

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM-4502-CII-2023 in/&
CR-824-2023
Date of Decision :14.03.2023

Krrish Realtech Pvt. Ltd

...Petitioner

Versus

Imperia Structures Limited and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Amit Jain, Advocate for the petitioner.

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Harsimran Singh Sethi, J. (Oral)

CM-4502-CII-2023

Application is allowed as prayed for.

Memorandum of Understanding (MOU) is taken on record as
Annexure P-5.

CR-824-2023

In the present revision petition, the challenge is to order dated 17.11.2022 (Annexure P/4) passed by the Additional District and Sessions Judge-cum-Presiding Judge, Exclusive Commercial Court, Gurugram by which, the application filed by the petitioner under Order 7, Rule 10 of the CPC for the return of the plaint to be presented before the competent Court of law, has been rejected.

Learned counsel for the petitioner argues that respondent-plaintiff has filed the present suit for recovery in pursuance to Memorandum of Understanding (MOU) dated 26.11.2010, which has been entered into

between the parties.

Learned counsel for the petitioner concedes the fact that though, the Memorandum of Understanding (MOU) is commercial in nature but as the land in question on which the commercial activity was yet to be undertaken though the same was to be actually used for the commercial purpose, keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in **Civil Appeal No.7843-2019** titled as **Ambalal Sarabhai Enterprises Limited vs. K.S. Infraspace LLP and another** decided on 04.10.2019, the suit filed by the respondent/plaintiff before the Commercial Court is not maintainable.

Learned counsel for the petitioner further argues that order passed by the Court below dated 17.11.2022 (Annexure P/4) is without appreciating the judgment of the Hon'ble Supreme Court of India in **Ambalal (supra)** though, the same has been noticed in the impugned order.

I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

It is a conceded fact before this Court that the suit which has been filed by the respondent/plaintiff is for the recovery of an amount under Memorandum of Understanding (MOU) dated 26.11.2010. In the said MOU, the land in question was described for the development purposes, which fact has duly been mentioned in the agreement itself. Not only this, in order to develop the land for commercial purposes under the said MOU, even the licenses were applied by the petitioner which were granted. That being so, the findings which have been recorded by the Court below qua the maintainability of the suit before the Commercial Court needs no

interference by this Court.

Further, argument of the learned counsel for the petitioner that judgment in **Ambalal (supra)** has not been appreciated in a correct perspective by the trial Court cannot be accepted. Learned counsel for the petitioner argues that merely the land on which, the development was to be undertaken was capable of being developed commercially, cannot be a ground to invoke the jurisdiction of Commercial Court hence, despite the fact that in the MOU, the land has been mentioned to be developed commercially, hence, till the same is commercially used, the jurisdiction of the Commercial Court cannot be invoked.

Though, there is no quarrel with the proposition of law settled by the Hon'ble Supreme Court of India in **Ambalal (supra)** but facts of the present case are entirely different. In the present case, land which was to be developed has been described to be developed commercially in the memorandum of understanding and under the said MOU, the petitioner has already taken the license from the authorities concerned for development of land commercially. In **Ambalal (supra)**, there was no description as to how the land was to be used in a manner and it was under those circumstances, the Hon'ble Supreme Court of India held that where there is no description of the land to be used in a particular manner, the jurisdiction of the commercial Court cannot be invoked merely on the ground that the said land could have been used commercially.

In the present case, learned counsel for the petitioner during the course of hearing, conceded the fact that the MOU in pursuance to which, a suit has been filed for recovery is commercial in nature and the

land was to be used commercially even as per MOU hence, the judgment in **Ambalal (supra)** has rightly been distinguished by the trial Court while passing the impugned order.

Keeping in view the above, no interference by this Court is called for and the present revision petition is accordingly dismissed.

March 14, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No