



2024:DHC:8761-DB



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

*Date of decision: 11.11.2024*

+ **FAO (COMM) 213/2024**

**RAKSHIT KHURANA AND ORS** .....Appellants

Through: Mr. Manoj Khanna, Adv.

versus

**INDUS TOWER LIMITED AND ORS** .....Respondents

Through: Nemo.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE SHALINDER KAUR**

**NAVIN CHAWLA, J. (ORAL)**

**CM APPL.63468-469/2024**

1. Allowed, subject to all just exceptions.

**CM APPL.63470/2024**

2. The present application has been filed by the appellants under Section 5 of the Limitation Act, 1963 read with Section 151 of the Code of Civil Procedure, 1908 (in short, 'CPC') seeking condonation of 99 days delay in re-filing the appeal.

3. For the reasons stated in the application, the delay of 99 days in re-filing the appeal is condoned.

4. Accordingly, the application stands disposed of.

**FAO(COMM) 213/2024 & CM APPL.63467/2024**

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5. This appeal has been filed challenging the Order dated 07.06.2024 (hereinafter referred to as 'Impugned Order') passed by the learned District Judge (Commercial Court)-02, East District, Karkardooma Courts, Delhi in CS(COMM.) No. 167/2024 titled ***Rakshit Khurana & Ors. vs. Indus Tower Limited & Ors***, returning the plaint of the appellants under Order VII Rule 10 of the CPC, holding that the subject matter of the dispute raised in the plaint, does not fall in the definition of a 'commercial dispute' within the meaning of the said term as defined in Section 2(1)(c) of the Commercial Courts Act, 2015 (hereinafter referred to as 'the Act') and, therefore, holding the subject Suit to be not maintainable as a commercial suit.

6. The appellants had filed the abovementioned Suit contending that the appellants are shareholders of the respondent no.6 Company, having 46.5 % shares thereof. It was contended that respondent no.1, which is in the business of owning and operating cell phone towers, has conspired with the respondent no. 3 & 4 and set up a cell phone tower on the property of respondent no.6. It was further contended that the monthly rent of the same, as part of a common intention of the parties to cause wrongful loss to the respondent no.6 and for making unlawful gains, is being illegally misappropriated by respondent no.1 in connivance with respondent no. 3 & 4. It was further contended that Clause 35 of the Memorandum of Association of defendant no.6 company allows it to lease, grant licences, or otherwise dispose of the property of the company. Such agreements/transactions being commercial in nature, a derivative suit was filed by the plaintiff/appellant, therefore, the suit would be maintainable as a



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commercial suit within the meaning of said term as defined under Section 2(1)(c)(i) and (vii) of the Act.

7. The learned Trial Court, however, *vide* the Impugned Order has held that the plaint raises the dispute which is essentially an *inter se* dispute amongst the shareholders about the management of business affairs of the respondent no.6 and it does not raise any commercial dispute. Based on the said observations, as noted hereinabove, the learned Trial Court had returned the plaint.

8. The learned counsel for the appellants reiterates that the present Suit being filed as a derivative suit and raising a dispute in respect to the lease entered into by respondent no.6 with respondent no.1 for a commercial purpose, the suit was maintainable as it raises a commercial dispute. He further submits that no definitive finding has been given by the learned Trial Court on the above issue and the suit has been rejected by presuming that it does not raise a commercial dispute.

9. We do not find any merit in the submissions of the learned counsel for the appellants. As it is evident from the reading of the plaint itself, the plaint primarily raises a dispute which is *inter se* amongst the shareholders *qua* the management of respondent no.6. Such disputes do not fall within the ambit and scope of the term “commercial dispute” as defined in Section 2(1)(c) of the Act.

10. The Supreme Court in ***Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP & Anr.*** (2020) 15 SCC 585 has held that to expand the meaning of term ‘commercial dispute’ as defined by the Act, would in fact negate the very mandate and purpose for which the



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Act has been promulgated. There is, therefore, no reason to give an expansive meaning to the said term.

11. Accordingly, we do not find any merit in the present appeal and the same, along with the pending application(s), is dismissed.

**NAVIN CHAWLA, J**

**SHALINDER KAUR, J**

**NOVEMBER 11, 2024/ab/sk/VS**