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

Date of decision: 09.08.2023

+ **FAO 178/2023 & CM APPL. 37228/2023**

SOPL PRIVATE LIMITED THROUGH AUTORIZED
SIGNATORY HARSH KUMAR Appellant
Through: Mr. Manoj Kumar Garg, Adv.

versus

NAVEEN PATEL Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE POONAM A. BAMBA

POONAM A. BAMBA, J (Oral)

- 1.0. Vide this appeal, the appellant is assailing the order dated 13.07.2023 passed by Ld. ADJ-03, South, Saket Courts, New Delhi, in Civil Suit no. CS no. 387/2023. Vide impugned order, ld. ADJ returned the plaint to the appellant/plaintiff to adopt the procedure for filing of commercial suit observing that in terms of Section 2 (c) Commercial Courts Act, 2015 (**The Act**) the dispute in question would fall within the domain of commercial court.
- 2.0. Ld. counsel for the appellant submits that no commercial dispute is involved in the present case as the property in question is residential in nature and was leased out to the respondent for the purpose of residential as well as 'services under bed and breakfast scheme'. Thus, it was not leased exclusively for the purpose of trade and



commerce. Reference in this respect is made to sale deed and lease deed in question. Further, the appellant's suit for recovery of possession, arrears of rent, *mesne* profit, damages and mandatory and permanent injunction has been valued @ Rs. 10,84,623/-. Thus, the suit was very much triable by the Ld. ADJ. In support of his arguments, ld. counsel has relied upon the judgment of Hon'ble Supreme Court dated 04.10.2019 in Civil Appeal no. 7843/2019, in *Ambalal Sarabhai Enterprises Ltd. vs. K.S. Infraspace LLP & Anr.*

3.0. The 'commercial dispute' is defined in Section 2 of the Commercial Courts Act, 2015. Sub-clause (vii) of clause (c) of sub-section (1) of the same reads:-

“2. Definitions.—(1)

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

.....

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

4.0. From the plain reading of the definition of the commercial dispute, it is clear that dispute arising of agreement relating to immovable property used exclusively in trade and commerce only, would fall in the category of commercial dispute. It would be pertinent to refer here to the judgment of this Court in *Mrs. Soni Dave vs. M/s Trans Asian Industries Expositions Pvt. Ltd. 2016 SCC Online Del 4282*, wherein this Court inter alia, observed that :-

“16. I may in this regard also observe that a **property**, prescribed user whereof as per the law i.e. the Master Plan and the municipal laws **is residential, even if let out for use exclusively in trade or commerce** or when, without being so



let out, is used exclusively in trade or commerce, **the same would still not qualify as an immovable property used exclusively in trade or commerce within the meaning of Section 2(1)(c)(vii) of the Commercial Courts Act.** The Commercial Courts Act has brought only disputes arising out of transactions relating to immovable property used exclusively in trade or commerce within the ambit of a ‘commercial dispute.’ The legislature could not have intended to bring disputes arising out of transactions relating to immovable property illegally used exclusively in trade or commerce within the ambit of commercial disputes.

18. Following the said principles, **Section 2(1)(c)(vii) has to be read and interpreted as ‘immovable property which is in accordance with law, used exclusively in trade or commerce’** and not as ‘immovable property which, in contravention of law, is used exclusively in trade or commerce.’”

5.0. In the instant case, as per the copy of the lease-deed dated 09.10.2019 placed on record by the appellant, the property bearing no. C-4/77/2, First and second floor, Safdarjung Development Area, New Delhi, was leased to the respondent for his ‘residence’ as well as for the purpose of ‘services under bread and breakfast scheme’. Thus the property was not leased exclusively for the commercial purpose/services under bread and breakfast scheme.

5.1. Further, as per the sale deed and the lease deed, clause 12 of which reads :

“12.....Lessee shall be responsible for any penalty/levies damage/surcharge/additional levies/additional taxes/increase in Municipal taxes and any other taxes/charges because of change



of use of the premises from residential to commercial due to the use of premises by the lessee under the bed & breakfast scheme/and/or any other use whatsoever. Any taxes (other than residential use) on commercial operation by lessee shall be to the account of lessee and shall be borne by the lessee”,

the property in question is residential in nature.

- 6.0.** In view of the above, the property has not been leased exclusively for commercial purpose. Even otherwise, the property in question being residential in nature, the dispute involved in the present case does not fall within the definition of ‘commercial dispute’ under Section 2 (1) (vii) (c) of the Act.
- 7.0.** The impugned order is therefore, set aside with direction to the Id. ADJ to proceed in the matter as per law.
- 8.0.** Appeal is disposed of, accordingly.
- 9.0.** Pending application is closed.

POONAM A. BAMBA, J

AUGUST 9, 2023/csc

[Click here to check corrigendum, if any](#)