment mode that said loan has to be repaid within 2 months after concluding of crushing by the factory or by July whichever is earlier. Thus, it is clear that the loan advanced by the plaintiff Bank is not a commercial loan,

rather it is a loan granted to sugar cane labours and it is a short term loan. Hence, the suit loan transaction is not a commercial loan. Thus, the Commercial Courts Act, is not applicable to the present suit. Hence, this court is having jurisdiction to try this suit.

16. In the similar connected matters already the similar applications are decided on merit and the same is rejected holding that the loan transaction of the defendants is not commercial loan transaction. Till today defendants have not challenged the said order.

17. The Hon'ble Apex court in a decision reported in **(2020) 15 SCC 585 between Ambalal Sarabhai Enterprises Ltd. V/s K.S. Infraspace LLP and another,** it is held that U/s 2 (1) (c), Sec.6 and 7 of the Commercial Act 2015 applies only to the disputes which are actually answer the definition of Commercial Act as provided under said Act. Further it is held that merely because property is likely is to be used in relation to trade or commerce same cannot be ground to attract jurisdiction of commercial courts.

18. Herein this case also there is no material to show that, the loan advanced by the plaintiff bank is for commercial trade or business and the defendants use the same for commercial purpose. Thus, this court is of the opinion that, the transaction taken place between the plaintiff and defendants is not commercial transaction. Hence, the Commercial Courts Act is not applicable to the case on hand. Further as the present suit is filed for recovery of loan amount this court is having jurisdiction to entertain the present suit. Thus, there is no ground to reject or return the plaint. Hence, I answer point No.1 in the negative.

19. **<u>POINT No.2:</u>** The proposed plaintiff filed the present I.A.No.II and it is stated in the application that, the defendant No.2 sugar factory moved insolvency proceedings before NCLT and in that proceedings the proposed plaintiff has produced the assets of the defendant No.2. Thus, it stepped into the shoes of the plaintiff and it has paid amount to the original plaintiff on behalf of the defendants. Thus, it is clear that the proposed plaintiff stepped into

shows of original plaintiff. Hence, it has right to recover the dues from the defendants as if by the original plaintiff.

20. On perusal of the order passed by NCLT it is clear that, the present applicant/proposed plaintiff has purchased the assets of the defendants and it has paid dues on behalf of defendants to the original plaintiff. Thus, it stepped into shows of the original plaintiff and it has right to recover the dues from the defendants.

21. The defendants contended that, the original plaintiff has not filed any application about the clearance of loan by the proposed plaintiff. But on careful perusal of the letter issued by original plaintiff i.e., Bank of India dated 29.08.2024 it is clear that, it has directed the proposed plaintiff to recover the dues from the defendants and it requested to continue the proceedings of the suits. Further it is clear from the said letter that the plaintiff bank has filed 306 suits against the defendants for recovery of money and in the NCLT proceedings resolution and plan submitted by the proposed plaintiff has been accepted and proposed plaintiff company is entitled to recover the dues payable to

the Bank of India by the defendants. The relevant portion of said letter reads as under:

" We may inform the bank of India, Vijayapura Branch had filed 306 civil suits filed with the courts of Senior Civil Judge at Vijayapura against the individual harvesting and transaction contractors of Dnyanayogi Shri Shivakumar Swamiji Sugars Ltd., and the company.

We may further inform that in view of the order dated 24.04.2024 of the Hon'ble NCLT the Resolution plan of your company (ICPL) has been accepted and as per the said order your company is entitled to recover the dues payable to the bank of India by the individual H & T contractors of Dnyanayogi Shri Shivakmar Swamiji Sugars Ltd under the Principles Right of Subrogation.

Now please note that the suits filed by the bank of India are posted for the evidence of the bank by the court. Therefore we request that if your company intends to proceed with continuing the above said suits kindly engage an advocate and make arrangement to file suitable application to trasposition of the parties, implead your company as plaintiff and to amend the suit suitably through the said advocate, enabling your company to proceed against the defendants to obtain the decree against them. Please note that as the cases are posted for evidence needful have to be done immediately".

22. The another contention taken by the defendants is that the present applicant who represented the proposed plaintiff has not authorized person. But on careful perusal of the documents produced by him it is clear that, he produced the authority letter issued by proposed plaintiff company and he produced resolution passed by said

company authorizing him to represent in the suits. Hence, contention taken by defendants no holds water.

23. On careful perusal of the material placed on record it is clear that, the proposed plaintiff stepped into the sues of the original plaintiff and he is assignee under Order 22 Rule 10 of CPC. Further it is clear that, from NCLT order that the proposed plaintiff is having right to substitute as plaintiff in the place of original plaintiff bank and it has right to continue the suits and recover the amount from the defendants. Further it is admitted fact that, the similar applications are allowed by other courts in the connected matters and till today the defendants have not challenged the said order. Hence, I answer point No.2 in the Affirmative.

24. **Point No.3:** In view of the aforesaid reasons, I proceed to pass the following,

-: O R D E R :-

I.A.No.I filed by the defendant No.2 U/s. 9 of CPC R/w Sec.6 R/w 2 (1) (i) of Commercial Courts Act R/w order VII Rule 11 (d) of CPC is hereby rejected.

I.A.No.II is filed by the proposed plaintiff U/o 22 Rule 10 (1) R/w order 1 Rule 10 (2) of CPC is hereby allowed.

The applicant/proposed plaintiff is permitted to come on record as plaintiff in place of original plaintiff i.e. Bank of India and proceed with the matter. Further he is directed to amend the cause title accordingly and file amended plaint.

(Dictated to the Stenographer transcribed, typed by her, corrected and order is pronounced in the open court on the ***3rd day of May, 2025****)*

(Mahesh Chandrakanth)
III Additional Senior Civil Judge
Vijayapura