



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

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Judgment reserved on: 18.09.2024

Judgment delivered on: 07.10.2024

+ CM(M) 512/2022

KARTAR SINGH KOCHHAR

.....Petitioner

versus

ICICI BANK LTD.

.....Respondent

Memo of Appearance

For the Petitioner: Mr. Indra Chand Prajapat, Ms. Himanshi Gupta and Ms. Sadhika Atri, Advocates

For the Respondent: Ms. Chetna Bhalla, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. The limited question herein is whether the dispute disclosed in the plaint can be characterized as 'commercial dispute' or not.
2. Petitioner/plaintiff filed a suit seeking recovery of possession, damages and mesne profits for the additional space of 302 sq. feet situated at ground floor of C-18, Safdarjung Development Area Market, New Delhi. Said space had been let out to respondent Bank on 01.01.2019, *albeit*, there was no written agreement.
3. There was another agreement, much prior in time, between the same parties whereby on 10.10.2012, plaintiff and the defendant bank entered into a lease agreement by which another portion admeasuring 1800 sq. feet of same property, part situated in basement and part at ground floor, was let out by the plaintiff to defendant for nine years. Such agreement was in writing.



Plaintiff has already filed a separate suit for said portion which is pending adjudication before a *Commercial Court* only. Presently, we are not concerned with said case pertaining to 1800 sq. feet area.

4. In the suit in question i.e. CS 401/2020, petitioner claimed himself to be the owner of said property of Safdarjung Development Area Market which comprised of basement, ground floor and first floor. The plaintiff, on the basis of request made by the defendant bank, provided them with additional space at ground floor and thus further area of 302 sq. feet was let out to defendant bank on *ad-hoc* basis. According to plaintiff, he had incurred expenses of Rs. 14,74,388/- for carrying out alteration to bring the said property in conformity with the requirement of defendant bank and despite request, defendant bank did not execute any lease deed and, therefore, besides seeking the possession of said area, it also prayed for compensation, damages and mesne profits.

5. The defendant bank, in its written statement, did not dispute that such additional space had been let out to them but according to them, plaintiff had not reverted to the bank for the purposes of execution of new lease deed. According to them, it was also, repeatedly, asking the plaintiff to rather take back the possession of 1132 sq. feet area situated in the basement which was of no use to them but the plaintiff had been delaying the same as well for the reasons best known to him.

6. As noted already, the issue in hand is with respect to dispute related to letting out of additional space of 302 sq. feet, for which there is no written agreement.

7. During the pendency of the above-said suit, defendant Bank moved



application before the learned Trial Court contending that the dispute was commercial in nature.

8. Such contention has been upheld vide order dated 27.01.2022.

9. Such order is impugned herein.

10. According to petitioner/plaintiff, the dispute could not have been labelled as commercial dispute for want of agreement in writing. He also contends that dispute between the parties never arose *out of agreement* but it arose as the defendant *failed to enter into an agreement* for the suit property.

11. Such contentions seem completely unsustainable.

12. It is settled position of law that an agreement can be oral or in writing.

13. An agreement would not lose its sheen by mere fact that it is oral. Though, the burden to prove its existence may be little arduous but nonetheless such agreement is valid in eyes of law. The existence of oral agreement would get strengthened if pursuant to the same, some tangible action is taken by the parties.

14. Like here, the possession of additional space was handed over which corroborates the execution of oral agreement. The demand of possession, mesne profits by filing a suit further strengthens the above fact.

15. In *Nanak Builders and Investors Pvt. Ltd Vs. Vinod Kumar Alag AIR 1991 Delhi 315*, this Court held that an oral agreement is valid and enforceable as a contract. Even the Hon'ble Supreme Court upheld the validity of oral agreement in *Aloka Bose Vs Parmatma Devi & Ors. (2009) 2 SCC 582*.

16. Coming to what is meant by commercial dispute, in the present



context, let us take note of the relevant definition and Explanation given in Commercial Courts Act, 2015.

17. These read as under: -

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

.....

.....

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

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

.....

.....

Explanation.-A commercial dispute shall not cease to be a commercial dispute merely because-

(a) It also involves action for recovery of immoveable property or for realisation of monies out of immoveable property given as security or involves any other relief pertaining to immoveable property;

(b) One of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;”

18. There is nothing mentioned in the above definition that such agreement has to be in writing only.

19. The dispute, undeniably, relates to immovable property. It seeks not only possession but damages in context of its user. And, such property is admittedly being used, exclusively, for banking business and, therefore, all the ingredients of a commercial dispute are found to exist.

20. It really does not matter whether there was no written lease deed or for



that matter, as alleged, the defendant bank never came forward to reduce the same into writing. It will also be useful to refer to one judgement of learned Division Bench of this court given in *Jagmohan Behl Vs. State Bank of Indore* 2017 SCC OnLine Del 10706. The relevant paras are as under: -

“11. Clause (c) defines the “commercial dispute” in the Act to mean a dispute arising out of different sub-clauses. The expression “arising out of” in the context of clause (vii) refers to an agreement in relation to an immoveable property. The expressions “arising out of” and “in relation to immoveable property” have to be given their natural and general contours. These are wide and expansive expressions and are not to be given a narrow and restricted meaning. The expressions would include all matters relating to all agreements in connection with immoveable properties. The immoveable property should form the dominant purpose of the agreement out of which the dispute arises. There is another significant stipulation in clause (vii) relating to immoveable property, i.e., the property should be used exclusively in trade or commerce. The natural and grammatical meaning of clause (vii) is that all disputes arising out of agreements relating to immoveable property when the immoveable property is exclusively used for trade and commerce would qualify as a commercial dispute. The immoveable property must be used exclusively for trade or business and it is not material whether renting of immoveable property was the trade or business activity carried on by the landlord. Use of the property as for trade and business is determinative. Properties which are not exclusively used for trade or commerce would be excluded.

12. The explanation stipulates that a commercial dispute shall not cease to be a commercial dispute merely because it involves recovery of immoveable property, or is for realisation of money out of immoveable property given as security or involves any other relief pertaining to immoveable property, and would be a commercial dispute as defined in sub-clause (vii) to clause (c). The expression “shall not cease”, it could be asserted, has been used so as to not unnecessarily expand the ambit and scope of sub-clause (vii) to clause (c), albeit it is a clarificatory in nature. The expression seeks to clarify that the immoveable property should be exclusively used in trade or commerce, and when the said condition is satisfied, disputes arising out of agreements relating to immoveable property involving action for recovery of immoveable property, realization of money out of immoveable property given as security or any other relief pertaining to immoveable property would be a commercial dispute. The expression “any other relief pertaining to immoveable property” is significant and wide. The contours are broad and should not be made



otiose while reading the explanation and sub-clause (vii) to clause (c) which defines the expression “commercial dispute”. Any other interpretation would make the expression “any other relief pertaining to immoveable property” exclusively used in trade or commerce as nugatory and redundant.

.....
18. *Lease of immoveable property is dealt with under the Transfer of Property Act in Chapter V thereof. The said enactment vide section 105 defines what is lease, lessor, lessee and rent and vide section 107 stipulates how leases are made and can be terminated. Leases can be both oral or in writing. Noticeably, sub-clause (vii) to clause (c) in Section 2 of the Act does not qualify the word “agreements” as referring to only written agreements. It would include oral agreements as well. The provisions of the Transfer of Property Act deal with the effect of non-payment of rent, effect of holding over and most importantly the determination of the leases or their termination. It cannot be disputed that action for recovery of immoveable property would be covered under sub-clause (vii) to clause (c) when the immoveable property is exclusively used in trade or commerce. Read in this manner, we do not think that claim for recovery of rent or mesne profit, security deposit etc., relating to immoveable property which was used exclusively in trade or commerce should not be treated as a commercial dispute in view of the language, ambit and scope of sub-clause (vii) to clause (c) to Section 2 of the Act. These would qualify and have to be regarded as commercial disputes. The use of expression “any other relief pertaining to immoveable property” would mean disputes relating to breach of agreement and damages payable on account of breach of agreement would be covered under sub-clause (vii) to clause (c) to Section 2 of the Act when it is arising out of agreement relating to immoveable property exclusively used in trade and commerce.”*

(Empasis supplied)

21. Thus, it is of no significance even if the agreement was oral. Moreover, the averments made in the plaint and the nature of relief claimed in the suit also clearly demonstrate that the dispute is commercial in nature.

22. Petitioner strongly relies on *Deepak Polymers Private Limited vs Anchor Investments Private Limited: 2021 SCC OnLine Cal. 4323*. In the above matter, though the suit was for possession of a property let out for commercial purpose, learned Single Judge of Calcutta High Court observed



that if a suit is filed for recovery of possession in respect of immovable property *on the ground of forfeiture for contravention of any of the terms and conditions of the agreement*, it could be said to be a dispute "arising out of" such agreement. However, observing that, the dispute therein had arisen out of refusal by the defendants to comply with the notice issued by the lessor under Section 106 of the Transfer of Property Act, 1882, which was based on a statutory right, independent and irrespective of any clause of the lease agreements. Thus, it was held that such suit would squarely arise out of a statutory right conferred by Section 106 of the Transfer of Property Act, having no direct nexus with the lease agreements in respect of the immovable properties concerned. Resultantly, it was held that the pre-condition of the applicability of Section 2(1)(c)(vii), that is, the emanation of the dispute out of the lease agreement, was not satisfied. It is argued that since the SLP challenging the above order was eventually withdrawn, the above findings cannot be ignored. However, mere withdrawal of SLP would not, *ipso facto*, make it a binding precedent.

23. Moreover, the bare definition and the Explanation say it all.

24. The Explanation, as already extracted above, stipulates that a commercial dispute shall not cease to be a commercial dispute merely because it also involves action for recovery of immovable property or for realisation of monies out of immoveable property given as security or involves any other relief pertaining to immovable property. Therefore, in my humble opinion, no advantage can be dug out from *Deepak Polymers Private Limited (supra)* as it seems that the kind attention of said Court was never drawn to the wordings used in said Explanation.



25. The conclusion is, thus, inevitable.

26. Finding nothing wrong in the impugned order, the petition is dismissed.

(MANOJ JAIN)
JUDGE

OCTOBER 07, 2024/hj/dr