

IN THE COURT OF DISTRICT JUDGE-2, AKOLA.

Order Below Exhibit 48

In

Commercial Suit No. 8 of 2019

Jaju Krushi Utpadan & Prakriya Udyog Pvt. Ltd.	Plaintiff
V/s.	
Maharashtra Industrial Development Corporation & Ors.	Defendants

Coram :	Shri D.B.Patange District Judge-2, Akola. Date :03/03/2021.
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Oral Order :

By this application, the defendant is seeking indulgence of the Court for dismissing the suit by giving background details of the pleading, being not maintainable. It is contended that the dispute involved in this matter does not come within the perview of commercial dispute, as per section 2 (1) C of the Commercial Court Act, 2015.

2] The plaintiff through his counsel filed reply to the aforesaid application and thereby opposed aforesaid contention. It is alleged that the agreement between plaintiff and defendant is related to immovable property, used exclusively in the trade or commerce. Merely because the dispute also involved action for recovery of immovable property or for realisation of money, the commercial dispute shall not ceased. As such, plaintiff prayed for rejection of application with cost.

3] Heard both sides, perused the record.

4] In the backdrop of aforesaid application, commercial dispute need to be appraised, in view of section 2 (1) C of the Commercial Court Act, 2015, which read thus-

(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;

(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;
- (d) “Commercial Division” means the Commercial Division in a High Court constituted under sub-section (1) of section 4;
- (e) “District Judge” shall have the same meaning as assigned to it in clause (a) of article 236 of the Constitution of India;
- (f) “document” means any matter expressed or described upon any substance by means of letters, figures or marks, or electronic means, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter;
- (g) “notification” means a notification published in the Official Gazette and the expression “notify” with its cognate meanings and grammatical variations shall be construed accordingly;

- (h) "Schedule" means the Schedule appended to the Act; and
- (i) "Specified Value", in relation to a commercial dispute, shall mean the value of the subject-matter in respect of a suit as determined in accordance with section 123 [which shall not be less than three lakh rupees] or such higher value, as may be notified by the Central Government.

5] From a perusal, of the aforesaid provision it is noticed that the disputes arising out of alleged agreement relating to immovable property used exclusively in trade or commerce will qualify to be a commercial dispute to be tried by Commercial Courts. The question therefore would be that, in the instant case, damages are solicited by the plaintiff for the alleged failure of the defendant to provide the adequate water on the plot in question, pertaining to the immovable property. The aforesaid dispute between the parties would constitute a commercial dispute and the expression arising out of and in relation to immovable property should not be given the narrow and restricted meaning and the expression would include all matters relating agreements in connection with the immovable property. The immovable property in question was undoubtedly being used for a trade or commerce and when the claim in the suit is for damages and other reliefs etc. for the use of such immovable property. As such, it can not be entirely said that the aforesaid dispute is not commercial dispute, on the basis of contention of defendant, considering the pleadings, documents and reliefs claimed thereunder. As such the prayer in this application can not be allowed. Hence, the following order-

ORDER

	The application is rejected with cost.
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Sd/-

(D.B. Patange)
District Judge-2, Akola.

Date :03/03/2021.

CERTIFICATE

I affirm that the contents of this P.D.F. file are same word for word as per the original.

Name of Steno	:	Smt. J.A.Morey
Court name	:	D.J.-2 & A.S.J., Akola.
Date	:	03/03/2021
Signed by P O on	:	03/03/2021
Uploaded on	:	04/03/2021