

**IN THE COURT OF THE MUNSIFF, CHALAKUDY**

Present : Parvathy Vijayan, Munsiff, Chalakudy.

Friday, the 20<sup>th</sup> day of February, 2026/8<sup>th</sup> Falghuna,1947

**I.A.10/2025 and I.A.5/2024 in O.S.238/2024**

**I.A.5/2024:-**

**Petitioner/5<sup>th</sup> Defendant :-**

General Manager, KLM Axiva Finvest Ltd.,  
registered Office at 1<sup>st</sup> floor Door No.3-3408/1,  
RTC Colony, L.B. Nagar, Opp.SBI Bank, Hyderabad,  
Masoorabad, Rangaredi Telengana - Pin -500068.

By Adv. P.R. Anandhan

**Respondents :-**

1. Thomas Kanookadan, Aged 79, S/o Late Devassy,  
Kanookadan House, opp. Kinfra Park,  
Muringoor Thekkumuri Village, Chalakudy Taluk.  
Koratty P.O, Thrissur District, Pin - 680 308. (Plaintiff)
2. Saleena Kanookadan, Aged 77, W/o Thomas Kanookadan,  
Kanookadan House, opp. Kinfra Park,  
Muringoor Thekkumuri Village, Chalakudy Taluk.  
Koratty P.O, Thrissur District. Pin - 680 308. (Plaintiff)
3. M.J. Associates, a unregistered Partnership firm Koratty P.O,  
Thrissur District, Kerala,Pin - 680 308, rep.by its Partner,  
Midhun Ittoop and Nalapat Sebastian Jose
4. N.S.Jose@ Nalapat Sebastian Jose, Aged 64,  
S/o Nalapat Joseph Sebastian, Koratty P.O,  
Thrissur District, Pin - 680 308.
5. Midhun Ittoop, Aged 31, S/o K.O. Ittoop, Konuparan House,  
Chalakudy P.O, Pin - 680683.
6. M and B Associates, No.403, Poineer Towers, Marine Drive,  
Ernakulam, Pin - 682 031 rep.by its Managing Director  
Francis Kanookkadan.
7. Shibu Theckumpuram, Aged 57, S/o Varghese,  
Angady kara, Kozhipilly P.O, Kothamangalam,  
Ernakulam District. Pin -686 691.
8. George Kuriape @ George Gijo Kuriape, Aged 58,  
S/o Joseph Kuriape, Elenjickal House, Parapatty,  
Kozhipilly P.O, Kothamangalam, Ernakulam District.  
Pin -686 691.
9. Josekutty Xaviur, Aged 59, S/o Joseph Xavier,  
Kozhipilly P.O, Kothamangalam, Ernakulam District.  
Pin -686 69

10. Sukurthi Affordable Housing Projects Pvt. Ltd.,  
registered office 1/224 -A (Old No.1/315 A)  
Kunjiparambil House, Alathur (P.O),  
Annamanada, Thrissur District, Kerala, Pin -680 741  
rep.by its Director Konuparamban Ousep.
11. Ittoop, Aged 65, S/o Ouseph, Konuparan House, Chalakudy P.O,  
Thrissur District, Kerala, Pin – 680683.
12. C.C. Shibu, Aged 51, S/o Chatengattil Chandran,  
Kuzhikattussery Desom, Thezhekkad Village,  
Thrissur District, Kerala Pin -682037.
13. Daisy Jose, Aged 64, W/o N.S. Jose, Nalapat House,  
Koratty P.O, Thrissur, Kerala Pin -680 308.

By Adv. D1,D2 - Shaji Chirayath D3, D5, D12 - Adv.Sooraj M.P  
D4 - Adv. Sreekumar D6, D7 - Adv.P.R. Anandhan  
D10, D11 - Adv.Gayathri Dayaseelan

**I.A.10/2025:-**

**Petitioner/5<sup>th</sup> Defendant :-**

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**Defendants :-**

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Thrissur District, Kerala,Pin - 680 308, rep.by its Partner,  
Midhun Ittoop and Nalapat Sebastian Jose
4. N.S.Jose@ Nalapat Sebastian Jose, Aged 65,  
S/o Nalapat Joseph Sebastian, Koratty P.O,  
Thrissur District, Pin - 680 308.
5. Midhun Ittoop, Aged 32, S/o K.O. Ittoop, Konuparan House,

Chalaky P.O, Pin – 680683.

6. M and B Associated, No.403, Poineer Towers, marine Drive, Ernakulam, Pin - 682 031 rep.by its Managing Director Francis Kanookkadan.
7. Shibu Theckumpuram, Aged 58, S/o Varghese, Angady kara, Kozhipilly P.O, Kothamangalam, Ernakulam District. Pin -686 691.
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9. Josekutty Xaviur, Aged 60, S/o Joseph Xavier, Kozhipilly P.O, Kothamangalam, Ernakulam District. Pin -686 691.
10. Sukurthi Affordable Housing Projects Pvt. Ltd., (CIN U45500KL2017PTC49596) registered office 1/224 -A (Old No.1/315 A) Kunjiparambil House, Alathur (P.O), Annamanada, Thrissur District, kerala, Pin -680 741 rep.by its Directors Konuparamban Ousep.
11. Ittoop, Aged 66, S/o Ouseph, Konuparan House, Chalaky P.O, Thrissur District, Kerala, Pin – 680683.
12. C.C. Shibu, Aged 52, S/o Chatengattil Chandran, Kuzhikkattussery Desom, Thezhekkad Village, Thrissur District, Kerala Pin -682037.
13. Daisy Jose, Aged 65, W/o N.S. Jose, Nalapat House, Koratty P.O, Thrissur, Kerala Pin -680 308.

By Adv. D1,D2 - Shaji Chirayath D3, D5, D12 - Adv.Sooraj M.P  
D4 - Adv. Sreekumar D6, D7 - Adv.P.R. Anandhan  
D10, D11 - Adv.Gayathri Dayaseelan

This Petition is come up before me hearing on this day, the court passed the following :-

### **COMMON ORDER**

I.A.5/2024

1. This is a petition filed under Order I Rule 9 and Section 151 of CPC
2. The averments in the petition in brief are as follows: The petitioner is the General Manager of 5<sup>th</sup> defendant, KLM AXIVA FINVEST LIMITED. The suit is filed for settlement of accounts. On a perusal of paragraph 4 of the

plaint, it is seen that transaction that alleged to be happened between the plaintiff and defendant is of above Rs.5 crores. The suit is filed for settlement of account with respect to the said transaction. The sala in the said transaction is more than the sala within the jurisdiction of this court and hence the suit is not maintainable before this court. Hence this application to pass an order on the maintainability of the suit hearing the maintainability of the suit as preliminary issue.

I.A.10/2025

3. This is a petition filed under Order I Rule 9 and Section 151 of CPC
4. The averments in the petition in brief are as follows: The petitioner is the General Manager of 5<sup>th</sup> defendant, KLM AXIVA FINVEST LIMITED. The suit is filed for settlement of accounts. On a perusal of paragraph 4 of the plaint, it is seen that transaction that alleged to be happened between the plaintiff and defendant is of above Rs.5 crores. On perusal of the averments in the plaint it can be seen that there is commercial transactions between the plaintiff and defendants. It is claimed that the plaintiffs had taken loan of Rs.5 crores and the dispute comes under Section 2 of Commercial Court Act. There is specific bar to try this suit before the Munsiff Court. The case is to be returned on finding that the Munsiff Court has no jurisdiction. Hence this application to pass an order on the maintainability of the suit hearing the maintainability of the suit as preliminary issue.
5. The Plaintiff filed objection contending as follows: The interlocutory application no.10/2025 filed by the 5<sup>th</sup> defendant seeking to decide the issue of maintainability as a preliminary issue is wholly misconceived, legally untenable and filed only to delay the trial of the suit. The allegations contained in the affidavit filed in support of the application are denied except those which are specifically admitted. The plaint clearly discloses that the suit is for taking of accounts, declaration and cancellation of documents, release of securities, redemption f

of charge over immovable properties and consequential injunction arising out of refusal of defendants to settle the accounts and to release the properties of the plaintiffs despite repeated demands. The cause of action for the suit arose on 14.08.2018 when the financial arrangement between the defendants commenced, continued through execution of security documents on 05.03.2019, 30.06.2020, 01.07.2020, 29.06.2022 and 27.12.2022 and finally on 15.12.2023 when the defendants refused settlement of accounts and to release the properties of the plaintiff. Hence the suit is perfectly maintainable before this court. The defendants filed written statement and have raised several disputed questions of fact including denial of loan transaction, denial of execution of mortgage/security documents, plea of limitation, alleged purchase of properties for consideration and denial of settlement of accounts which require recording of oral and documentary evidence and cannot be adjudicated as a preliminary issue. Under Order XIV Rule 2 of Code of Civil Procedure, only a pure question of law relating to jurisdiction or statutory bar may be tried as a preliminary issue. Where determination of jurisdiction or maintainability depends upon investigation of facts, the issue cannot be decided preliminarily. The question raised in the present application regarding maintainability and jurisdiction is inseparably connected with determination of existence and nature of financial transactions, execution and validity of mortgage and security documents, role of plaintiffs as guarantors, settlement of accounts and outstanding liability, limitation based on refusal to settle accounts. These matters require detailed evidence and therefore cannot be tried as preliminary issue. The Hon'ble Supreme Court has consistently held that where issues of jurisdiction or maintainability involve mixed questions of law and fact, the court should not decide them as preliminary issues and the suit must proceed to full trial. Hence prays for dismissal of the application. D1,D2, D3,D12, D5 to D8 does not have any objection. D4 filed memo as D4 have same objection of plaintiff.

6. The point to be decided is:

Whether the suit is maintainable ?

7. The Point: The learned counsel of the 5<sup>th</sup> defendant had submitted that the suit is filed for the settlement of accounts. The transaction that alleged to be happened between the plaintiff and the defendant is of Rs.5 crores. The allegations in the plaint would show that it is a commercial transaction and so the suit is not maintainable in this court. The learned counsel of the defendant had submitted that there is no such loan transaction between the plaintiff and the defendant and the deeds executed are sale deeds. The total valuation with regard to the transactions is Rs.5 crores which itself would show that that this court has no jurisdiction.
8. The learned counsel for the plaintiff had submitted that the specific case of the plaintiff is with regard to the settlement of accounts and to produce the account statement with regard to the payment of loan by the plaintiff to the defendant. There are no documents produced by the 5<sup>th</sup> defendant to show that it is a commercial transaction happened between the plaintiff and defendant. The learned counsel of the plaintiff submitted that there is no such contention raised in the written statement that the said transaction alleged is a commercial transaction.
9. The relief sought by the plaintiff is for passing a preliminary decree ordering that an account be taken of what was due to the plaintiffs at the date of such decree for principal amount payable by the plaintiff and interest thereon to release charge on the properties covered by the financial transactions pursuant to agreement dated 8<sup>th</sup> August 2008 to 31<sup>st</sup> March 2023 and further on 5<sup>th</sup> March 2019, 30<sup>th</sup> June 2020, 1<sup>st</sup> July 2020, 29<sup>th</sup> June 2022 and 27<sup>th</sup> December 2022 in favour of the defendant nos.1 to 3 and 5 to 12 with 4<sup>th</sup> defendant and thereby fix an amount to be paid to release the charges on the plaintiffs' property.
10. Sec 2 1 (c) of Commercial Courts Act reads "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;(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;

11. It is pertinent to note that the defendants are the persons who are group of companies dealing with non banking financial business. The specific case of

the plaintiff is that plaintiff had availed loan for defendant no.4, who is the son of plaintiff. Defendant no.4 is a partnership firm dealing with the business of import and sale of foreign made liquor products through out India as per the licence issued by appropriate authority. The plaintiff had alleged in the plaint that plaintiff had offered security to the 5<sup>th</sup> defendant having an extent of 6 Acres for and on behalf of 4<sup>th</sup> defendant partnership firm. It is also pertinent to note that the plaintiff is relying on certain agreements that is entered into between the 4<sup>th</sup> defendant and 1<sup>st</sup> defendant which is formed the cause of action in the suit.

12. Determination of Specified Value.—(1) The Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application shall be determined in the following manner:— (a) where the relief sought in a suit or application is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of filing of the suit or application, as the case may be, shall be taken into account for determining such Specified Value; (b) where the relief sought in a suit, appeal or application relates to movable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such Specified Value; (c) where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining Specified Value; 1 [and] (d) where the relief sought in a suit, appeal or application relates to any other intangible right, the market value of the said rights as estimated by the plaintiff shall be taken into account for determining Specified Value; 2\*\*\* 3\* \* \* \* \* (2) The aggregate value of the claim and counterclaim, if any as set out in the statement of claim and the counterclaim, if any, in an arbitration of a

commercial dispute shall be the basis for determining whether such arbitration is subject to the jurisdiction of a Commercial Division, Commercial Appellate Division or Commercial Court, as the case may be. (3) No appeal or civil revision application under section 115 of the Code of Civil Procedure, 1908 (5 of 1908), as the case may be, shall lie from an order of a Commercial Division or Commercial Court finding that it has jurisdiction to hear a commercial dispute under this Act.

13. The allegations in the plaint can be seen that the whole transaction is with regard to the availing of loan of Rs.5 crores by mortgaging the security of immovable properties. The cause of action that arises in the suit starts from the availing of loan of Rs.5 crores. Thus the dispute is with regard to the settlement of accounts in relation to the availing of loan and the repayment of loan of Rs.5 crores which would show that the conditions specified in Section 12 of the Commercial Courts Act is specified. Relying on *Hindustan Petroleum Corporation Mumbai & Another Vs. Muhammad Illias and Others* [2022(6) KHC 68] where the Hon'ble High Court of Kerala held in *Musthafa H vs. Abdullakutty Haji* [2024 KHC 932] where Hon'ble High Court held that a dispute regarding immovable property perse may not be a commercial dispute. To quantify the dispute to be a commercial dispute, it must fall under sub clause vii of Section 2(1)(c) of the C.C.Act viz. The dispute arising out of a n agreement relating to immovable proeprty used exclusively in trade or commerce. Thus immovable property which is the subject matter of the agreement between the parties must be acually and exclusively used for trade or commerce when the dispute arises between the parties to qualify the dispute as a commercial dispute within the meaning of Section 2 (1)(c)(vii). In other words the usage of the property for trade or commerce is relatable to the date of the dispute arising between the parties and not to the date of execution of agreement in question for the applicability of above section. It is not necessary that the prop-

erty was actually being used for trade or commerce as on the date of execution of agreement. The Hon'ble High Court of Kerala also held in the above case that Clause (c) of Section 2(1) defines commercial dispute to mean the dispute arising out of different subclauses. If the dispute falls within any of the sub clause 2(i)(c) it becomes a commercial dispute. Sub Clause (vii) refers to dispute arising out of agreement in relation to immovable property used exclusively in trade or commerce. The expression arising out of and in relation to immovable property would include all matters relating to all agreements in connection with the immovable property. The immovable property should form a dominant purpose of the agreement and the said property should be exclusively in trade or commerce. The use of the property for trade or business is determinative. In order to satisfy the commercial court to exercise jurisdiction the twin test of pecuniary and subject matter jurisdiction has to be satisfied. Hon'ble High Court held that an examination of Section 2(1)(c) stipulates that a commercial dispute shall not cease to be a commercial dispute merely because it involves the recovery of property or for the realization of money out of the immovable property given as security or involves any other relief pertaining to immovable property and would be a commercial dispute as defined in sub clause (vii)(ii)(c). Harmonious reading of explanation to Sub Clause (vii)(ii)(c) would include all disputes arising out of the agreement relating to immovable property when used exclusively in trade or commerce it should be an action for recovery of immovable property or realization of money given in the form of security or any other relief pertaining to immovable property.

14. On perusal of the agreement dated 14.08.2018 between the 1<sup>st</sup> and 4<sup>th</sup> defendant it would clearly show that it is a commercial transaction. The recital in this agreement is that 1st defendant firm will provide maximum financial assistance to the tune of Rs.5 crores for the import and sale of foreign made liquor in the State as per the permission obtained from Kerala State Beverages Corporation

Limited. Moreover the defendant nos.2 to 3 and 9 to 12 will do the canvassing for sale of the FMFL/FMW products of the 4th defendant. It is further stated that the said agreement both parties to covenants empathically agreed that when the agreement is terminated, 4<sup>th</sup> defendant is liable to return the amount collected as security/financial aid without interest. Moreover defendants 1 to 3 are entitled to get profit of share at the rate of Rs.41/-per bottle. The tenure of contact has been limited to 5 years from 14<sup>th</sup> August 2018 to 31<sup>st</sup> March 2023. It is also learnt that these defendants are also benefiting from or making use of the profits and resources passed on to them by virtue of said agreement.

15. Even though the plaint would show that it is a suit filed for the settlement of accounts with regard to the loan secured from the defendants and for the cancellation of the deeds executed in favour of the defendants. On perusal of the plaint it can be very well seen that the execution of the deeds with regard to the immovable property or availing of loan by keeping immovable property as security would arise from a commercial trade between the plaintiff and defendant with a specific clause to actively participating in canvassing orders for foreign made liquor. It is also stipulated in the agreement dated 14.08.2018 that the business agreement is executed for regulating the business transaction with the 1<sup>st</sup> and 4<sup>th</sup> defendant that is giving financial aid to the business of the 4<sup>th</sup> defendant and to act as a canvassing agent for the sale of liquor and also to satisfy the rights and obligations of both parties to the agreement and the profit sharing between them in the business. Thus from the above discussion the agreement dated 14.08.2018 between the 1<sup>st</sup> defendant and the 4<sup>th</sup> defendant would clearly prove that the transaction alleged by the plaintiff between the plaintiff, D4 his son and the 1<sup>st</sup> defendant is a commercial transaction and the immovable property was a part of the transaction. Moreover as per Section 35 of Kerala Court Fees Act, in a suit for accounts court fee shall be computed on the amount

sued and the amount estimated in the plaint or on Rs.1,000/- whichever is higher. But in fact the real dispute is with regard to the security of the of the loan alleged by the plaintiff in the plaint is for Rs.5 crores which is the amount disputed in this case. Hence from the above discussion, the suit is not maintainable and plaint shall be returned to be presented before proper Court.

(Pronounced in open court, this the 20<sup>th</sup> day of February, 2026.)

Parvathy Vijayan,  
Munsiff

**APPENDIX : NIL**

Munsiff