

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL**

**ON THE 15<sup>th</sup> OF APRIL, 2024**

**CIVIL REVISION NO.24/2024**

**BETWEEN:-**

- 1. M/S BHOPAL FRACTURE HOSPITAL THROUGH PARTNER DR. KAMLESH KUMAR VERMA E-3/01 ARERA COLONY BHOPAL (MADHYA PRADESH)**
- 2. DR. KAMLESH KUMAR VERMA S/O LATE SHRI S.P. VERMA, AGED ABOUT 62 YEARS, OCCUPATION: PARTNER M/S BHOPAL FRACTURE HOSPITAL R/O 55 KHANUJA ENCLAVE E-9/ARERA COLONY BHOPAL (MADHYA PRADESH)**
- 3. DR. SANDEEP SHARMA S/O SHRI O.P. SHARMA, AGED ABOUT 60 YEARS, OCCUPATION: PARTNER M/S BHOPAL FRACTURE HOSPITAL R/O 7/658 ARERA COLONY BHOPAL (MADHYA PRADESH)**
- 4. DR. SHASHANK AGRAWAL S/O SHRI, AGED ABOUT 57 YEARS, OCCUPATION: PARTNER M/S BHOPAL FRACTURE HOSPITAL R/O E-3/38A ARERA COLONY BHOPAL (MADHYA PRADESH)**

**.....PETITIONERS**

**(BY SHRI QASIM ALI - ADVOCATE)**

**AND**

**SAVITRI DEVI VIJAYWARGIYA S/D/W/Thru:-  
LATE RADHA VALLABH VIJAYWARGIYA  
FLAT NO. 102-103 RADHA VALLABH**

**COMPLEX PLOT NO. 130 MALVIYA NAGA  
BHOPAL, MADHYA PRADESH**

**.....RESPONDENT**

**(NONE)**

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*This petition coming on for admission this day, the court passed the following:*

**ORDER**

With the consent of the parties, the matter is heard finally at motion stage.

2. The present civil revision has been filed under Section 115 of CPC against order dated 03.10.2023 passed in RCS No.286-A of 2022, by 7<sup>th</sup> Civil Judge, Senior Division. Bhopal whereby, petitioners application under Section 7 Rule 11 CPC has been dismissed.

3. Learned counsel for the petitioners submits that learned trial Court has failed to appreciate the fact that the dispute between the parties is *prima-facie* a commercial dispute as defined under the Commercial Courts Act, 2015. Commercial dispute is defined under Section 2(1)(c) of Commercial Courts Act. (hereinafter referred as “Act”). From bare perusal of aforesaid provision, it is apparently clear that all the disputes arising out of an agreement for an immovable property used exclusively in trade or commerce is a commercial dispute. It is clear from Section 2(1)(c)(vii) of the Act. In the instant case, it is an admitted fact that as per lease dated 01.02.2013, respondent had given suit property on lease to the petitioners for running hospital and allied services. Respondent has valued the suit as Rs.23,25,780/- and thus, subject matter of the dispute between the parties is also more than Rs.3,00,000/- as per Section 2(1)(i) read with section 12 of the “Act”. In this connection, learned counsel for the petitioners has also referred to Section 12(1)(a) of the “Act”.

4. As per Section 6 of the Act, the Commercial Courts will have exclusive jurisdiction to adjudicate the commercial dispute arising in their territory. From bare reading of Section 6 of Commercial Courts Act, it is clear that XVIII Civil Judge Senior Division, the designated Commercial Court at Bhopal, will have exclusive jurisdiction to adjudicate the dispute between the parties. In view of above, learned trial Court lacks inherent jurisdiction to adjudicate the dispute between the parties. Learned trial Court has committed illegality in holding that. from bare perusal of first lease agreement dated 26.04.1999, it cannot be concluded that at the time of execution of the said lease deed, the property was used exclusively for trade and commerce. As from bare reading of para-2 and 3 of the plaint, it is abundantly clear that petitioners have always intended to use the leased property for running hospital and same was always impliedly consented by the respondent and thus the parties had absolute meeting of mind as to the use of the suit property for commercial purpose at the time of execution of the lease deed dated 26.04.1999.

5. For the purpose of Commercial Courts Act, it is not only the averments made in the plaint which can be looked into but the entire documents and pleadings of defendant can also be looked into to ascertain the exact nature of the transaction entered into between the parties.

6. Hence, in this case, though there is a clear pleading in the plaint that the suit property was leased out to the petitioners for running hospital (commercial activities) but from the lease deed filed on record and the application filed by the petitioners, it was also apparent that dispute was admittedly a Commercial dispute falling within definition of Section 2(1)(c)(vii) of the Act. Scope of Commercial Court Act and Section 6 of the same is much wider than the scope of Order 7 Rule 11 CPC.

7. Learned counsel for petitioners, after referring to Clause-14 of lease agreement, submits that as per above clause, all disputes and differences between the parties arising out of this agreement were required to be referred to arbitration. Before filing present suit, plaintiff has not referred the matter to arbitration.

8. With respect to above submissions, learned counsel for the petitioners has relied upon *Subrata Kumar Ghose Vs. Ries Limited and Another* (2023) SCC Online 165, *Jagmohan Behl Vs. State Bank of Indore* 2017 SCC Online Del 10706, *Harshad Chiman Lal Modi Vs. DLF Universal Ltd. And another* (2005) 7 SCC 791, *Patil Automation Private Limited And Others Vs. Rakheja Engineers Private Limited* (2022) 10 SCC 1, *Ambalal Sarabhai Enterprises Limited Vs. K.S. Infraspace LLP and Another* (2020) 15 SCC 585. On above grounds, it is urged that impugned order passed by the trial Court is patently illegal. Therefore, same deserves to be set aside. Hence, petition filed by the petitioners be allowed and impugned order be set aside.

9. I have heard learned counsel for the petitioners and perused the record of the case.

10. Before proceeding further, it would be appropriate to briefly refer plaint averments and relief sought in the plaint. It is evident from plaint averments that plaintiff had leased out/rented suit property to respondent for running hospital. Initial lease was for three years and thereafter, it was extended from time to time and in the year, 2013 lease was extended upto 31.01.2018 and thereafter also. As per plaint averments, plaintiff has filed present suit for recovery of possession as well as arrears of rent on the ground that suit property is bonafidely required for residence and non-payment of rent. Thus, plaintiff has filed present suit under Section 12(1)(e) and 12(1)(a) of Madhya Pradesh Accommodation Control Act.

11. It is also well settled that while deciding application under Order 7 Rule 11 CPC, only plaint averments and documents filed along with the plaint are required to be seen and examined and not written statement/documents filed by defendants etc. {Ambalal Sarabhai Enterprises Limited (Supra)}.

12. Primary issue for determination before this Court is whether *prima-facie* dispute between the parties comes within the purview of commercial dispute as defined under Section 2(1)(c)(vii) of the Act.

13. It is correct that in the instant case, lease deed/rent agreement pertains to immovable property and suit property has been given on rent/lease to petitioner for running hospital.

14. In Ambalal Sarabhai Enterprises Limited, (Supra) Hon'ble Apex Court has dealt with the issue/definition of "commercial dispute" in detail and has held that *the very purpose for which the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ("the Commercial Courts Act, 2015") has been enacted would be defeated if every other suit (i.e. suit as to non-commercial dispute) merely because it is filed before the Commercial Court is entertained. This is for the reason that the suits which are not actually relating to commercial dispute but being filed merely because of the high value and with the intention of seeking early disposal would only clog the system and block the way for the **genuine commercial disputes** **which** may have to be entertained by the Commercial Courts as intended by the law makers. In commercial disputes as defined, a special procedure is provided for a class of litigation and a strict procedure will have to be followed to entertain only that class of litigation in that jurisdiction. **If the same is strictly interpreted it is** not as if those excluded will be non-suited without any remedy. The excluded class of litigation will in any event be entertained in the ordinary civil courts wherein the remedy has always existed.*

15. Hon'ble Apex Court in *Ambalal Sarabhai (Supra)* further held that *in view of the above, it is necessary to carefully examine and entertain only disputes which actually answer the definition of "commercial dispute" as provided under the Commercial Courts Act. In terms of Section 2(1)(C) (vii) of the Commercial Courts Act, the disputes arising out of agreements relating to immovable property used exclusively in trade and commerce will qualify to be a commercial dispute to be tried by Commercial Courts. In the instant case, 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, the High Court was justified in its conclusion arrived through the impugned order (directing the Commercial Court to return the plaint). The Commercial Court shall therefore, return the plaint indicating a date for its presentation before the Court having jurisdiction.*

16. Hon'ble Apex Court in *Ambalal Sarabhai (Supra)* further observed that *thus, 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 Commercial Courts Act viz. "the agreements relating to immovable property used exclusively in trade or commerce". The conclusion arrived at herein, that in order to fall within Section 2(1)(C) (vii) of the Commercial Courts. Act, the immovable property must be "used exclusively" or "being used exclusively" in trade or commerce, is agreed to. The words "used exclusively in trade or commerce" are to be interpreted purposefully. The word "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 for deciding the commercial disputes.*

17. Hon'ble Apex Court in *Ambalal Sarabhai (Supra)* also held that *the nature of the dispute and the jurisdiction to try the same is to be reflected in the suit itself since in a civil suit the pleadings, namely, averments in the plaint would at the outset be relevant to confer jurisdiction. Hence before advertent to the other aspects it would be necessary to carefully examine the plaint. The plaintiff has in detail referred to the nature of the transaction between the appellant and the respondents herein. In the entire plaint there is no reference to the nature of the land or the type of use to*

*which it was being put as on the date of the agreement to will sale deed/memorandum of understanding or as on the date of the suit.*

**18.** The Statement of objects and reasons of the Commercial Courts Act reads as under:-

*31. The Statement of Objects and Reasons of the Commercial Courts Act reads as under:-*

*“Statement of Objects and Reasons – The proposal to provide for speedy disposal of high value commercial disputes has been under consideration of the Government for quite some time. The high value commercial disputes involve complex facts and question of law. Therefore, there is a need to provide for an independent mechanism for their early resolution. Early resolution of commercial disputes shall create a positive image to the investor world about the independent and responsive Indian legal system.”*

**19.** Thus, if statement of objects and reasons and observations of Hon’ble Apex Courts in *Ambalal Sarabhai Enterprises Limited (Supra)* are conjointly read and examined, then, following propositions for interpreting whether a dispute is a “commercial dispute” or not emerges/may be culled out:-

(i) That, a term “commercial dispute” under the Act is to be strictly interpreted.

(ii) That, wide interpretation of term of Section 2(1)(c)(vii) of the Act would defeat the purpose/object of the Act.

(iii) That, “the words” used exclusively in “trade or commerce” are to be used/interpreted/purposefully.

(iv) That, the Act has been enacted for early disposal of High value commercial disputes.

(v) That, dispute has to be a genuine “commercial dispute”

(vi) That, if statement of objects and reasons is taken into consideration as a guiding principle, then, it subtly indicate about the nature of dispute that would come within the purview of “commercial dispute” and purpose of enactment would also provide a basis for determining whether a dispute is a “commercial dispute” or not.

**20.** Evidently, as per plaint averments, plaintiff has leased out/rented her suit property for running hospital and present suit has been filed for getting vacant possession/recovery of arrears of rent under Section 12(1)(a) and 12(1)(e) of M.P. Accommodation Control Act. Therefore, in view of plaint averments, it does not appear that dispute involved in the instant case is commercial dispute as defined under Section 2(1)(c)(vii) of the Act. In this Court’s opinion, ordinarily landlord tenant cases does not come within the purview of commercial dispute. A “commercial dispute” indicates something more than a simple landlord tenant dispute. This view of the Court also gets fortified by observations made by Hon’ble Apex Court in *Ambalal (Supra)*. Further, if all landlord tenant disputes with respect to non-residential properties are held to be “commercial dispute” within the definition of “commercial dispute”, then, very purpose of speedy disposal of high value commercial disputes would be defeated.

**21.** It is also evident that M.P. Accommodation Control Act is a special Act and therein with respect to some categories, a special provision has been made under Chapter III-A, wherein, application can be filed before Rent Control Authority. After passing of Commercial Courts Act, no such amendment has been made in M.P. Accommodation Control Act and no provision has been added therein that all or any suits relating to properties rented for non-residential purpose under Section 12(1)(f) of M.P. Accommodation Control Act

would come within the purview of commercial disputes and Commercial Courts would have the jurisdiction.

**22.** So far as value of subject matter of the dispute between the parties is concerned, Section 2(1)(i) and Section 12 of the Act reads as follows:-

2. Definition \_ (1) In this Act, unless the context otherwise requires-

(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 document;

**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 upto 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:

(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;

.....

**23.** Perusal of plaint averments reveal that plaintiff has valued present suit on the basis of annual rent, i.e. Rs.1,98,815 x 12 = Rs.23,25,780/-. It is also evident that plaintiff has filed present suit under Section 12(1)(a)(e) of M.P. Accommodation Control Act.

**24.** Thus, present suit does not come within the purview of Section 2(1)(i) of the Act. Present suit also does not come within the purview of Section 12(1)(a)(c) of the Act, as present suit has been filed under Section 12(1)(a)(e) of M.P. Accommodation Control Act.

**25.** It is correct that in lease agreement dated 01.02.2013, there is a Clause-14 pertaining to arbitration. As present suit has also been filed under Section 12(1)(f) for *bonafide* requirement of residence, therefore, Clause-14 of above lease pertaining to arbitration, would not be applicable in the instant case.

**26.** In view of discussion in the foregoing paras, in this Court's considered opinion, principles laid down in Subrata Kumar Ghose, (Supra) Patil Automation Private Limited (Supra) and Harshad Chiman Lal Modi (Supra) do not apply to the facts of the case.

**27.** In Jagmohan Behl (Supra) suit was in relation to recovery of mesne profit of Rs.1.08 crores along with interest in respect of immovable property. Above suit was not filed under Section 12(1)(a) and 12(1)(e) of M. P. Accommodation

Control Act. Hence, in view of factual difference, principle laid down in Jagmohan Behl does not apply to the facts of the case, otherwise also, this Court is not in agreement with the findings recorded therein.

**28.** Hence, in view of discussion in the foregoing paras, in this Court's opinion, dispute between the parties does not *prima-facie* come within the purview of commercial dispute as defined under the Commercial Dispute Act. Further, Clause-14 of lease deed is also not applicable in the instant case. Further, subject matter of dispute in the instant suit does not come within the purview of Section 2(1)(i) read with Section 12 of the Act.

**29.** Hence, no grounds are made out to interfere in the impugned order passed by the trial Court and in this Court's opinion, learned trial Court has not committed any illegality/perversity in the findings.

**30.** Therefore, petition filed by the petitioner is dismissed and petition is disposed off accordingly.

**(ACHAL KUMAR PALIWAL)**  
**JUDGE**