IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8393 OF 2021

M/s.Glasswood Realty Pvt.Ltd and ors .. Petitioners
Versus
Mrs.Chandravilas Kailashkumar Kothari .. Respondents

…

Mr.Ganesh Murthy i/b K.V. Aiyar & Associates for the petitioners.
Mr.Rizwan Ahmed i/b Amar Legal for respondent

CORAM: BHARATI DANGRE, J.
DATED : 6th DECEMBER 2021

ORAL JUDGMENT:-

1 A Commercial Summary Suit under Order 37 Rule 2 of the Code of Civil Procedure was filed by Mrs. Mrs.Chandravilas Kailashkumar Kothari (respondent herein) seeking the following relief:-

> "(a) The Defendants be ordered and decreed to pay to the Plaintiff a sum of Rs.35,00,000/- as per particulars of claim Exhibit 'O' hereto together with interest at the rate of 18% p.a. and further interest from the date of filing of the present suit till payment and/or realization"

2 The plaintiff staked the claim on the basis that the amount is due and payable to her, from the defendant as the

amount of Rs.35 lakhs was advanced as a friendly loan and on default in its repayment, it was sought back with interest.

3 In the said Commercial Suit, the petitioner (original defendant) filed Notice of Motion No.877 of 2021 requesting the Court to exercise the powers under Order 7 Rule 10, sub-Section (1) of the Code of Civil Procedure, to return the plaint to the plaintiff. The affidavit in support of Notice of Motion pleaded that the plaintiff in the plaint has admitted that the suit transaction is a friendly loan, of which the refund is sought and the defendant has filed written statement on record in which the and existence of any commercial relationship or any commercial transaction, attracting the provisions of Commercial Courts Act, 2015, was denied. The Notice of Motion was based on a pleading that the Suit of the plaintiff do not fall within the purview of 'commercial transaction' contemplated under Section 2(c) of the Commercial Courts Act, 2015 and hence the Suit is liable to be returned.

4 The Notice of Motion was responded to, by the plaintiff by filing an affidavit, wherein it is set out that the word 'commercial' before the word 'summary suit' is a mistake and it is clearly admitted that it is not a commercial suit and the following statement is made in para 9 to the following effect :

"9. I say that further in Paragraph No. 23 of the said Written Statement filed by the Defendants again it has been clearly admitted that the Plaintiff has filed the suit as Summary suit under the provision of Order XXXVII Rule 2 of CPC and therefore the Defendants are very well aware that the suit filed by the Plaintiff is under the provisions of CPC and not under the provisions of Section 20 of the Commercial Courts Act, 2015 and therefore no question or right arises for the Defendants to allege that the suit is filed as commercial suit as they have clearly admitted that the Suit is filed under the Provisions of CPC.

11. I repeat and reiterate that except the word Commercial in hand written, there is no change in the provision of the recovery suit which is still as such there in the plaint which clearly shows that the suit filed is not as a commercial suit but it is a recovery suit strictly as per the provisions of the Code of Civil Procedure, 1908. Therefore the Defendants cannot say that the said suit is filed under the provisions of the Commercial Courts Act, 2015 as it is nowhere mentioned that the suit is filed under Section 20 of Commercial Courts Act, 2015 as alleged by the said Defendant."

5 The Notice of Motion came to be decided by the Addl. Sessions Judge, Mumbai under the impugned order passed on 31st March 2021, with the result that it is dismissed. The learned Judge has reasoned the dismissal by holding that the plaintiff had provided finance to the defendants for business

purpose and the defendant had agreed to pay interest @ 18% p.a, which goes to suggest that there is a financial transaction involved and the transaction is commercial, despite the use of the word 'friendly loan' by the plaintiff. It is recorded that the word 'friendly' does not take away nature of the transaction, which is purely commercial and will fall within the definition of 'commercial dispute' as defined in Section 2, sub-section (3)(1) of the Commercial Courts Act, 2015. The learned Judge further record that plaintiff has acted as a financer and there is a transaction of loan between the two. Hence, the application came to be rejected.

6 Heard learned counsel Mr.Ganesh Murthy for the petitioner and Mr.Rizwan Ahmed for the respondent.

7 The Commercial Courts Act 2015 is one of the modern legislation, which provide a new mechanism as distinct from the existing one, for speedy disposal of high value commercial disputes, which involve complex question of fact and law. The object in bringing the said legislation is early resolution of commercial disputes which create a positive image to the investors over the world about the independent and responsive Indian legal system. Emphasizing on the ease of doing business, the Act provide for constitution of Commercial Courts, Appellate Court and Commercial Division for adjudicating commercial

disputes of specified value and matters connected therein. The definition clause clarify what would amount to a 'commercial dispute' and Section 2(c), encompass what dispute would fall within the purview of a 'commercial dispute'. Clause (i) of Section (c) cover the ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents.

The word 'commercial' as per Websters Dictionary convey, being occupied with or engaged in commerce or work intended for commerce; designed for a larger market. Commerce is the conduct of trade among economic agents. Generally, commerce refers to the exchange of goods, services, or something of value, between businesses or entities. It may thus refer to business matter involving contract, export or import, financing agreements, trade etc.

The disputes which are in the nature of ordinary transactions of merchants, business, financers and traders will fall within the purview of 'commercial disputes', and particularly those relating to merchantile documents. Thus, it cover the ordinary/normal transactions carried out by the entities mentioned in the said clause and the term 'merchant' would cover a person who buy and trade, in any commodity and therefore, the term as explained correspond to all sort of traders, buyers and sellers. A trader is, necessarily a person who engages himself in trading in goods; buying and selling them at profit and the word 'trader' has received a liberal interpretation with passage of time, being not only one who sell goods substantially in the form in which they are bought, but it would also cover a member of stock exchange, who buy and sell securities on the exchange floor or one who buys and sells commodities and commodity futures for others, in anticipation of speculative profit. A 'financer' as per Oxford Dictionary is an administrator, collector of taxes or one who is skilled in levying and managing public money or as a capitalist concerned in financial operations. The aforesaid is an indicator that the goal of a financier is to secure ample revenue.

The aforesaid terms being included, specifically in the definition clause, 'commercial disputes' are those disputes which involve their ordinary transactions.

8 The moot question that arise for consideration is whether the singular transaction by way of 'hand loan' would fall within the meaning of 'commercial dispute', as the Act of 2015 intend to cover only 'commercial dispute'; and not any other form of dispute, where the basis of disagreement between the parties has a non-commercial cause. Necessarily, the transaction involved must have a commercial flavour and its genesis lies in the body that the parties entered into the said transaction with a commercial purpose. Dispute arising out of the transaction between the persons who are classified in clause (i) of Section

2(c), only qualify to be covered by the definition of 'commercial dispute'.

9 In *Ambala Sarabhai Enterprises Ltd Vs.K.S. Infraspace LLP and ors, (2020) 15 SCC, 585,* the Hon'ble Apex Court has expatiated about which dispute would fall within the ambit of Section 2(1)(c) in the backdrop of the statements of objects and reasons of the Act of 2015 along with various amendments in the Code of Civil Procedure, specifically made applicable to the Suits of commercial dispute. The words, in which the nature of 'commercial dispute' has been enunciated by His Lordship S. Bopanna can be reproduced as under :-

> *13. In that regard, the learned senior advocate has referred to the statement of objects and reasons with which the Commercial Courts Act, 2015 is enacted so as to provide speedy disposal of high value commercial disputes so as to create the positive image to the investors world about the independent and responsive Indian Legal System. Hence, he contends that a purposive interpretation be made. It is contended that a wider purport and meaning is to be assigned while entertaining the suit and considering the dispute to be a commercial dispute. Having taken note of the submission, we feel that the very purpose for which the CC Act of 2015 has been enacted would be defeated if every other suit merely because it is filed before the Commercial Court is entertained. This is for the reason that the suits which are not actually relating to commercial dispute but being filed merely because of the high value and with the intention of seeking early disposal would only clog the system and block the way for the genuine commercial disputes which may have to be*

entertained by the Commercial Courts as intended by the law makers. In commercial disputes as defined a special procedure is provided for a class of litigation and a strict procedure will have to be followed to entertain only that class of litigation in that jurisdiction. If the same is strictly interpreted it is not as if those excluded will be non-suited without any remedy. The excluded class of litigation will in any event be entertained in the ordinary Civil Courts wherein the remedy has always existed.

36 A perusal of the Statement of Objects and Reasons of the Commercial Courts Act, 2015 and the various amendments to Code of Civil Procedure and insertion of new Rules to the Code applicable to suits of commercial disputes show that it has been enacted for the purpose of providing an early disposal of high value commercial disputes. A purposive interpretation of the Objects and Reasons and various amendments to Code of Civil Procedure leaves no room for doubt that the provisions of the Act require to be strictly construed. If the provisions are given a liberal interpretation, the object behind constitution of Commercial Division of Courts, viz. putting the matter on fast track and speedy resolution of commercial disputes, will be defeated. If we take a closer look at the Statement of Objects and Reasons, words such as 'early' and 'speedy' have been incorporated and reiterated. The object shall be fulfilled only if the provisions of the Act are interpreted in a narrow sense and not hampered by the usual procedural delays plaguing our traditional legal system.

10 Justice R.Banumathi (as she was then) further highlighted the purpose of the Commercial Courts and the Commercial Division in the following words :

> *"The object and purpose of the 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 reasonable cost to the litigants. Keeping in view the object and purpose of the establishment of the Commercial Courts and fast tracking procedure provided under the Act, the statutory provisions of the Act and the words incorporated thereon are to be meaningfully interpreted for quick disposal of commercial litigations so as to benefit the litigants especially those who are engaged in trade and commerce which in turn will further economic growth of the country".*

In the wake of the aforesaid insight thrown on the nature of commercial dispute, it has become necessary to adopt a careful approach in scrutinizing, whether a dispute would fall within the purview of 'commercial dispute', as if not, it would unnecessarily consume the time of the Commercial Court, which is meant for speedy disposal of high commercial disputes and the ordinary civil disputes which cannot be classified as 'commercial disputes' must be permitted to be tried in normal suit, which are to be tried by a well defined procedure prescribed in the Code of Civil Procedure, by following the pursuit provided in the Code, for such types of Suit.

11 Mr.Ganesh Murthy, learned counsel is justified in placing reliance upon the decision of the Calcutta High Court in *Ladymoon Towers Pvt.Ltd Vs. Mahendra Investment Advisors Pvt.Ltd, (IA No.GA/4/2021 in CS 99/2020* which involved identical facts and the observation of learned Single Judge of the Calcutta High Court are worth to be reproduced, as it aptly apply to the facts involved before me.

> *"The Delhi High Court in Kailash Devi Khanna vs. DD Global Capital Ltd.; 2019 SCC Online Del 9954 held that all suits for recovery of monies cannot brought under Section 2(1)(c)(i) of the Act where the suit is not based on any transaction relating to mercantile documents. The Bombay High Court in Bharat Huddanna Shetty vs. Ahuja Properties & Developers; (Interim Application (L) No.14350 of 2021) rejected the contention that the suit should be treated as a commercial summary suit on the mandate that the transaction had occurred between merchants, bankers, financiers and traders and further clarified that transactions between individuals where the plaintiff gives a friendly loan to a needy friend will not be seen as a transaction in the course of ordinary business. The Madras High Court in R. Kumar vs. T.A.S. Jawahar Ayya (C.S. No.431 of 2019) was of the view that since the plaintiffs did not transact in the capacity of financiers, the dispute was not a "commercial dispute" and that an ordinary transaction of the four classes of persons mentioned in 2(1)(c)(i) arising out of mercantile documents alone would fall within the definition of a commercial dispute. The Calcutta High Court in Associated Power Co. Ltd. vs. Ram Taran Roy; AIR 1970 Cal 75 focused its gaze on a "mercantile*

> *document" within the meaning of the First Schedule of the City Civil Court Act, 1953 as a document between merchants and traders where the construction, interpretation and meanings of words and clauses of the mercantile documents would assume significance.*

12 The decision of this Court in *Manesh Rajkumar Kanhed Vs. Ramesh Bhagwansa Walale,* (Cr.Revision Application No. 143 of 2005, decided on 6.02.2007) also involve similar facts, the case being hand loan being advanced. The following observation is made as under in para 10 :

> *"10. Therefore, taking of hand-loan for whatever purposes, including starting a business of agency, cannot come within the four corners of definition of "commercial transaction" and, therefore, I hold that the finding recorded by both the Courts below that the transaction between the parties was a commercial transaction, is an error apparent from the record and especially, when, it is admitted position that it was a hand-loan between the relatives of each other".*

13 In the wake of the above, the impugned order which take a view that the transaction of advancing the amount as a friendly loan is commercial in nature, is an erroneous finding as a solitary transaction of advancing loan, on friendly terms, unlike a commercial lending with the prevailing market rate, would fall short or ordinary transaction of a financer, banker. Moreso, even the plaintiff is conscious of this position and in her response to the Application filed for return of plaint for presentation of appropriate court, she admit so.

Necessarily, the order which record the said finding deserve to be set aside and is accordingly, set aside.

14 Writ Petition is allowed and impugned order is set aside. Consequently, Notice of Motion No.877 of 2021 is allowed. The plaint be permitted for presentation to the appropriate Court, not being a 'commercial dispute'.

SMT. BHARATI DANGRE, J