

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SMT JUSTICE T.RAJANI

COM.T.A.No. 2 OF 2017

JUDGMENT : (per the Hon'ble Sri Justice C.Praveen Kumar)

1) Assailing the order dated 08.11.2016 passed in Memo SR.No.5669 /A of 2016 in O.S.No.219 of 2016 on the file of the XI Additional Chief Judge, City Civil Court at Hyderabad, wherein the Memo filed by the defendants 1 and 2 in the said suit seeking transfer of the suit to Commercial Court, came to be dismissed, the present appeal is filed under Section 15(5) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (for short "the Act").

2) The respondent/plaintiff filed O.S.No.219 of 2016 before the XI Additional Chief Judge, City Civil Court at Hyderabad seeking a decree for a sum of Rs.7,52,50,000/- against the petitioner/defendant, with future interest @ 12% p.a., from the date of suit till the date of realization. Pending the said suit, a memo came to be filed seeking transfer of the said suit to the Commercial Court, which came to be rejected on 08.11.2016.

3) The main ground of attack is that the proceedings initiated by the respondent/plaintiff is a Commercial dispute, falling within the

meaning of Section 2(c)(vii) of the Act and in view of the explanation contained therein, he submits that the matter has to be tried by the Commercial Court. Relying upon the judgment of the Gujarat High Court in **Vasu Healthcare Private Limited v. Gujarat Akruti TCG Biotech Limited and others**¹, the counsel for the respondent would contend that the dispute between the parties would become commercial only if it is shown that the property was going to be used exclusively in trade or commerce.

4) The object and purpose of establishment of Commercial Courts, Commercial Division and Commercial Appeal Divisions of the High Court is to ensure that the cases involved in the commercial disputes are disposed of expeditiously, fairly and at reasonable cost to the litigant. The Commercial courts, commercial divisions and commercial appellate divisions of the High Courts are intended to serve as a pilot project in the larger goal of reforming the civil justice system in India. These courts have been established only with a view to benefit the litigant especially those engaged in trade or commerce. The object is also to reduce the backlog by disposing of the cases at the earliest so as to increase foreign investment and make India an attractive place to do business. But one cannot take advantage of the objects of the Act and say that every dispute involving immovable property has to be treated as a commercial dispute.

¹ AIR 2017 Guj 153

5) In order to appreciate the arguments advanced, it would be necessary to refer to Section 2(c)(vii), which reads as under:-

Section 2(c)

Commercial dispute means a dispute arising out of

(vii) agreements relating to immovable property used exclusively in trade or commerce.

Explanation to Section 2(c) says that a commercial dispute shall not cease to be a commercial dispute merely because it is also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property.

6) A reading of Section 2(vii) makes it clear that a dispute would become a commercial dispute, only if the immovable property which is subject matter of the agreement is used exclusively in trade or commerce. The explanation given would only supplement the meaning to the commercial disputes refer to in Section 2(c).

7) It would also be necessary to look into the contents of the plaint to find out as to whether the dispute is a commercial dispute.

8) The plaintiff and defendant were acquainted with each other since 2013 and out of the said acquaintance, the defendant approached the plaintiff requesting him to purchase various properties in her name. It was represented by the defendant that the firm is involved in business of real estate and that it can purchase properties on behalf of the plaintiff, at competitive market

rates. Believing the version of the defendant, the plaintiff paid various amounts to the defendant and from 04.06.2013, the plaintiff is said to have paid a sum of Rs.28,62,00,000/-. The defendant had shown four properties to the plaintiff, which are located at different places. The manner of payment of money is indicated in the plaint, which amounts were said to have been transferred to the owners of the property, for which sale deeds were also said to have been executed, in favour of the plaintiff. Thereafter, the defendant started interfering with the possession of the plaintiff, which lead to filing of suits viz., O.S.No.498 of 2016, O.S.No.947 of 2015 and O.S.No.1803 of 2015. The averments in the plaint also show that after receiving some amount in respect of property situated at Narsingi, the defendant failed to register the same. When questioned, the defendant promised to return the money received in excess by him to the plaintiff along with interest. Though the plaintiff requested the defendant to return the said amount, but the defendant failed to do so. It is further stated that when the plaintiff filed a suit for specific performance against the defendant, the defendant in turn filed a suit for specific performance against the plaintiff and two others. Having regard to the circumstances, the present suit O.S.No.219 of 2016 came to be filed seeking to pass a decree, for a sum of Rs.7,52,50,000/-. The averments in the plaint nowhere indicate that the property which was purchased by the plaintiff was for the purpose of any trade or commerce. It appears

to be a simple transaction between the two individuals relating to some property deals, which are alleged to have been registered in favour of the plaintiff. Merely because, the amount involved is more than One crore, the same does not by itself mean that the dispute between the parties is a commercial dispute. In the absence of any material to show that the property involved is to be used exclusively in trade or commerce at a later point of time and as the case of the applicant does not fall within clause (vii) of Section 2(c) of the Act, we feel that the request of the petitioner for transfer of this case to the commercial court cannot be accepted.

9) Accordingly, the present appeal is dismissed. No costs. Miscellaneous Petitions pending if any in this appeal shall stand closed.



C.PRAVEEN KUMAR, J

T.RAJANI, J

Date: 09.08.2018

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