

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SMT JUSTICE T.RAJANI

COM.T.A.No. 1 OF 2017

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

1) Aggrieved by the order dated 08.11.2016 passed in Memo SR.No.5667 of 2016 in O.S.No.947 of 2015 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 came to be filed under Section 9 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (for short "the Act").

2) The averments in the plaint in O.S.No.947 of 2015 would show that the second applicant/second defendant approached the respondent/plaintiff asking her to purchase a house bearing Municipal No.8-2-293/82/A/795, consisting of a ground floor with a super built up area of 12000 sft in Plot No.795 in Survey Nos.403/1 (old) and 120 (new) of Shaikpet village and 102/1 of Hakimpet village, situated within the approved layout of the Jubilee Hills Cooperative House Building Society Limited, claiming that his company viz., Sandhya Hotels private Limited, of which he is

Managing Director, had entered into an agreement with Smt. M.Jayasree. It was further stated that the amount towards sale consideration has to be paid to the vendor and he will get the sale deed directly conveyed from Smt. M.Jayasree to the plaintiff. Believing the same, an agreement was entered into with the second defendant by the plaintiff. Between July and November 2013, the plaintiff paid the amounts through cheques and RTGS to the second defendant and to its company i.e., the first defendant, amounting to Rs.14.00 Crores. Though the second defendant has put the plaintiff in possession of the schedule property, in which the plaintiff set-up a boutique after developing the said property to suit her business requirements, but still the property is not registered in the name of the plaintiff. To her surprise, the plaintiff came to know that the second defendant got executed a sale deed in the name of the first defendant. When the same was confronted, the second defendant seems to have stated that he has done so because Smt. Jayasree was not agreeing for the above arrangement on account of some income tax issues. However, he promised to register the said property in favour of the plaintiff shortly. After much persuasion, the defendant agreed to execute a sale deed in the month of January 2015. Though the plaintiff furnished all the requirements for getting the property registered, the second defendant did not turn up for registration. Referring to certain incidents, where the

defendants cheated the plaintiff and others, O.S.No.947 of 2015 came to be filed for specific performance of the agreement of sale. Later on in November, 2016 a memo came to be filed before the said court by the defendants to transfer the case to the Commercial Court since the value involved is more than rupees One Crore and that the said court has become functus officio. Rejection of the said request, lead to filing of the present appeal under Section 9 of the Act.

3) The main ground urged by the learned counsel for the appellant is that in view of Section 2(c) of the Act and as the value of the suit is more than rupees One Crore, the matter requires to be adjudicated only by a Commercial Court.

4) The same is opposed by the learned counsel for the respondents contending that merely because the value of the property is more than One Crore or that the transaction between the parties is more than One Crore, the same does not by itself mean that it is a commercial dispute. According to him, the matter can be transferred only if the agreement relating to immovable property is used exclusively in trade and commerce.

5) The question that arises for consideration is "Whether in the given set of facts, the dispute between the parties can be termed as a commercial dispute?"

6) It is also required to be noted that the object and purpose of establishment of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of the High Court is to ensure that the cases involved in commercial disputes are disposed of expeditiously, fairly and at a reasonable cost. 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. As per the recommendations made by the Law Commission, on the basis of which the Commercial Courts have been established, the Commercial Courts more particularly will benefit the litigant, other potential litigants (especially those engaged in trade and commerce) will also be advantaged by the reduction in backlog caused by the quick disposal of the commercial disputes, which in turn, will further economic growth, increase foreign investment, and make India an attractive place to do business.

From the 188th report of the Law Commission it appears that the constitution of Commercial Divisions Courts were necessitated due to inordinate delays, and the need to ensure fast disposal of high value commercial disputes to provide assurance to domestic and foreign investors. It has been aimed to give a clear assurance to investors that high value commercial suits would directly go before

the Commercial Division/Commercial Courts/Commercial Appellate Courts, which would follow fast track procedures.

7) In order to decide the issue involved, it would be relevant to extract Section 2(1)(c) of the Act :-

Section 2(1)(c) of the Act reads as under:-

"2(1)(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 documents;
- ii. export or import of merchandise or services;
- iii. issues relating to admiralty and maritime law;
- iv. transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;
- v. carriage of goods;
- vi. construction and infrastructure contracts, including tenders;
- vii. agreements relating to immovable property used exclusively in trade or commerce;
- viii. franchising agreements;
- ix. distribution and licensing agreements;
- x. management and consultancy agreements;
- xi. joint venture agreements;
- xii. shareholders agreements;
- xiii. subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;
- xiv. mercantile agency and mercantile usage;
- xv. partnership agreements;
- xvi. technology development agreements;
- xvii. intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design,

domain names, geographical indications and semiconductor integrated circuits;

- xviii. agreements for sale of goods or provision of services;
- xix. exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;
- xx. insurance and re-insurance;
- xxi. contracts of agency relating to any of the above; and
- xxii. such other commercial disputes as may be notified by the Central Government.

8) Explanation (a) to Section 2(1)(c) states that a commercial dispute shall not cease to be a commercial dispute merely because-

- a) it also involves action for recovery of immovable property or for realization of monies out of immovable property given as security or involves any other relief pertaining to immovable property;

9) Placing much stress on the explanation given to Explanation (a) of Section 2(1)(c), the learned counsel for the applicants would contend that since the action involves recovery of immovable property and also for realization of money out of the immovable property, the dispute shall be a commercial dispute and it requires to be adjudicated by the commercial court only.

10) It is to be noted here that Explanation (a) to Section 2(1)(c) has to be read with Section 2(1)(c).

As per Section 2(1)(c)(vii)(a) "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.

11) Merely because, there was a transaction involving immovable property worth more than One Crore and merely because an amount of Rs.14 Crores was paid, the dispute would not become a commercial dispute, it requires to be qualified with other conditions.

12) The word "used" in Section 2(1)(c)(vii) would mean "actually used" or "being used" as held by the Gujarat High Court in *Vasu Healthcare Private Limited v. Gujarat Akruti TCG Biotech Limited and others*¹ and Bombay High Court in *Dineshkumar Gulabchand Agrawal v. Commissioner of Income Tax and another*². The Court held that if the intention of the latter was to expand, the scope of the phraseology used, would have been different. The word "used" denotes "actually used" and it cannot be said to be either "ready for use" or likely to be used"; or "to be

¹ Manu/GJ/1130/2017

² Manu/MH/1557/2003

used". It was also held that the word "used" denotes "actually used" and not merely "ready for use".

13) It has been brought to our notice that the S.L.P. filed against the judgment of Nagpur Bench of the Bombay High Court and also against the judgment of the Gujarat High Court, were also dismissed by the Apex Court. Therefore, the word "used" therein must be such property which is being "actually used" or "being used" and not likely to be used or to be used at a later point of time.

14) A reading of the plaint does not anywhere indicate that the agreement which was entered into between the parties, relates to using of the property either for trade or for commerce. It was an offer given by the second defendant to the plaintiff for purchase of the property for a valid consideration. The property which was supposed to be sold, by executing a deed in favour of the plaintiff, was not registered in her favour, but was executed in favour of first defendant inspite of the receiving consideration from the plaintiff. The dispute in the said suit can be attributed as the one for specific performance of the said agreement of sale. Nowhere in the plaint there is a reference as to the usage of the property nor that agreement was entered into for the usage of the said property, in trade or commerce. Merely because the property is immovable property worth more than One Crore and that it relates to recovery

of the property does not by itself lead to a conclusion that the dispute is a commercial dispute. That being the position, we feel that the dispute between the parties cannot be termed as a commercial dispute. Hence, the request of the applicants for transfer of the suit to Commercial Court cannot be accepted.

15) 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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B/o.GM

