

\$~32

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CS(COMM) 828/2017 & IA No.14482/2017 (u/O XXXVIII R-5  
CPC)  
KRISHAN GUPTA & ANR ..... Plaintiffs  
Through: Mr. Bhaskar Tiwari, Adv.  
Versus  
SHREE VEETRAG KNITTING MILLS PVT. LTD.  
& ORS ..... Defendants  
Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

% **07.12.2017**

1. The two plaintiffs, namely Krishan Gupta and Reena Gupta have instituted this suit for recovery of Rs.1,05,47,000/- jointly and severally from defendants No.1 to 6 namely (i) Shree Veetrage Knitting Mills Pvt. Ltd., (ii) Shri Abhishek Jain, (iii) Shri Sachin Jain, (iv) Smt. Preeti Jain, (v) Smt. Sonal Jain; and, (vi) Shri J.K. Jain, claiming that the plaintiffs, at the instance of the aforesaid defendants, who were in collusion with each other, had furnished their immovable property as security and stood guarantee for re-payment of dues by the defendant No.1 to the defendant No.7 Bank of Baroda (BoB) and the defendant No.1 has failed to pay dues owed by it to the defendant No.7 BoB resulting in the defendant No.7 BoB proceeding against the property of the plaintiffs under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

2. The plaintiffs, though do not seek recovery of any monies or any other relief against the defendant No.7 BoB, have impleaded the defendant

No.7 BoB as a pro forma defendant to the suit.

3. The plaintiffs, though have filed the suit as a commercial suit within the meaning of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 (Commercial Courts Act) but there is no averment in the plaint, as to how the dispute subject matter of the suit qualifies as a commercial suit.

4. I have enquired from the counsel for the plaintiffs, as to how the dispute subject matter of the suit qualifies as a commercial dispute.

5. The counsel for the plaintiffs first states that since the plaintiffs stood guarantee to the defendant No.7 BoB and the monies are due from the defendants No.1 to 6 to the plaintiffs, it is a commercial transaction. On further prodding, the counsel for the plaintiffs states that since the dispute arises out of a contract between the plaintiffs on the one hand and the defendants No.1 to 6 on the other hand, the dispute is a commercial dispute.

6. I am afraid, that is not the criteria which qualifies the dispute as a commercial dispute and entitles the plaintiffs to file the suit as a commercial suit.

7. The minimum pecuniary jurisdiction of this Court is in excess of Rs.2 crores and the suit, if were to be an ordinary suit, would not lie in this Court, owing to the provisions of Section 15 of the Code of Civil Procedure, 1908 (CPC).

8. However, the Commercial Courts Act vide Section 2(i) thereof has defines the specified value as not less than Rs.1 crore and if the subject matter of suit were to qualify as a commercial dispute then the same being in excess of Rs.1 crore would lie in the commercial division of this Court.

9. However, it is not the sweet will of the plaintiffs to qualify the suit as a commercial suit or an ordinary suit. Attention of the counsel for the plaintiffs is drawn to Section 2(1)(c) of the Commercial Courts Act which defines the disputes which qualify as a commercial dispute.

10. I have perused Section 2(1)(c) of the Commercial Courts Act and do not find the suit of the present nature as falling in any of the sub clauses (i) to (xxi) of Section 2(1)(c) supra. The plaintiffs claim to have had friendly relations with the defendants No.1 to 6 and their family and owing whereto, the plaintiffs claim to have been prevailed upon to stand guarantee to the defendant No.7 BoB for payment of dues owed by the defendant No.1. The suit thus does not qualify as a commercial suit and once it is not a commercial suit, this Court is not the Court of minimum pecuniary jurisdiction to entertain the suit.

11. Instead of returning the plaint to the plaintiffs for filing in the Court of appropriate jurisdiction, the Court fees/stamp duty affixed by the plaintiffs on the plaint filed in this suit and original documents, if any filed, only be returned to the counsel for the defendants in accordance with rules, for utilisation of the same for filing the suit in the Court of appropriate pecuniary jurisdiction.

12. Having so ordered, need to go into the question, whether the defendant No.7 BoB is a proper party to the suit or not, does not arise and it will be open to the Court of appropriate pecuniary jurisdiction to deal therewith.

13. The suit is disposed of. No costs.

**RAJIV SAHAI ENDLAW, J.**

**DECEMBER 07, 2017/bs..**

*CS(COMM) 828/2017*

*Page 3 of 3*