

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

% **Date of decision: 13th December, 2021**

+ **CM(M) 1146/2021**

REALISTIC REALTORS PVT. LTD. Petitioner

Through: Mr. Varun Tyagi with Mr. Bharat
Gupta, Advocates.

Versus

KARANPREET SINGH WALIA & ANR..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

CM No.44758/2021(for exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CM(M) 1146/2021 & CM No.44757/2021(for stay)

3. The present petition under Article 227 of the Constitution of India impugns the order dated 10th September, 2021 passed by District Judge, Commercial Court-02, West District, Tis Hazari Courts, Delhi in CS(COMM.) No.288/2021, whereby the Commercial Court has held that the suit filed on behalf of the petitioner/plaintiff Company does not fall within the definition of 'commercial dispute' under Section 2(1)(c) of the Commercial Courts Act, 2015.

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4. The petitioner/plaintiff Company is into the business of providing real estate consultancy. An agreement dated 21st September, 2019 was entered into between the petitioner/plaintiff Company and the respondent no.1/defendant no.1 for the petitioner/plaintiff Company to provide consultancy and brokerage services in relation to the leasing of the property of the respondents/defendants being Ground Floor, Plot No.30/3 & 30/3A, Ashok Nagar, Tilak Nagar, New Delhi-110018 to the prospective lessee being Domino's Pizza India Pvt. Ltd, as introduced by the petitioner/plaintiff Company. The scope of the services was to facilitate the leasing of the aforesaid premises for commercial purposes by arranging site inspections, organizing meetings and discussions with the prospective lessees. In respect of the aforesaid services, a fee was payable by the respondent no.1/defendant no.1 to the petitioner/plaintiff Company.

5. It is the case of the petitioner/plaintiff Company that the respondents/defendants did not pay the requisite fee in terms of the aforesaid agreement after the petitioner/plaintiff Company negotiated with Jubilant Foodworks Limited, who holds the master franchise of Domino's Pizza, for materializing a commercial lease transaction in respect of the said property of the respondents/defendants. Therefore, the suit from which the present petition arises was filed as a commercial suit seeking recovery of Rs.3,21,463/- along with *pendente lite* and future interest.

6. Vide the impugned order dated 10th September, 2021, the aforesaid suit was not taken to be the subject matter of a 'commercial dispute' by observing/reasoning that, (i) the agreement dated 21st September, 2019 between the parties, which is titled as 'Confirmation of fee payable for Consultancy/Brokerage Service', could not be termed as an agreement

relating to immovable property and therefore, the dispute between the parties would not fall under the ambit of a ‘commercial dispute’; and, (ii) the agreement is regarding the broker’s fee and therefore, the suit cannot be termed as a ‘commercial dispute’.

7. The counsel for the petitioner has drawn the attention of this Court to Section 2(1)(c)(vii) and Section 2(1)(c)(x) of the Commercial Courts Act to contend that the aforesaid agreement between the parties clearly falls within the ambit of a ‘commercial dispute’ and therefore, the petitioner/plaintiff Company was entitled to file a suit before the Commercial Court.

8. The relevant provisions of the Commercial Courts Act are set out below:

“2. Definitions.— (1) In this Act, unless the context otherwise requires,—

xxxx xxxxx xxxx

(c) “commercial dispute” means a dispute arising out of—

xxxx xxxxx xxxx

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

xxxx xxxx xxxx

(x) management and consultancy agreements;

xxxx xxxx xxxx

Explanation. – 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 realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;”

9. Having perused the provisions of the Commercial Courts Act as set out above, this Court is of the view that all agreements relating to immovable properties, which are to be used exclusively in trade and commerce are covered within the ambit of ‘commercial dispute’ in terms of Section 2(1)(c)(vii) of the Commercial Courts Act.

10. In the present case, the property in question of the respondents/defendants for leasing of which the agreement 21st September, 2019 was entered into between the parties, was a property to be leased for commercial use. Even otherwise, in terms of Section 2(1)(c)(x) of the Commercial Courts Act, all management and consultancy agreements would be covered within the ambit of commercial disputes. A bare reading of the agreement in question makes it clear that the aforesaid agreement is in the nature of a consultancy agreement.

11. In my view, the agreement in question between the petitioner/plaintiff Company and the respondent no.1/defendant no.1 would be covered under Section 2(1)(c)(vii) as well as Section 2(1)(c)(x) of the Commercial Courts Act. Accordingly, the impugned order passed by the Commercial Court is patently erroneous and liable to be set aside.

12. The present petition is allowed and the impugned order dated 10th September, 2021 is set aside. Accordingly, the suit filed by the

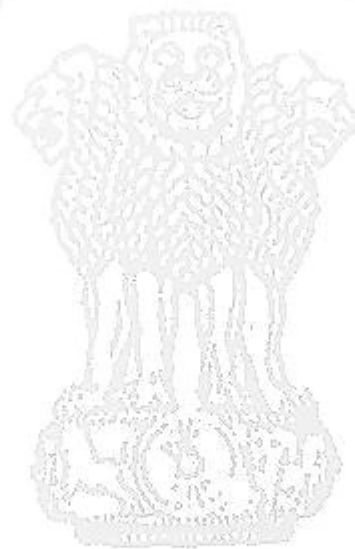
petitioner/plaintiff Company would be taken to be a commercial suit covered under the provisions of the Commercial Courts Act.

13. Since summons have not been ordered to be issued to the respondents/defendants in the suit, it is not deemed necessary to issue notice to the respondents/defendants, while disposing of the present petition.

AMIT BANSAL, J

DECEMBER 13, 2021

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