

**IN THE COURT OF SH. PULASTYA PRAMACHALA,
DISTRICT JUDGE (COMMERCIAL COURT)-01,
PATIALA HOUSE COURT, NEW DELHI**

CS (COMM) 529/2025

In the matter of: -

S. Kulvinder Singh

S/o late S. Sarmukh Singh

R/o G-178, 2nd Floor, Naraina Vihar,
New Delhi-110028.

...Plaintiff

Versus

Dr. Raakesh Aggarwal

Sole Proprietor of

M/s Footwear (India)

A-21/15, Naraina Industrial Area,
Phase-2, New Delhi-110028.

...Defendant

Date of pronouncement of the order: 02.07.2026

ORDER

1. Vide this order I shall decide issue no.2, which was treated as preliminary issue, being a purely legal issue.

BRIEF FACTS OF THE CASE

2. Briefly stated, the relevant facts as averred in the plaint are that, plaintiff is the co-owner to the extent of 2/3rd share in property bearing no. A-21/15, Naraina Industrial Area, Phase-II, New Delhi-110028 (hereinafter referred to as the “suit property”), in terms of the preliminary decree dated 07.01.2020 passed by Hon’ble High Court of Delhi in a suit for partition, whereby it

was declared that plaintiff holds 2/3rd undivided share in the suit property and plaintiff's brother was declared owner of the remaining 1/3rd undivided share therein. It is further averred that the present suit has been filed against defendant for recovery of outstanding rent in respect of the tenanted premises forming part of the suit property, which had been let out to defendant for industrial/commercial purposes and was being used by defendant accordingly. Despite repeated requests and intimations, defendant allegedly failed to clear the outstanding rent. Accordingly, the present suit has been instituted seeking recovery of a sum of Rs.3,80,000/- along with interest.

3. Defendant filed written statement, wherein inter-alia it is averred that defendant had fully surrendered the tenanted premises to plaintiff's brother in January, 2023 and defendant's business remained shut since March, 2020. It is further averred that business of defendant was ruined because of plaintiff and suit property remained defunct for more than 5 years. Since, the suit property is lying closed and unused for commercial purposes, therefore, present dispute does not constitute a "commercial dispute". It is further pleaded that at best, plaintiff can claim rent for period from July, 2022 to December 2022, that too @ Rs. 5000/- per month. Thus, the claim being lesser than Rs. 3 lacs, this suit is not maintainable before this court. Thus, on the basis of aforesaid plea, defendant has claimed that this suit does not relate to "commercial dispute".
4. I heard ld. counsels for both the parties and have perused the record.

APPRECIATION OF ARGUMENTS, LAW AND FACTS

5. Issue No. 2 is reproduced as under: -

“Whether the suit is based on commercial dispute?” OPP

6. Ld. counsel for defendant argued that since suit property had been lying shut and no commercial activity had been going on, therefore, suit property cannot be treated as property for commercial use. Ld. counsel heavily relied upon a judgment cited as ***Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP***, (2020) 15 SCC 585. Ld. counsel specially placed reliance over following observations: -

“37. 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 Section 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”. Such a wide interpretation would defeat the objects of the Act and the fast tracking procedure discussed above.”

7. On the basis of aforesaid observations, ld. counsel for defendant argued that in the present case since suit property had been lying closed without commercial activity, therefore, it shall not be a case of “commercial dispute”.

8. Per contra, ld. counsel for plaintiff argued that plaintiff has pleaded in the plaint that suit property is an industrial property. Plea of defendant about handing over keys of the suit property to brother of plaintiff, cannot change the nature of use of the

property. Hence, suit relates to an immovable property used for commercial purposes.

9. In order to assess the rival arguments, and especially the proposition presented by defendant, it shall be relevant to refer to the facts and other observations made in the case of **Ambalal** (supra). The relevant observations are as follows: -

“14. 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 1-3-2019 [K.S. Infraspac LLP v. Ambalal Sarabhai Enterprises Ltd., 2019 SCC OnLine Guj 1926] impugned herein. The Commercial Court shall therefore return the plaint indicating a date for its presentation before the Court having jurisdiction.”

10. Thus, it is apparent that in the case before the court in Ambalal (supra), there was no claim from plaintiff about the nature of use of the property. However, in the present case, plaint specifically mentions that suit property was being used for industrial and commercial purposes. This plea has not been denied by defendant. Defendant has come up with the plea that since, he had closed his business and the suit property had been lying

closed, therefore, it is not a case of commercial dispute. Question is that whether with closure of business and the suit property, the nature of use of property shall stand obliterated? At the cost of repetition, I shall again quote relevant part from the observations made in the case of **Ambalal** (supra). In that case, court said that *“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”.*

11. Thus, it can be seen that as per law explained, the requirement is that property should be actually used for commercial purposes, but law does not require that it must be in use for such purpose even at the time of filing of the suit. Therefore, in the present case, just because the suit property was lying closed and no activity was going on at the time of filing of the suit, the nature of use of the property did not change and it still remained as a property used for commercial purposes. Hence, the dispute related to agreement concerning such property shall be well covered under the ambit of S.2 (c)(vii) of Commercial Court Act, 2015.

12. In the case of **Ambalal** (supra), court observed that: -

“26. A matter will fall under the jurisdiction of the Commercial Court or the Commercial Division of the High Court on the following factors:

(i) it shall be a commercial dispute within the meaning of Section 2(1)(c) of the Act; and

(ii) such commercial disputes are of a specified value as per Section 2(i) of the Act.”

13. Present suit has been filed by plaintiff seeking recovery of Rs.

3.8 lacs with interest, which is more than minimum specified value of Rs. 3 lacs to be maintainable before Commercial Court. It shall be matter of trial if plaintiff is found to be entitled for recovery of such amount, and hence, plea of defendant that specified value of suit is lesser than Rs. 3 lacs because at the best plaintiff can recover rent for July, 2022 to December, 2022, cannot be accepted at this stage.

14. Issue no. 2 is accordingly decided in favor of plaintiff and against defendant.

**Pronounced in the
Open Court on this
2nd Day of July, 2026**

**(PULASTYA PRAMACHALA)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi**