



IN THE CITY CIVIL COURT AT MUMBAI, BORIVALI DIVISION,
DINDOSHI, GOREGAON, MUMBAI.

ORDER BELOW EXH.48

IN

**COMMERCIAL SUIT No.164 OF 2019
(CNR No.MHCC040061502019)**

Karuna Nilesh Kanodia

... Plaintiff

V/s

M/s. Ahuja Properties and Associates & Ors.

... Defendants

CORAM: H.H. AD-HOC JUDGE SHRI S. N. SALVE

(C.R. No. 03)

DATE : 2nd August, 2021.

Ld. Advocate Kunal Kumbhat for plaintiff.

Ld. Advocate Shraddha Birwadkar i/b Advocate Madhukar Mulay
for defendants.

Order below Exh.48

This is an application moved by the defendants for conversion of the present Commercial Suit to Summary Suit.

2. In short, it is the contention of the defendants that the plaintiff has filed the present suit for recovery of money to the tune of

Rs. 21,75,363/- from the defendants on account of Bill of Exchange and Post Dated Cheques. It is further contention of the defendants that the present suit is filed as Commercial Suit, however, it does not fall under the provisions of Commercial Courts Act as the claim of plaintiff is based upon Bill of Exchange and Post Dated Cheques. It is further contention of defendants that the plaintiff is an individual and does not carry any business, therefore, the present claim of the plaintiff can not be considered as Commercial Dispute as defined in Section 2 (1) (c) of Commercial Courts Act. It is further contended that there is no agreement/contract between plaintiff and any of the defendants towards any financial/commercial transaction to pay the alleged interest @ 20.40% on the loan amount as alleged by the plaintiff. It is further contention of the defendants that the plaintiff in para No.17 of the plaint submitted that the present suit is filed as Summary Suit under the provisions of Order XXXVII Rule II of the Code of Civil Procedure and no relief not falling within the ambit of Order XXXVII of the Code of Civil Procedure is claimed. It is further contention of the defendants that this Court has no jurisdiction to entertain and decide the present suit. The defendants, therefore, prayed to convert the present Commercial Suit to Summary Suit.

3. The plaintiff has resisted the application (Exh.48) by filing an affidavit-in-reply thereto. It is contended by the plaintiff that objection as to the maintainability of the suit has to be taken at the first instance. The present application is being filed after final hearing of the matter and after right to file Written Statement has been forfeited. It is

further contention of the plaintiff that plaintiff has clearly made out a case in the plaint that defendants were introduced to plaintiff's family through the Broker and amount lent to the defendants was for the purpose of the business. It is further contended by the plaintiff that it is specified in the plaint that defendants are carrying business of Construction & Real Estate Development. The Builders are traders in Real Estate and transactions involved in the present suit are ordinary transactions of Developers for raising finance from the market on the basis of Bill of Exchange which is mercantile document. Therefore, present dispute is squarely covered within the ambit of section 2(1) (c) of the Commercial Courts Act. According to the plaintiff, the present dispute is "Commercial Dispute" as defined in Section 2 (1) (c) of the Commercial Courts Act. The plaintiff, therefore, prayed to reject the application.

4. The points for determination along with my findings with reasons thereon are as follows :-

<u>Sr.</u> <u>No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the claim of the plaintiff is "Commercial dispute" as defined in Section 2 (1) (c) of the Commercial Courts Act ?	No.
2	What order ?	Application is allowed.

REASONS

5. I have the Ld. Advocate for the defendants. He submitted

that the present suit is filed for recovery of money based on Bill of Exchange and Post Dated Cheques which ought to have been registered as “Summary suit” under Order XXXVII of the Code of Civil Procedure and not a “Commercial suit”. It is further submitted that a bare perusal of the averments of the plaint show that the claim of the plaintiff is not covered within the scope and ambit of “Commercial dispute” as defined in Section 2 (1) (c) of the Commercial Courts Act. In support of his submissions, he has relied upon following decisions.:-

1) Ambalal Sarabhai Enterprises Ltd. V/s. KS Infraspace LLP and Anr. Civil Appeal No.7843 of 2019 decided by the Hon'ble Supreme Court of India.

2) Bharat Huddanna Shetty V/s. Ahuja Properties & Developers & 2 Ors. Summons for Judgment No. 9 of 2021 in Commercial Summary Suit No. 6 of 2021.

6. On the other hand, the Ld. Advocate for plaintiff argued that the present dispute as filed by the plaintiff is “Commercial dispute” within the meaning of Section 2 (1) (c) of the Commercial Courts Act as the claim of the plaintiff is based upon Bill of Exchange and Post Dated Cheques which are mercantile documents. It is further argued by him that the defendants are Builders and Developer have obtained the money from the plaintiff for the purpose of their business. Therefore, the present dispute is a “Commercial dispute”. He therefore, prayed to dismiss the application.

7. Having heard the Ld. Advocate for the defendants and the

plaintiff, I have gone through the application, affidavit-in-reply filed thereto, averments of the plaint and documents filed in support. From the averments of the plaint, the case of the plaintiff is that he had rendered financial assistance to the defendants, the defendants agreed to pay the amount with interest @ 20% p.a. on quarterly basis and also executed Bill of Exchange and issued Post Dated Cheques. However, defendants failed to repay the amount advanced by the plaintiff, the plaintiff, therefore, filed the present “Commercial suit”. By way of the present application, the defendants have raised objection as to maintainability of the present suit under the provisions of Commercial Courts Act.

8. Now, it is to be ascertained from the averments of the plaint and documents filed in support, whether the claim of the plaintiff is a “Commercial dispute ? The term “Commercial dispute” is defined in Section 2 (1) (c) of the Commercial Courts Act which reads as follows :-

- (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.

9. In so far as the claim of the plaintiff is concerned, only Clause (i) is relevant. It is also not the case of the plaintiff that his claim

falls under any other Clauses of Sec. 2 (1) (c). From the plain reading of Clause (i) of Sec. 2 (1) (c), it is very clear that in order to bring the dispute within the ambit and scope of “Commercial dispute” two requirements are necessary, namely :-

- (1) The transaction must be of merchant, banker, financiers and traders.
- (2) Such transactions must be relating to mercantile documents.

10. In so far as case in hand is concerned, on going through the averments of the plaint, it appears that there is no pleadings that the present transaction is ordinary transaction of merchants, banker, financiers and traders such as those relating to mercantile documents including enforcement and interpretation of such documents. The claim of the plaintiff is very simple that defendant No. 1 was in need of finance hence, the plaintiff provided an amount of Rs 29,00,483/- and the defendants agreed to repay the amount with interest at the rate of 20% p.a. on quarterly basis. The said transaction can not be said to be transaction between them in the ordinary course of business. Moreover, though it may be an ordinary transaction, it is not between or among merchants, bankers, financiers, or traders. So the said transaction can not be treated as transaction between merchants, bankers, financiers and traders. In para No.17 of the plaint also the plaintiff has claimed that the present suit is filed as Summary Suit under the provisions of Order XXXVI Rule II of the Code of Civil Procedure.

11. Having considered the facts of the case and the definition

of “Commercial dispute” as defined in section 2 (1) (c) of the Commercial Courts Act and the law laid down in the decisions cited by the plaintiffs, I hold that the present dispute is not a “Commercial dispute” within the meaning of Section 2 (1) (c) of the Commercial Courts Act. Therefore, this court has no jurisdiction entertain and decide the present suit and the same is required to be transferred to the court having jurisdiction.

In the result, following order passed.

ORDER

1. Application (Exh.48) is allowed.
2. The present suit be sent to the Office for orders of the Hon'ble Administrative Judge for assigning it to the Court having jurisdiction.
3. Accordingly, application (Exh.48) is disposed off.

(S. N. Salve)

Ad-hoc Judge, City Civil Court,
Borivali Div. Dindoshi, Mumbai.

Date of dictation on computer : 02/08/2021
Date of order signed by HHJ : 04/08/2021
Date of delivery to CC

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

UPLOAD DATE

AND TIME : 04/08/2021 at 01.30 p.m.

P.V. Thorat

NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Shri S. N. Salve (Court Room No.03)
Date of Pronouncement of Judgment/Order	02/08/2021
Judgment/Order signed by P.O. on	04/08/2021
Judgment/Order uploaded on	04/08/2021