IN THE COURT OF THE SUBORDIANTE JUDGE/
COMMERCIAL COURT, THODUPUZHA

Present: Sri. Devan. K. Menon, Sub Judge, Thodupuzha

Friday the, 16th day of January 2026/ 26th day of Pousha 1947

IA 1/2026 IN CS.04/2024

Petitioner/Plaintiff:

Shibu Mathew, aged 47 years, S/o Mathew,
Kunnamkuzhakkayil House, Kolani Kara,
Thodupuzha Village, Thodupuzha Taluk.

By Adv. Jose Mathew

Respondent/Defendant:

Rafeek B P S/o K T Ibrahim, Sudha Cottage,
Kurisupalli Bhagam, Sreekandapuram, Thaliparamba,
Kannoor District.

By Advs. Faisel and Bineesh Vijayan

This petition is coming on for final hearing before me on 13.01.2026 in the presence of above both counsel and the court on 16.01.2026 passed the following:

ORDER

1. This application filed by the plaintiff in the suit under Order VII Rule 10 of the Code of Civil Procedure to return the plaint.

2. **Case of the Petitioner/defendant: -** The suit is one for recovery of money and was filed on 26-06-2024 before the Commercial Court on the premise that the amount sought to be recovered represents a

portion of the profit agreed to be paid in relation to the construction of a bridge undertaken by the defendant. During the course of trial, an additional issue was framed as to whether the suit is maintainable before the Commercial Court. Upon examination, it was noticed that the dispute raised in the suit does not fall within any of the categories specified under Section 2 of the Commercial Courts Act, 2015. In the above circumstances, the only remedy available to the petitioner is to seek return of the plaint along with all documents produced, for presentation before the court having proper jurisdiction. Unless the plaint and connected documents are returned, the petitioner would suffer irreparable loss, injury, and hardship. Hence, it is prayed that the plaint and all documents produced on behalf of the plaintiff be returned and the accompanying petition be allowed.

3. **Objection filed by Respondent:** The petition filed by the plaintiff seeking return of the plaint under Order VII Rule 10 of the Code of Civil Procedure at this belated stage is wholly untenable, illegal, and an abuse of the process of court. The suit has already undergone a full-fledged trial. Evidence on both sides has been completed, arguments have been concluded, and the matter is posted for pronouncement of judgment. At this stage, the court is bound to adjudicate the suit and cannot return the plaint. The present petition has been filed only after the plaintiff realised that the suit is liable to be dismissed, particularly in view of the jurisdictional objection consistently raised by the defendant from the very inception of the suit. In the written statement as well as during the course of trial, the

defendant has categorically contended that the subject matter of the suit does not fall within the definition of a “commercial dispute” under Section 2(1)(c) of the Commercial Courts Act, 2015.

4. The defendant had specifically pleaded that the suit was wrongly instituted before the Commercial Court and that the court lacked jurisdiction to entertain the suit as a commercial dispute. Despite full knowledge of this objection, the plaintiff chose to prosecute the suit as a commercial suit, led evidence, cross-examined witnesses, and participated in final arguments. Once issues are framed, the court cannot avoid adjudication. The plaintiff cannot be permitted to seek return of the plaint to escape findings on the issues already framed. If Issue No.1 relating to the bar of limitation is decided against the plaintiff, the suit is liable to be dismissed as barred by limitation. If Issue No.2 relating to the existence of a commercial dispute is decided against the plaintiff, the suit is liable to be dismissed for want of jurisdiction. In either event, the only permissible order is dismissal of the suit and not return of the plaint. It is a settled principle of law that a procedural lapse, if any, cannot confer a substantive right upon the plaintiff nor can it be used to defeat the legitimate defence of the defendant. The belated framing of the issue does not revive or validate the plaintiff’s claim, nor does it entitle the plaintiff to seek return of the plaint after conclusion of trial. Order VII Rule 10 CPC contemplates return of the plaint only at a preliminary stage when the court finds lack of territorial or pecuniary jurisdiction. Once issues are framed, evidence is recorded, and final

hearing is completed, the only course open to the court is to pronounce judgment under Order XX CPC. At such an advanced stage, the plaint cannot be returned and, if the suit is found not maintainable, it can only be dismissed.

5. After completion of trial and arguments, the defendant has acquired a valuable and vested right to obtain a judicial finding on the jurisdictional issue and maintainability of the suit. Permitting return of the plaint at this stage would seriously prejudice the defendant, nullify the entire trial, and render the proceedings meaningless. The conduct of the plaintiff clearly establishes that the suit was deliberately filed as a commercial suit, jurisdiction was contested from the outset, and the present petition has been filed only to avoid an adverse judgment. Such conduct amounts to forum shopping and abuse of the process of court. The defendant has incurred substantial litigation expenses including court fees, advocate fees, and costs relating to trial and final hearing. Under Section 35 CPC, as amended and read with the Commercial Courts Act, 2015, awarding costs is the rule and denial is an exception. The plaintiff is therefore liable to pay actual and realistic costs to the defendant. Without prejudice to the above contentions, if the court is inclined to consider the plaintiff's petition, it is submitted that the jurisdictional issue already framed be decided first and, if at all the plaint is returned, the same shall be returned without liberty to re-present. In the above circumstances, it is prayed that the petition seeking return of the plaint be dismissed, the jurisdictional issue be decided against the

plaintiff, the suit be dismissed as not maintainable, costs be awarded to the defendant, and such other orders as deemed fit be passed

6. The only point that arises for consideration is whether the application seeking return of the plaint for presentation before the court having proper jurisdiction is maintainable and liable to be allowed.

7. Heard both sides.

8. While considering the point under discussion it is apposite to note that the plaintiff has filed the present suit for recovery of money arising out of financial investments made by him in construction works undertaken by the defendant. At the request of the defendant, the plaintiff invested substantial amounts on the assurance that profits would be shared in proportion to their respective investments. Upon full and final settlement of accounts, the defendant acknowledged that a sum of ₹30,00,000/- was due to the plaintiff towards his share of profits and executed agreements undertaking to repay the said amount within stipulated time. Though a part payment of ₹5,00,000/- was made, the defendant failed to discharge the balance liability of ₹25,00,000/- despite repeated extensions and assurances.

9. In discharge of the outstanding liability, the defendant issued a cheque dated 28-06-2021 for ₹25,00,000/-, assuring sufficient funds, which was subsequently dishonoured on presentation for the reason “Exceeds Arrangement.” Despite issuance of statutory demand notice, the defendant failed to make payment and continued to evade

his liability. It has now become apparent that the defendant has no intention to repay the amount and is attempting to alienate his properties to defeat the plaintiff’s lawful claim. Hence, the suit is filed for recovery of the outstanding amount of ₹30,24,999/-with interest at the rate of 10 % per annum, by enforcing the plaintiff’s claim against the defendant and charging the plaint schedule property.

10. The defendant denied all allegations made in the plaint and contends that the suit is based on suppression of material facts and is barred by limitation. While admitting that the parties were friends and that an agreement relating to the bridge work was executed on 05-07-2017, the defendant asserts that the plaintiff deliberately omitted reference to this agreement in the plaint. According to the defendant, the bridge project suffered severe losses due to floods in 2018, during which the defendant’s machinery and equipment were destroyed, a fact well known to the plaintiff. Despite incurring heavy losses, the defendant claims to have raised substantial funds, including by mortgaging his wife’s property, and transferred a total sum of ₹1.19.5 crores to the plaintiff through multiple bank accounts as directed by the plaintiff.

11. The defendant further contends that the agreement dated 26-06-2020 and the cheques allegedly issued towards liability were not executed voluntarily but were obtained under coercion and threats. It is asserted that the plaintiff has already received amounts in excess of his entitlement and has in fact gained financially despite the project

losses. The defendant disputes the plaintiff's claim over the plaint schedule property, denies the existence of any enforceable liability, and maintains that profit sharing under the agreement was conditional upon actual profits, which never arose. On these grounds, the defendant asserts that the suit is without cause of action, filed on false and fabricated claims, and is liable to be dismissed with costs, reserving liberty to raise additional issues, file counterclaims, and produce further documents

12. It is apposite to note that there was no specific or explicit challenge in the written statement to the jurisdiction of the Commercial Court on the ground that the dispute is not a "commercial dispute" under Section 2(1)(c) of the Commercial Courts Act, 2015. Consequently, no issue was framed earlier with respect to any bar under Section 2(1)(c) of the Commercial Courts Act. After framing three issues and following due procedure, the suit was included in the trial list. On the side of the plaintiff, PW1 to PW3 were examined and Exts. A1 to A8 were marked. On the side of the defendant, DW1 was examined. Thereafter, during the course of hearing, the issues relating to the bar of limitation and the existence of a commercial dispute between the parties were found to be essential for proper adjudication. Accordingly, by invoking the power under Order XIV Rule 5 of the Code of Civil Procedure, additional issues were framed. Subsequently, the agreement relied upon by the plaintiff was marked, with consent, as Exts. A9 and A9(a). Thereafter, the plaintiff filed the present application.

13. It is apposite to note that, based on Section 2(1)(c) of the Commercial Courts Act, 2015, the term “commercial dispute” means a dispute arising out of specific categories of commercial transactions enumerated in the statute. In substance, a commercial dispute is one that has its origin in business, trade, commerce, or professional commercial activity, and not merely in a private or personal financial arrangement. In particular, a dispute qualifies as a commercial dispute if it arises out of construction and infrastructure contracts under Section 2(1)(c)(vi), joint venture agreements under clause (xi), partnership agreements under clause (xv), investment or subscription agreements pertaining to services or financial services under clause (xiii), or agreements for sale of goods or provision of services under clause (xviii). Disputes relating to ordinary commercial dealings of merchants, financiers, and traders under clause (i) are also included, provided they are part of organised commercial activity.

14. Conversely, a dispute does not become a commercial dispute merely because money is involved. The transaction must be commercial in nature and must arise from a recognised business or trade relationship falling within one of the enumerated clauses. Private loans, informal profit-sharing arrangements between individuals, or personal investments unconnected with structured commercial contracts do not automatically fall within the definition unless they squarely fit into one of the statutory categories. In essence, for a dispute to fall under Section 2(1)(c), it must arise from

a transaction expressly covered under clauses (i) to (xxii) and must be intrinsically connected with trade, commerce, business, or professional commercial activity.

15. Of course, if the dispute does not fall within any of clauses (i) to (xxii) of Section 2(1)(c) of the Commercial Courts Act, 2015, this Court would have no jurisdiction. In the present application, the plaintiff has admitted that the dispute does not come under any clause of Section 2(1)(c) of the Act. This admission clearly implies that this Court lacks subject-matter jurisdiction to adjudicate the dispute. Consequently, the question arises as to the applicability of Rule 10 of Order VII of the Code of Civil Procedure.

16. As per sub-rule (1) of Rule 10 of Order VII, “Subject to the provisions of Rule 10A, the plaint shall **at any stage** of the suit be returned to be presented to the Court in which the suit should have been instituted”. This provision makes it clear that the Court is empowered to return the plaint at any stage of the suit, provided it is done before the passing of the decree. Therefore, there is no legal bar to returning the plaint for presentation before the proper court. Thus this application is maintainable and liable to be allowed . In the present case, the proper court having jurisdiction to entertain the suit is the Sub Court, Thodupuzha.

In the result, this application is allowed. The plaint is returned to be presented before the Sub Court, Thodupuzha, in which the suit ought to have been instituted. The plaintiff and the defendant are directed to appear before the Sub Court, Thodupuzha on 16/02/2026.

In view of the considerable delay on the part of the plaintiff in filing the present application under Section 35B of the Code of Civil Procedure, the defendant is entitled to costs. A sum of ₹25,000/- (Rupees Twenty-Five Thousand only) would be reasonably sufficient to reimburse the defendant. Accordingly, the plaintiff shall pay the said costs to the defendant.

Dictated to the Confl. Assistant, transcribed and typed by her, corrected by me and pronounced in Open Court on this the 16th day of January, 2026.

Sd/-
Devan K Menon
Sub Judge

APPENDIX

Nil

Id/-
SUB JUDGE

Typed by: Shyna Vahab
Comp by:Vineetha Das