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

% ***Date of decision: 28th October, 2024***

+ CM(M) 3574/2024
KANHIYA LAL PRAKESH KUMAR

.....Petitioner

Through: Mr. Ankur Jain, Advocate.

versus

AJM HOUSING PVT. LTD

.....Respondent

Through: Mr. Gaurav M. Liberhan, Ms. Komal Gupta, Mr. Rahul Dwivedvi and Mr. Arun Singh Rawat, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN
J U D G M E N T (oral)

1. The petitioner is defending a Commercial Suit and is aggrieved by order dated 6th September, 2024 whereby his application moved under Order VII Rule 10 CPC has been dismissed.
2. According to defendant, the suit should have been returned on the ground of *lack of jurisdiction*. It is claimed that the suit in question is no longer a commercial suit in view of law laid down in *Soni Dave vs. M/s. Trans Asian Industries Expositions Pvt. Ltd.: 2016 SCC OnLine Del 186* and since the tenanted premises in question could have been used for residential purposes alone, the dispute in question cannot be said to be commercial in nature. In said case, the plea of the defendant in its written statement was that the letting out of the property as per the lease deed between the parties was “*for storage, exhibition of handicraft items and residence*”. It was



agitated that plaintiff, without pleading that the transaction from which the dispute subject matter of suit arises, relates to immovable property used exclusively in trade or commerce, could not label it as a commercial dispute. It was observed therein that a property, prescribed user whereof as per the law i.e. the Master Plan and the municipal laws was 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. It is also observed therein that 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' and that the legislature could not have intended to bring disputes arising out of transactions relating to immovable property 'illegally used' in trade or commerce within the ambit of commercial disputes.

3. In this regard, learned counsel for the defendant also relies upon one letter written to Hon'ble Lt. Governor, Delhi Administration, way back in the year 1975 to contend that permissible user was residential only.

4. Learned counsel for the respondent/plaintiff also appears on advance notice.

5. There is, admittedly, a lease deed between the parties and moreover, the actual user is running of a cold storage i.e. commercial.

6. This court has gone through the impugned order and learned Trial Court has, and rightly so, relied upon judgment of Supreme Court given in *Ambalal Sarabhai Enterprises Ltd. vs. K.S. Infraspace LLP*, (2020) 15 SCC 585 wherein the apex court has, in no certain terms, settled the legal position



and has observed and held that the words ‘*used exclusively in trade or commerce*’ need to be interpreted purposefully and the word ‘*used*’ denotes, ‘*actually used*’ and it cannot be either ‘*ready for use*’ or ‘*likely to be used*’ or ‘*to be used*’. Para 37 of said judgment reads as under:-

“37. 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 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.”

7. The abovesaid categoric directions clinch the issue and makes it abundantly clear that it is the *actual user* of any such property which becomes the governing and deciding factor and not the ‘*intended user*’ or even ‘*permissible user*’.

8. Since the issue is no longer *res integra* and the Hon’ble Supreme Court has, in no uncertain terms, held that it is the *actual user* which would decide whether the dispute is commercial or not, this Court does not find any reason to interfere with the impugned order and, resultantly, the present petition is, hereby, dismissed.

(MANOJ JAIN)
JUDGE

OCTOBER 28, 2024/ss