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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 1412/2016**

ADHUNIK DATAMATICS PRIVATE LIMITED Plaintiff

Through: Mr. Ratan K. Singh, Mr. Nikhilesh
Krishnan, Mr. Aishwary Kumar
Tiwari, Mr. Abhishek Iyer and Ms.
Somya Priyadarshni, Advs.

Versus

KRISHAN LAL YADAV & KRISHAN & ORS Defendants

Through: Mr. Pramod Kumar and Ms. Shalu
Jain, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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16.05.2017

1. No compromise has been possible.
2. On the pleadings of the parties, the following issues are framed:
 - (I) Whether the defendants are in breach of the agreement to sell with the plaintiff? OPP
 - (II) If the above issue is decided in favour of the plaintiff, whether the plaintiff is entitled to recover back the sum of Rs.1,27,96,345/-? OPP
 - (III) Even if Issue No.(I) is decided against the plaintiff, whether the plaintiff is still entitled to recover Rs.1,27,96,345/-? OPP
 - (IV) If the plaintiff is found entitled to any monies from the defendant, whether the plaintiff is entitled to any interest and if so, on what rate and for what period? OPP

(V) Relief.

3. At this stage, it has been enquired from the counsel for the plaintiff, as to how this suit for recovery of Rs.1,27,96,345/- i.e. below the enhanced minimum pecuniary jurisdiction of this Court has been filed in this Court.
4. The counsel for the plaintiff states that this is a commercial suit.
5. On being asked to satisfy so under the provisions of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, the counsel for the plaintiff refers to Clause (vii) of Section 2(1)(c) of the said Act as well as to the Explanation thereto.
6. The claim of the plaintiff for recovery of money is on the basis of the plaintiff having advanced the said money to the defendant for purchase of agricultural land situated at Central Village Kharkhari Jatmal, Teshil Kapashera, District South West, New Delhi and the plaintiff being entitled to refund thereof on the defendants failing to comply with their part of the agreement.
7. The counsel for the plaintiff states that since the business of the plaintiff is to trade in land, thus the agreement of sale was agreement relating to immovable property used exclusively in trade or commerce. It is argued that the Explanation to Clause (vii) of Section 2(1)(c) of the Commercial Courts Act *inter alia* provides that a dispute shall not cease to be commercial merely because it involves action for recovery of immovable property or realisation of money out of immovable property given as security or any other relief pertaining to immovable property.
8. The suit is not pertaining to any immovable property but for recovery of money. The Division Bench of this Court in ***Hindpal Singh Jabbar Vs. CS(COMM) 1412/2016***

Jasbir Singh 2016 SCC OnLine Del 14901 has held that a suit for declaration as void of Power of Attorney etc. with respect to the immovable property, even if used for trade or commerce, would not qualify as a commercial suit. Reference in this regard can also be made to my recent judgment in *Sanjeev Kumar Arora Vs. Satish Mohan Agarwal* MANU/DE/1086/2017.

9. I may also add that the plaintiff is misconstruing the words ‘exclusively in trade or commerce’. The said words pertained to the use of the property and not the use by the defendant of immovable property of not use exclusively in trade or commerce, for trade or commerce.

10. The suit thus has been wrongly instituted in this Court.

11. The plaint be returned to the plaintiff for filing in the Court of appropriate jurisdiction.

No costs.

RAJIV SAHAI ENDLAW, J.

MAY 16, 2017

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