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A.Nos.399, 400 & 401 of 2023

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in

C.S.Nos.84, 85 & 86 of 2019

C.SARAVANAN, J.

All these applications have been filed by the applicant/plaintiff to condone the delay of 545 days in re-presenting the Reply Statement-cum-Written Statement to the Counter Claim filed by the plaintiff in C.S.Nos.84, 85 & 86 of 2019.

2. By an order dated 08.12.2021, this Court had categorically concluded that there was no Commercial dispute and that the case should be listed before the Regular Court. However, on 14.12.2021, this Commercial Division directed the case to be listed before the learned Additional Master-II for recording of evidence on 04.01.2022. This was after the issues were framed by this Court on 05.10.2020.

3. The learned Counsel for the respondents/defendants would submit that the dispute between the applicant/plaintiff and the respondents/defendants in the respective suits is not a Commercial Dispute within the meaning of Section 2(c)(vii) of the Commercial Courts Act, 2015



as the property in question was not intended to be used exclusively for trade or commerce.

4. In this connection, a reference is also made to the decision of the Hon'ble Supreme Court in **Ambalal Sarabhai Enterprises Limited Vs. K.S.Infraspac LLP and another**, [2019] 13 S.C.R. 605. The relevant paragraphs from the aforesaid order reads as under:-

"6. At the outset, it is noticed that the consideration required in the instant case is as to whether the transaction between the parties herein which is the subject matter of the suit could be considered as a "commercial dispute" so as to enable the Commercial Court to entertain the suit. In that regard, it is necessary to take note of Section 2(1)(c)(vii) of the CC Act, 2015. The said provision to the extent relevant is extracted here below for reference.

"Sec.2(1)In this Act, unless the context otherwise requires,-

(a) xxx

(b) xxx

(c) "commercial dispute" means a dispute arising out of –

(i) xxx

(ii) xxx

(iii) xxx



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(iv) xxx

(v) xxx

(vi) xxx

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

(viii) xxx

(ix) xxx

(x) xxx

(xi) xxx

(xii) xxx

(xiii) xxx

(xiv) xxx

(xv) xxx

(xvi) xxx

(xvii) xxx

(xviii) xxx

(xix) xxx

(xx) xxx

(xxi) xxx

(xxii) xxx



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From a perusal, of the provision relied upon by the learned senior advocates it is noticed that the disputes arising out of agreements relating to immovable property used exclusively in trade or commerce will qualify to be a commercial dispute to be tried by Commercial Courts. The question therefore would be that, in the instant case though the parties have entered into a sale transaction of the immovable property and presently in the suit the registration of a Mortgage Deed pertaining to the immovable property is sought, whether the immovable property involved could be considered as being used exclusively in trade or commerce.

14. In that view it is also necessary to carefully examine and entertain only disputes which actually answers the definition “commercial disputes” as provided under the Act. In the instant case, as already taken note neither the agreement between the parties refers to the nature of the immovable property being exclusively used for trade or commerce as on the date of the agreement nor is there any pleading to that effect in the plaint. Further the very relief sought in the suit is for execution of the Mortgage Deed which is in the nature of specific performance of the terms of Memorandum of Understanding without reference to nature of the use of the immovable property in trade or commerce as on the date of the suit. Therefore, if all these aspects are kept in view, we are of the opinion that in the present facts the High Court was justified in its conclusion arrived through the order dated 01.03.2019 impugned herein. The Commercial Court shall therefore return the plaint indicating a date for its presentation before the Court having jurisdiction.

22. A dispute relating to immovable property per se may not be a commercial dispute. But it becomes a commercial dispute, if it falls under sub-clause (vii) of



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Section 2(1)(c) of the Act viz. “the agreements relating to immovable property used exclusively in trade or commerce”. The words “used exclusively in trade or commerce” are to be interpreted purposefully. The word “used” denotes “actually used” and it cannot be either “ready for use” or “likely to be used” or “to be used”. It should be “actually used”. Such a wide interpretation would defeat the objects of the Act and the fast tracking procedure discussed above.”

5. The Court records indicates that pursuant to the directions of this Court on 14.12.2021, the evidence of applicant/plaintiff witness has already been recorded. Meanwhile, the applicant/plaintiff has filed the above applications for condoning the delay in re-presenting the Reply Statement-cum-Written Statement to the Counter Claim filed by the applicant/plaintiff in C.S.Nos.84, 85 & 86 of 2019.

6. The Court records indicates that the respondents/defendants themselves filed the Written Statement with a delay after the delay was condoned by a common order dated 28.08.2019. Pursuant to the aforesaid order, the applicant/plaintiff also appears to have filed a Reply Statement on 23.07.2021. However, it was not represented on 08.06.2021. It is during the interregnum, the issues were framed and the trial was commenced pursuant to order dated 14.12.2021.



7. The objections of the respondents/defendants is that there is no commercial dispute and therefore, the case should be referred to the Regular Court for trial and is justified in the light of the order passed by this Court on 08.12.2021. However, the trial has already been commenced. The fact also remains that the applicant/plaintiff has filed the Reply Statement to the counter claim of the respondents/defendants in the respective suit.

8. Considering the above, the application filed for condoning the delay in re-presenting the Reply Statement-cum-Written Statement by 545 days deserves to be allowed as there are no other mistakes on the part of the applicant/plaintiff. Accordingly, these applications are allowed.

9. The Reply Statement-cum-Written Statement to the Counter Claim of the respondents/defendants are therefore taken on record.

10. Since the trial has already commenced, this case shall proceed with recording of evidence of the applicant/plaintiff and the respondents/defendants in the respective suits. However, it is made clear



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that after recording of evidence, further proceedings shall not be treated as proceedings under the Commercial Courts Act, 2015 and shall be before the Court as a regular Civil Suit.

11. List this case before the learned Additional Master-II for continuation of trial on 01.03.2023 as a regular suit.

14.02.2023

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