

ORDERS

This suit is filed for declaration that there was an oral contract between the plaintiff and the defendant for providing realty services on commission @ 2% of the cumulative value that accrues to the defendant's share in the JDA relating to property bearing No.21, 80 feet road, Indiranagar, Bengaluru measuring 5 acre 1½ guntas and that she has provided such services; for recovery of Rs.5,51,00,000/- towards the same with service tax @ 10.3%, Rs.75,00,000/- towards 12% interest on Rs.5,00,00,000/- from the date of invoice upto the date of realization and mandatory injunction to pay such additional amount towards the prevailing service tax.

2. It is argued by the learned counsel for the defendant that unless there is an agreement in writing, the plaintiff's claim cannot be entertained by the commercial court and the dispute does not qualify to be a commercial dispute as defined U/s 2(1)(c) of the Commercial Courts Act.

3. On the other hand the learned counsel for the plaintiff submits that the office has suo motu transferred this matter from CCH-28 to this court as the suit claim is more than the

specified value. It was also argued for the plaintiff that it is a commercial dispute as defined U/s 2(1)(c) (xiii) of the Commercial Courts Act dealing with Subscription and investment agreements pertaining to the services industry including outsourcing services and financial services.

4. Section 2(e) of the Indian Contract Act defines an agreement as every promise and every set of promises, forming the consideration for each other. The provision does not require that an agreement should always be in writing. An oral agreement is as equally valid as a written one and the legality of the same cannot be questioned if it satisfies the requirements U/s 10 of the Indian Contract Act.

5. In my opinion, disputes arising out of oral agreements, if could be tried by Civil Court, can be tried by this court too, provided it is of the nature falling U/s 2(1)(c) of the Commercial Courts Act and of specified value or more, as exclusive Commercial Courts are established only to expedite and fast track the disposal of commercial disputes.

6. It is not the case of the plaintiff that there was a JDA between her and the deceased defendant. The JDA was between the deceased defendant and Nitesh Estates Pvt. Ltd. In the affidavit accompanying I.A.No.5 U/o XI rule 1(5) CPC seeking permission to produce additional documents, the plaintiff states that she has also filed O.S.1151/2014 against Nitesh Indiranagar Retail Pvt. Ltd. and Nitesh Estates Ltd. Relating to the same dispute and it is pending before the City Civil Court; that she was acting as a real estate agent for the deceased defendant. From this, it is

clear that the dispute does not fall U/s 2(1)(c)(xi) of the Commercial Courts Act dealing with joint venture agreement.

7. Coming to the question whether realty services qualify as Subscription and Investment agreement covered U/s 2(1) (c)(xiii) of the Commercial Courts Act, I am afraid, it does not. Because, a subscription agreement is an investor's application to join a limited partnership and an investment agreement is a contract stating the rights and responsibilities of two parties to an investment. While the investment agreement sets forth the parameters of the investment, the subscription agreement defines the terms for a party's investment in a limited partnership. Therefore, I am unable accept that the plaintiff's claim falls U/s 2(1) (c) (xiii) of the Commercial Courts Act.

8. Therefore, office to place the file before the Prl.City Civil and Sessions Judge, Bengaluru for its reallocation.

LXXXIV ACC & SJ
(CCH - 85, Commercial Court)
Bengaluru