

**IN THE COURT OF THE II ADDITIONAL SENIOR CIVIL
JUDGE AND J.M.F.C. HUBBALLI**

Present:- Smt.Deepa G Manerkar,
B.Com. L.L.B, (Spl.)
II Addl. Senior Civil Judge & J.M.F.C.,
Hubballi.

Dated this the 03rd day of December 2025

O.S. No.200/2023

Plaintiff/s : M/s Ashok Enterprises,
Represented by its proprietor
Sri Ashok Channabasappa
Sangolli,
Age: 49 years, Occ: Business,
R/o: 14, Chanakyapuri, near
MTM Mill, Hubballi.

(By Sri. G.A. Bhat, Adv.)

-Versus -

Defendant/s : 1. Uday Trading Company
Represented by its proprietor
Sri Manjunath Arjuna
Kalburgi
Age: 45 yrs, Occ: Business,
R/o: House No.54, Lattipeth,
Old Hubli, Hubballi

2. Suresh S/o Dhanraj Oswal
Age: 54 years, Occ: Business,
R/o: A/5, 44 Byatti Plot,
Deshpande Nagar, Hubballi

Amendment as
as per order on IA

3. Smt. Santoshdevi W/o
Dineshkumar Oswal,
Age: 50 yrs, Occ: Housewife,
R/o: Hubballi
4. Smt. Manjuladevi W/o
Uttamchand Oswal,
Age: 51 years, Occ: Housewife,
R/o: No.2-3, C.T.S No.161/A5,
Arihant Neeli Plots,
Deshpande Nagar, Hubballi

**(D1 by Sri. I.K. Belagali, Adv.
D-2 to 4 by Sri. P.S.Naregal, Adv.)**

ORDERS ON PRELIMINARY ISSUE

The defendant No.2 to 4 in their written statement and para No.24 have contended that on reading the allegations made out in the plaint and defence of the defendants, the suit transaction is commercial in nature. As such this court has no jurisdiction to adjudicate the suit. Hence it is the only commercial court which can entertain the suit and adjudicate it. Hence this court has no jurisdiction to try the suit as such plaint may be rejected to be

presented before competent court and it is also prayed to treat the said issue as Preliminary issue. Based on said contention in written statement additional issue No.1 is framed on 03.09.2025 which runs as under:-

Whether the defendant No.2 to 4 proves that since the transaction in present suit is commercial in nature, this court has no jurisdiction to try the present suit?

2. This issue was treated as preliminary issue and matter was posted for hearing on preliminary issue.

3. Heard arguments from plaintiff and defendants counsel. My answer to the above issue is :

Addl. Issue No.1: In the **NEGATIVE**,
for the following :

REASONS

4. The counsel for the defendant No.2 to 4 argued that in the present case, the loan transaction is for business purpose. In the cause title of the plaint

the plaintiff is shown as M/s. Ashok Enterprises, which is firm. The defendant No.1 is also company. As such the transaction is commercial in nature as per Section 2(1) of Commercial Courts Act as such this court has no jurisdiction to try the present suit. Hence, plaint has to be returned to be presented to before commercial court.

5. On the contrary the counsel for plaintiff argued that in the plaint it is averred that on friendly acquaintance, transaction between the plaintiff and defendant No.1 was done there is no business transaction. In Section 2(1)(c) of Commercial dispute has been defined as and since the present suit is filed only for recovery of money lent by the plaintiff to the defendant No.1 for the purpose to meet out his business needs, the present transaction cannot be termed as business transaction or commercial dispute within the meaning as provided in above provision. As such the Additional Issue No.1 has to be answered in

the negative and this court is having jurisdiction to try the present suit.

6. I have gone to the plaint avernments in the plaint, it is averred that the plaintiff and defendant are acquainted with each other since long time and the defendant has been receiving loan from the plaintiff for his business purpose and used to repay the same. That the defendant had borrowed Rs.10,00,000/- for business purpose hence the plaintiff paid the said amount through RTGS on 25.11.2019. The defendant assured that he would return the said amount within few months as he was facing financial problems. However he has not shown his intention in returning the same. It is also averred that one Suresh Kumar Oswal and others i.e. defendant No.2 to 4 agreed to take responsibility of payment to the creditors of defendant and in lieu of the same the defendant No.1 and his brothers to executed sale deed pertaining to CTS No.122/6B and

it was agreed that the on that day said sale agreement has to be executed in their favour. Believing the said arrangement made the plaintiff repeatedly requested defendant No.2 to 4 to repay their amount. But defendant No. 2 to 4 told the plaintiff that they are trying to sell the property and thereafter will clear the loan. After repeated requests the defendant No.1 issued Cheque No.448362 and 448363 dated 04.05.2024 for Rs.5,00,000/- each which on presentation came to be dishonored and after issuance of legal notice he had filed complaint under Section 138 of NI Act. The defendant No.1 had availed the loan and same was undertaken to be repaid by defendant No. 2 to 4 and in furtherance of same they have got executed sale deed in their favour from defendant No.1 and his brothers and taken possession of the property. Hence according to their undertaking they are liable to pay the loan amount.

Hence the plaintiff has come up with the present suit for recovery of Rs.11,65,000/-.

7. On the contrary, the defendants have denied the averments made in the plaint. Defendant No.1 contends that on the advice of elders of APMC, the defendant No.1 and his brothers executed sale deed in favour of one Suresh Kumar Oswal and the said borrowers of the defendant No.1 had agreed to recover the said loan from the said Sureshkumar Oswal, to whom, the property was sold. The defendant No.1 also claims that plaintiff had executed ಒಪ್ಪಿಗೆ ಖರಾರು ಪತ್ರ or consent deed in favour of defendant No.1 on 18-02-2021 and also executed joint agreement along with 27 other persons on 18-02-2021 agreeing that since the date of execution of the sale deed there are no dues to be paid by the defendant No.1 to the plaintiff herein as the entire liability of payment is on the persons in whose favour the defendant No.1 has executed the sale deed. On the contrary, the

defendant No.2 to 4 denied their liability to pay any amount to the plaintiff and they contend that only to harass them and to extract money the present suit is filed. They contend that they have already paid sale consideration amount of Rs.94,44,000/- to the defendant No.1 and one Chandrabai W/o Arjuns Kalburgi, Gangadhar S/o Arjuns Kalburgi, Raghunath S/o Arjuns Kalburgi. As such they have no liability of paying any amount and they have not under taken to clear of loan or liability of defendant No.1.

Section 2(1)(c) in THE COMMERCIAL COURTS ACT, 2015 defines:-

(c) “commercial dispute” means a dispute arising out of— (i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such

documents; (ii) export or import of merchandise or services;(iii) issues relating to admiralty and maritime law;(iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters,including sales, leasing and financing of the same;(v) carriage of goods;(vi) construction and infrastructure contracts, including tenders; (vii) agreements relating to immovable property used exclusively in trade or commerce;(viii) franchising agreements;(ix) distribution and licensing agreements;(x) management and consultancy agreements;(xi) joint venture agreements;(xii) shareholders agreements;3(xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;(xiv) mercantile agency and mercantile usage;(xv)

partnership agreements;(xvi) technology development agreements; (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits; (xviii) agreements for sale of goods or provision of services; (xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;(xx) insurance and re-insurance;(xxi) contracts of agency relating to any of the above; and(xxii) such other commercial disputes as may be notified by the Central Government. 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 body carrying out public functions.

8. On going through the plaint averments and written statement of defendants, nowhere it appears that the dispute involving is commercial type of dispute as defined in Section 2 (1)(c) of Commercial Courts Act. On the contrary the present suit is filed for the relief of recovery of money by the plaintiff, which he claims to have advanced to the defendant No.1 and the defendant No. 2 to 4 have undertaken to repay the same by selling the property of defendant No.1 and his brothers. Therefore no commercial dispute is involved in the present suit. As such the above

issue i.e. Additional Issue No.1 is answered in the negative holding that this court is having jurisdiction to try the suit.

ORDER

Addl. Issue No.1 is framed on 03-09-2025 is answered in the Negative.

(Dictated to the AI Adalath, corrected by stenographer and verified by me, and then pronounced in the open court on this the 03rd day of December 2025).

Sd/-

(Smt. Deepa G. Manerkar)
II Addl. Senior Civil Judge and JMFC
Hubballi.