



2026:DHC:8263



\$~48

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 24th September 2026

CNR No. DLHC010425502026

+ **CM(M) 1986/2026**

SH. ASHOK BANSAL

.....Petitioner

Through: Mr. Raghvendra Kishore Singh,
Mr. Abhishek Gupta Mr. Nishant
Anand Ms. Shilpa Dewan, Mr.
Mahik Singh, Mr. Udit Wadhwa &
Mr. Tarun Choudhary, Advs.

versus

KOHLI TENTS PRIVATE LIMITED

.....Respondent

Through: Mr. Sunil Kapoor, Advocate

CORAM:**HON'BLE MR. JUSTICE ANISH DAYAL****JUDGMENT****ANISH DAYAL, J (ORAL)**

1. This petition has been filed under Article 227 of the Constitution of India, impugning orders dated 23rd April 2026, 13th July 2026 and 10th August 2026, passed by the Commercial Court, West District, Tis Hazari Courts, Delhi [*'Trial Court'*], in CS (COMM) 495/2024.

2. The commercial suit was filed by plaintiff/petitioner against six defendants, wherein defendant no.1 was '*Kohli Tents Private Limited*'; defendant nos. 2 to 4 were its Directors, and defendant no.5 was the Manager of the venue named '*The Florence by Kohli*'.



2026:DHC:8263



3. The said suit was filed by plaintiff/petitioner seeking refund of Rs.5,26,000/- i.e. the amount of Rs. 3,00,000/-, paid towards an advance booking made by petitioner/plaintiff for booking the aforesaid venue for the marriage of his daughter, scheduled for 01st May 2021, and with interest. However, due to the onset of the first wave of the COVID-19 pandemic, the marriage event stood cancelled. Despite requesting refund of the amount, the same was declined by the respondent/defendant no.1.

4. Issues in the suit were framed on 12th November 2024. The said issues are extracted as under:

- “1. Whether the suit is barred by limitation? OPD.***
- 2. That the suit is bad for mis-joinder of parties? OPD.***
- 3. Whether the plaintiff has no cause of action to file the present suit? OPD.***
- 4. Whether the plaintiff is entitled to recovery of suit amount alongwith Interest, as prayed for? OPP.***
- 5. Relief.”***

5. Mr. Raghavendra Singh, counsel for petitioner/plaintiff, points out that no issue was framed by the Commercial Court regarding whether the suit was maintainable or not, on account of it not being a *commercial suit* or otherwise.

6. Subsequently, on 23rd April 2026, an application was moved by respondents/defendants under Order XVIII of Code of Civil Procedure, 1908 [*‘CPC’*], seeking permission to examine four more witnesses. This application was however dismissed.

7. Unprovoked by any submission made by the respondents/defendants, the Commercial Court then noted that part final



2026:DHC:8263



arguments had been heard, but the Court was of a *prima facie* view that the dispute involved in the suit was not a *commercial dispute*, since petitioner/plaintiff had been a consumer while approaching the respondents/defendants and, therefore, petitioner/plaintiff ought to have approached the Consumer Court or the Civil Court in this regard. The observations rendered by the Commercial Court on this aspect are extracted as under:

“Part final arguments heard on behalf of the plaintiff, however, during the course of arguments, this court is of the prima facie view that the dispute involved in the present suit is not a commercial dispute because plaintiff as a consumer had approached the defendant for providing services and now plaintiff has filed the suit for recovery of advance payment that was given to the defendant. Prima facie this suit is not maintainable before this court and has to be tried by Consumer Court or Civil Court.”

(emphasis added)

8. *Mr. Singh*, therefore, contends that having taken a *prima facie* view at the stage of final arguments, despite no issue having been framed in this regard, and without being provoked by any submission made by respondents/defendants, the said order be set aside and the parties be relegated back to the Commercial Court for addressing final arguments on the merits of the matter.

9. The submissions of *Mr. Singh*, counsel for petitioner/plaintiff, can therefore, be summarised as under:

- i) *firstly*, no issue had been framed previously and therefore, the parties did not have an opportunity to address the Court on this issue;



2026:DHC:8263



- ii) **secondly**, the issue of maintainability could not have been raised at the stage of final arguments and;
- iii) **thirdly**, there is no reason why this suit could not be considered as a *commercial suit* in light of Section 2(1)(c)(xviii) of the Commercial Courts Act, 2015 [**CCA**], which allows suits filed in respect of '*provision of services*' to be considered as *commercial suits*.

10. *Mr. Singh*, counsel for petitioner/plaintiff has further drawn the attention of this Court to a judgment passed in another suit, *being CS (Comm) 146/2021*, titled '**Sh. Surinder Kumar Anand v. Kohli Tent House (Partnerships)**', wherein the same defendant was yet again arrayed as a defendant, and the Commercial Court proceeded to decide the matter in the favour of the plaintiff therein.

11. *Mr. Sunil Kapoor*, counsel, appears for the respondent and essentially submits that the Trial Court has already listed the matter for arguments on maintainability and therefore, said issue may be considered by the Trial Court.

12. However, in the process of examining whether this suit could be treated as a '*commercial suit*' or not, various decisions have been placed before this Court, which prompts the Court to give its opinion in this matter.

Analysis and findings

13. The suit had been filed under Section 6 read with Section 12A(i) of the CCA for recovery of Rs.5,26,000/-. The crux of the matter was based on refund of the amount, which had been paid towards an advance booking made by petitioner/plaintiff for booking the venue for marriage of his daughter.



2026:DHC:8263



14. What needs be considered therefore is whether the aforesaid transaction would fall within the purview of Section 2(1)(xviii) of the CCA.

15. The recent judgment of the Division Bench of this Court, in ***Chand Mehra v. British Airways PLC***, 2025 SCC OnLine Del. 6207, is instructive in this regard, wherein, a suit had been filed seeking refund of the money paid towards booking business class air tickets in the respondent airlines. An application under Order VII Rule 10 and 11 of the Code of Civil Procedure, 1908 [***CPC***] was moved by the defendant, before the Commercial Court, contending that the dispute does not fall within the ambit of a '*commercial dispute*'. The Commercial Court allowed the application and held that the suit was not maintainable as a '*commercial suit*'. The same was then appealed against, in ***FAO (COMM) No.245/2024***, which came up for consideration before the Division Bench of this Court. The question to be considered was whether the said transaction would qualify as a '*commercial dispute*' or not. The Court analysed the relevant judgments presented by the respective parties, and thereafter held as under:

“27. The aforequoted provision of Section 2(1)(c)(xviii) provides that any dispute arising out of agreement for sale of goods or arising out of agreement for provision of services will constitute commercial dispute. In the instant case there is no agreement for sale of goods; it is only a contract for providing services, however dispute arising out of such a contract for providing services can be construed to be a commercial dispute only in case it involves some or the other kind of trade or business or financing etc.



2026:DHC:8263



28. An agreement containing a provision for providing mere services on payment of certain charges cannot, in every case, be termed to be an agreement, dispute in respect of which can be said to be a commercial dispute. To constitute a dispute to be a commercial dispute arising out of an agreement which contains a provision of services, the agreement or transaction is to necessarily contain an element of commerce or trade or business.”

(emphasis added)

16. The Division Bench of this Court is, therefore, categorical, in that an agreement for provision of services must contain an element of *commerce or trade of business* in order to fall within the purview of Section 2 (1)(xviii) of the CCA.

17. To flesh out as to what would amount to a ‘*commercial purpose*’, reference has been made to the decision of the Supreme Court in ***Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers***, (2020) 2 SCC 265, whereby the Court analysed whether Section 2(1)(d)(ii) of the Consumer Protection Act, 1986, which states that the term ‘*consumer*’ would not include a person who avails any services for commercial purposes, would apply to the nature of the transaction involved in the said case. In this regard, the Supreme Court held as under:

“19. To summarise from the above discussion, though a strait jacket formula cannot be adopted in every case, the following broad principles can be culled out for determining whether an activity or transaction is “for a commercial purpose”:

19.1. The question of whether a transaction is for a commercial purpose would depend upon the facts and circumstances of each case. However, ordinarily, “commercial purpose” is understood to include



2026:DHC:8263



manufacturing/industrial activity or business-to-business transactions between commercial entities.

19.2. The purchase of the good or service should have a close and direct nexus with a profit-generating activity

19.3. The identity of the person making the purchase or the value of the transaction is not conclusive to the question of whether it is for a commercial purpose. It has to be seen whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser and/or their beneficiary.

19.4. If it is found that the dominant purpose behind purchasing the good or service was for the personal use and consumption of the purchaser and/or their beneficiary, or is otherwise not linked to any commercial activity, the question of whether such a purchase was for the purpose of “generating livelihood by means of self-employment” need not be looked into.”

(emphasis added)

18. This Court, in other decisions, has held that where the Court is dealing with matters which purely involve a non-commercial transaction, such as a friendly or personal loan, the same would not qualify as a ‘commercial dispute’ under the CCA. This opinion has been taken by the Single Bench of this Court in **Meena Vohra v. Master Hosts (P) Ltd.**, 2025 SCC OnLine Del 1758. For ease of reference, the relevant paragraphs from **Meena Vohra** (*supra*) are extracted hereunder:

“50. In light of the foregoing discussion, this Court finds that the claim for recovery in the present suit does not qualify as a “commercial dispute” under Section 2(1)(c) of the Act of 2015, as the transaction in question pertains to a personal loan. The lender was not a merchant, trader, banker or financier. The deceased had advanced a personal loan to defendant



2026:DHC:8263



no. 1 on certain terms and conditions, but such a loan, even if ultimately used for business purposes, does not inherently constitute a “commercial dispute” within the meaning of the Act of 2015 as it does not pertain to ordinary transactions involving merchants, bankers, financiers, and traders such as those relating to mercantile documents. Moreover, the loan was not advanced in the ordinary course of business and has no relation to the trade, commerce, or business of the plaintiff’s deceased brother.”

(emphasis added)

19. In view of the aforesaid decisions, it is quite obvious that the service sought towards booking a marriage venue would be for a ‘personal purpose’ and not a ‘business purpose’. Clearly, the transactions to be slotted as ‘commercial transactions’ would involve a mercantile or what would commonly be called as a ‘B2B’ or ‘business to business’ transaction between commercial entities. However, in this case, while the service provider would mostly and naturally be and is a commercial entity, purchaser of the services is not a commercial entity but had booked the venue for personal purpose.

20. The Court, therefore needs to consider what are the options available to it at this stage. Having arrived at this point where the suit cannot be considered as ‘commercial’, leaving the matter to be yet again considered by the Trial Court may not be necessary. Moreover, considering that the suit is at final stage and final arguments are being addressed, it would be not in the interest of justice to revert the matter back to its initial stage.

21. Some light upon the aforesaid issue has been thrown by a Co-ordinate Bench of this Court in the decision of **Namita Gupta v. Suraj Holdings Ltd.**, 2024 SCC OnLine Del 143, wherein the Court was



2026:DHC:8263



dealing with an application under Order VII Rule 11 of the CPC, which had been filed before the Trial Court, contending that the suit involved a ‘commercial dispute’ but had been filed without resorting to the pre-institution mediation as mandated under Section 12-A of the CCA and was, therefore, liable to be rejected. The Court considered the submissions of the parties and noted that the CCA does not exclude the application of Section 24 of the CPC and that power under Section 24 of the CPC to transfer the suit, is not available to a District and Sessions Judge. Therefore, the course adopted, was for this Court itself to transfer the suit to a Court of Competent Jurisdiction under Section 24 of the CPC.

22. For ready reference, Section 24 of the CPC has been reproduced hereinbelow:

“24. General power of transfer and withdrawal.—(1)

On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and—

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred



2026:DHC:8263



or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,—

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) “proceeding” includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.”

23. Thus, it is quite evident from a bare perusal of the aforesaid provision, particularly sub-section (1) clause (b) sub-clause (ii) read with sub-section (5), that in the facts and circumstances of the present petition as well, this Court has the power to transfer the suit to a Court of competent jurisdiction, which in this case would be the Civil Court.

24. Accordingly, it is directed that the said suit be finally heard by a Civil Court, upon transfer from the Commercial Court to a Civil Court. The suit shall be transferred from the Court of the District Judge, Commercial Court 04, West District, Tis Hazari Courts to the Court of competent jurisdiction.

25. For this purpose, the matter is listed before the Principal District and Sessions Judge, Tis Hazari Courts, on 07th October 2026, for designating a Court to hear the matter afresh from the stage at which it



2026:DHC:8263



presently stands and to proceed from the point at which it has been transferred.

26. After having deliberated upon legal aspects involved, counsel for the parties also consent to the said recourse, in that, suit be head from the present stage itself by the Civil Court.

27. This petition stands disposed in terms of above directions.

28. Pending applications, if any, are rendered infructuous

29. Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

SEPTEMBER 24, 2026/sm/ya