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

% Judgment delivered on: 25.05.2023

+ CM(M) 133/2023

VAKIL CHAND

..... Petitioner

versus

SARASWATI SAHITYA MANDIR AND OTHERS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Praveen Suri, Advocate.

For the Respondents : Ms. Pepakayala Geetanjali, Advocate
for R-6.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 28584/2023 (for early hearing)

1. This is an application seeking early hearing of the present petition.
2. For the reasons stated therein, the application seeking early hearing is allowed. With the consent of parties, the petition is taken up for consideration.
3. The application stands disposed of.

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4. Petitioner challenges the impugned order dated 11.01.2023 passed



in Civ. DJ No. 897/2019 titled as “Vakil Chand vs. Saraswati Sahitya Mandir And Others” whereby an application under Section 15(2) of the Commercial Courts Act, 2015 has been rejected.

5. Mr. Praveen Suri, learned counsel appearing for the petitioner at the outset invites attention of this Court to the definition of “commercial disputes” under Section 2 (1) of the Commercial Courts Act, 2015 to submit that, if one were to go by the explanation to sub-Section (1) of Section 2 of the Commercial Courts Act, the words employed in Clause (a) of sub-Section (1) to Section 2 of the Act which states “*any other relief pertaining to the immovable property*” would cover the case of the petitioner.

6. According to Mr. Suri, though there is no contract between the parties to the dispute, which could be called in the nature of a commercial agreement, however, the fact that the petitioner has been using the subject suit property, uninterruptedly for the past many decades for commercial trade, would itself fall within Clause (a) to sub-Section (1) to Section 2 of the Commercial Courts Act and, therefore, the transfer of the suit from the ordinary Civil Court to the designated Commercial Court under the Commercial Courts Act ought to have been allowed by the learned Trial Court.

7. Mr. Suri, learned counsel also submits that in the present case, the petitioner has asserted itself to be an owner by way of adverse possession and has been carrying out commercial trade for the last many decades from the suit premises. That itself, *per se*, even without referring to the explanation under the Commercial Courts Act would, keeping in view the fact that the property itself is being used for a



commercial purpose, bring the suit within the ambit of the Commercial Courts Act.

8. Learned counsel submits that in that view of the matter, the learned Trial Court committed a grave illegality and a procedural irregularity by overlooking the express provisions of the Commercial Courts Act, 2015.

9. Learned counsel also relies upon the judgment of the Single Bench in *T.V. Today Network Limited vs. News Laundry Media Private Limited And Others* reported in 2022 SCC OnLine Del 2233 of the Co-ordinate Bench of this Court as also the Judgment of the Supreme Court in *Ravinder Kaur Grewal And Others vs. Manjit Kaur And Others* reported in (2019) 8 SCC 729. Relying on the judgment of the Supreme Court, learned counsel submits that the Supreme Court has recognized the right of the person asserting right over the subject suit property by way of adverse possession as an independent right to establish the same and claim the ownership rights over the subject suit property.

10. So far as the judgment of the Single Bench is concerned, learned counsel submits that the issue involved therein was defamation in respect of a programme being carried out by the defendants, which as per the Co-ordinate Bench was infringement of the rights of the said plaintiff therein.

Learned counsel, on that basis, submits that the suit also entails the protection of intellectual property rights of the petitioner/ plaintiff, which necessarily makes the suit to be of a “commercial nature”, as provided by the Commercial Courts Act, 2015. Learned counsel



submits, in furtherance of his submission, that since the suits concerning the disputes pertaining to intellectual property rights fall within Commercial Courts Act, the learned Trial Court ought to transfer his suit to concerned commercial court.

11. On the basis of the aforesaid judgments as also the definition of the commercial disputes, as submitted above, learned counsel submits that the impugned order may be interfered with.

12. This Court has considered the submissions made by Mr. Suri, learned counsel appearing for the petitioner.

13. So far as the definition of a “commercial dispute” as contained in the Commercial Courts Act, 2015 is concerned, upon a plain reading of the explanation in Clause (a) to sub-Section (1) of Section 2 of the Commercial Courts Act, it is clear that the same cannot be read de hors the meaning as ascribed to the word “commercial dispute” in the preceding sub-clauses to Clause (c).

14. From the plain reading of the meaning given to “commercial dispute” from sub-Clause (i) to sub-Clause (xxii) of sub-Section (1) to Section 2 of the Commercial Courts Act, makes it apparently clear that the nature of transaction between the parties to the *lis*, necessarily has to have a color of commercial nature, if not completely a commercial dispute between the parties as ascribed in Commercial Courts Act, 2015.

15. So far as the present case is concerned, it is not disputed that between the parties there is no such transaction at all. It has been submitted by Mr. Suri that so far as respondent No.1 is concerned, respondent No.1 is asserting ownership on the basis of sale documents which are yet to be proved in accordance with law before the learned



Trial Court.

16. If one were to look at the assertion made by both parties, and restricting right now only to respondent No.1, the dispute apparently appears to be between the parties who are asserting ownership rights by virtue of title deeds, in contrast to the petitioner, who is asserting his right as an owner by virtue of adverse possession. It is clear that there is no element of commercial transaction insofar as the *inter se* dispute is concerned.

17. The other aspect of the matter as submitted by Mr. Suri, so far as respondent No.6 is concerned, is that it is an Authority under the State and covered by Article 12 of the Constitution of India. According to Mr. Suri, the respondent No.6 is also asserting its ownership rights by virtue of the vesting of the property, prior in time. Mr. Suri also submits that the respondent No.6 has issued notices against the petitioner under the provisions of Public Premises Act, 1971. If one were to consider the submissions made by Mr. Suri insofar as respondent No.6 too is concerned, apparently and *ex facie*, there is no element of commercial dispute or any transaction which has any commercial color to it at all.

18. So far as the judgments of the Supreme Court and the learned Single Bench of this Court is concerned, none of them are applicable to the facts of this case.

19. In view of the aforesaid, the petition is misconceived and is dismissed with no order as to costs.

20. The next date already fixed i.e., 24.08.2023 stands cancelled.

TUSHAR RAO GEDELA, J.

MAY 25, 2023/nd