

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

% **Date of decision: 23rd April, 2018**

+ **CS(COMM) 786/2017 & IAs No.13397/2017 (u/O XXXIX R-1 & 2 CPC), 13398/2017 (u/S 151 CPC)**

RITA AGARWAL **Plaintiff**

Through: Mr. Sougat Sinha, Adv.

Versus

UDAY MEDICARE PVT LTD & ORS **Defendants**

Through: Mr. Arvind Sah, Adv. for D-2 &3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The suit is ripe for framing of issues but the counsel for the plaintiff states that replication/rejoinder remains to be filed and seeks an adjournment.
2. While refusing adjournment, it is found that this suit is for recovery of Rs.1,42,00,000/- which is below the minimum pecuniary jurisdiction of this Court and was filed in this Court by labelling the same as a 'commercial suit' and in which capacity the suit has been entertained.
3. The counsel for the plaintiff, on enquiry as to how the suit qualifies as a commercial suit, first states that it qualifies as a commercial suit because it relates to a commercial matter.
4. However on further enquiry, whether all suits which may be deemed relating to commercial matters would qualify as a commercial suit, the counsel for the plaintiff states that commercial dispute has been defined.

5. Upon being shown Section 2(1)(c) of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 and on being enquired as to under which clause the dispute subject matter of this suit falls, the counsel first states that the suit falls in sub-clause (i) as it relates to ordinary transactions of Merchants, Bankers, Financiers and Traders.

6. However, a perusal of plaint shows the claim of the plaintiff to be (i) that the defendants No.2 & 3 namely Mr. Nilesh Kumar Singh and Mr. Ritesh Singh Pundir are the promoters of the defendant No.1 company; (ii) That the defendants No. 2 & 3 represented to the plaintiff that the defendant No.1 was in the process of purchasing land measuring 3300 sq. yards in Ghaziabad, UP and offered to the plaintiff 25% stake in the defendant No.1 company on payment of Rs.1,42,00,000/- as loan by the plaintiff to the defendant No.1 and of Rs.33,000/- to the defendant No.3 namely Mr. Ritesh Singh Pundir as consideration for transfer of 33,000 shares of defendant No.1 in favour of the plaintiff; (iii) That the defendant Nos.2 and 3, however, neither brought the money on their own in the defendant no.1 nor made anybody else become a shareholder in the defendant no.1 and have siphoned of the amount of Rs.1,42,00,000/- paid by the plaintiff to the defendant no.1, to the defendant No.4 Sun Infratrade Private Ltd.

7. I have enquired from the counsel for the plaintiff, how the suit for recovery of loan of Rs.1,42,00,000/- so given qualifies as a transaction between Merchants, Bankers, Financiers and Traders within the meaning of Section 2(1)(c) supra.

8. The counsel for the plaintiff then draws attention to Clause (xii) of Section 2(1)(c) which constitutes dispute arising out of shareholders' agreements as commercial dispute and also draws attention to para 21 of the plaint where the plaintiff has pleaded receipt of Rs.1,42,00,000/- by misrepresentation and of siphoning thereof.

9. However, the claim of the plaintiff as aforesaid is of loan transaction and not of the amount, for recovery of which the suit has been filed, being paid as subscription towards shares. Admittedly, there is no shareholders agreement in writing.

10. The counsel for the plaintiff next draws attention to Clause (vii) of Section 2(1)(c) which constitutes dispute arising out of the agreement relating to immovable property used exclusively in trade or commerce, as commercial disputes.

11. Though in the plaint there is no plea of the land proposed to be acquired being for trade or commerce but the counsel for the plaintiff states that in the Board of Resolution of the defendant No.1, extract whereof is filed, it is so referred.

12. The very fact that the counsel has jumped from provision to provision to somehow or the other fit the suit into the category of commercial suit when admittedly it does not, shows the fickleness of the label given to the suit as a commercial suit.

13. The dispute subject matter of the present suit is thus not found to qualify as a commercial dispute and the suit has been wrongly labelled as a commercial suit.

14. Else, admittedly the suit claim is below the minimum pecuniary jurisdiction of this Court.

15. The plaint, in accordance with the rules, is thus ordered to be returned along with court fees and all original documents to the plaintiff for filing in the Court of appropriate jurisdiction.

RAJIV SAHAI ENDLAW, J.

APRIL 23, 2018

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