

IN THE COURT OF THE MUNSIFF OF NADAPURAM

Present: Smt.Sowmya .T. M., Munsiff

Thursday, the 18th day of March, 2021

ORIGINAL SUIT No. 128/2020

Between:

Sivakrishnan. O. C. S/o. Kunhikrishnan Vaydiar, aged 52,
Business, Gawtham house, Poovathodi, Pallikkara amsom,
Desom, Koyilandy taluk, Kozhikode district

} Plaintiff

And:

Jithinath. K.P. S/o. Raveendranth, aged 55, Contractor,
Kombiparambath house, Purameri P.O., Purameri amsom,
Desom, Vatakara taluk, Kozhikode district

} Defendant

This suit coming on 8th day of March 2021 for final hearing before me in the presence of Sri. N. M. Rajagopal Advocate for plaintiff and of Sri. Manoj Arur Advocate for defendant and having stood over to this day for consideration this court delivered the followings:

ORDER

Plaint averments, in brief, are as follows:-

2. The plaint schedule property belongs to the plaintiff by virtue of Will

No: 47/2006 of SRO, Edachery. The plaintiff wanted to construct a building therein and he entrusted the construction work to the defendant as per the agreement dated 07/5/2019. As per the contract, the defendant agreed to complete the construction of the proposed building before 31-1-2020. The cost of the building construction was fixed at Rs 16,50,000/-. The defendant has not completed the work as per the terms of the contract. Hence the plaintiff instituted the above suit for directing the defendant to complete the construction of the building in accordance with the terms of the agreement entered into between the plaintiff and defendant and to pay Rs. 5,00,000/- as compensation.

3. The defendant appeared before the court in response to the summons served on him. The defendant contended that the dispute alleged herein would come within the purview of S. 2 (c) (vi) and (vii) of the Commercial Courts Act, 2015 and therefore the Commercial Court has the jurisdiction to adjudicate the suit.

4. Heard both sides.

5. preliminary issue framed as follows:

1. is the suit maintainable in view of the provisions of the Commercial Courts Act, 2015?

6 Issue no 1.

On perusal of pleading, it is seen that the suit is one for mandatory injunction directing the defendant to complete the construction of the building in the plaint

schedule property in accordance with the contract entered into between the plaintiff and the defendant. According to the defendant, the transaction alleged herein is a commercial transaction and the contract in respect to the construction of a commercial building. Therefore, the suit is not maintainable. In *Ambalal Sarabhai Enterprises Ltd v K.L Infraspace LLP* and another reported in 2019 KHC 7012 Hon'ble Apex court was held that

“A dispute relating to immovable property per se may not be a commercial dispute. But it becomes a commercial dispute, if it falls under sub-clause (vii) of S.2(1)(c) of the Act viz. "the agreements relating to immovable property used exclusively in trade or commerce". The words "used exclusively in trade or commerce" are to be interpreted purposefully. The word "used" denotes "actually used" and it cannot be either "ready for use" or "likely to be used" or "to be used". It should be "actually used".....

7 The Apex court further held that

“ In that view it is also necessary to carefully examine and entertain only disputes which actually answers the definition "commercial disputes" as provided under the Act. In the instant case, as already taken note neither the agreement between the parties refers to the nature of the immovable property being exclusively used for trade or commerce as on the date of the agreement nor is there any pleading to that effect in the plaint. Further the very relief sought in the suit is for execution of the Mortgage Deed which is in the nature of specific performance of the terms of

Memorandum of Understanding without reference to nature of the use of the immovable property in trade or commerce as on the date of the suit. Therefore, if all these aspects are kept in view, we are of the opinion that in the present facts the High Court was justified in its conclusion arrived through the order dated 01/03/2019 impugned herein. The Commercial Court shall therefore return the plaint indicating a date for its presentation before the Court having jurisdiction..”

8 The case on hand is filed for directing the defendant to complete the construction of the building in the plaint schedule property as per the contract. There building may or may not used for commercial purpose. Such a decision depends on the discretion of the plaintiff. The dispute herein relates to the terms of the contract between the plaintiff and the defendant and its enforceability. In view of the aforesaid dictum of Hon'ble Apex court, I am of the opinion that the suit is maintainable before this court.

In view of the aforesaid aspects, I am of the view that this suit cannot be dismissed as not maintainable at this stage.

(Typed on my laptop, corrected and pronounced by me in the open Court this on the 18th day of March 2021.)

Sd/-
Munsiff

Exhibits marked: Nil

Witness examined: Nil

Sd/-
Munsiff

Kps