

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya**

FMA No. 1484 of 2025

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CAN 1 of 2025

**Ashok Saraf and Others
– Versus –
Asansol Durgapur Development Authority**

With

FMA No. 1485 of 2025

+

CAN 1 of 2025

**Ashok Saraf and Others
– Versus –
Asansol Durgapur Development Authority**

For the appellants	:	Mr. Abhrajit Mitra, Ld. Sr. Adv., Mr. Suddhasatva Banerjee, Mr. Aritra Basu, Mr. Shashwat Nayak, Mr. Pratik Bagaria, Ms. Rituparna Chatterjee, Ms. Shuchismita Datta, Ms. Megha Yadav
For the respondent	:	Mr. Sharanya Chatterjee, Mr. Subhajit Barman
Heard on	:	03.11.2025
Reserved on	:	03.11.2025
Judgment on	:	10.11.2025

Sabyasachi Bhattacharyya, J.:-

1. These appeals arise out of two successive orders passed in the same suit and, as such, are taken up together for hearing.
2. By the first order dated May 17, 2025, impugned in FMA 1484 of 2025, the learned Trial Judge refused to grant ad interim injunction on an application filed by the plaintiffs/appellants for temporary and ad interim injunction restraining the defendant/respondent from taking any coercive steps against the plaintiffs and/or demanding or claiming any amount by way of penalty in terms of Clause 9 of the MOU dated June 7, 2007 and from issuing any fresh demand notices or communications to the plaintiffs claiming penalties under the said clause or from initiating any proceedings on the basis of the same.
3. By the second order dated June 9, 2025, challenged in FMA 1485 of 2025, the learned Trial Judge refused to grant ad interim injunction on the second application filed by the plaintiffs/appellants for temporary and ad interim injunction restraining the defendant/respondent from giving effect to and/or acting upon an order dated May 16, 2025 and/or from taking any coercive or consequential steps including the recovery, threat of recovery, interference with the project activities of the plaintiffs, allotments or operations, pursuant to any such notice.
4. The said injunction applications have been filed in a suit instituted by the plaintiffs/appellants for recovery of money by way of refund,

loss, damage, etc., for declaration that no penalty is payable under Clause 9 of the MOU dated June 7, 2007 by the plaintiffs to the defendant, and for permanent injunction restraining the defendant from taking any coercive steps against the plaintiffs and/or demanding or claiming any amount by way of penalty in terms of the said clause.

5. The genesis of the dispute is an MOU dated June 7, 2007 entered into between the parties pursuant to a tender notice dated July 7, 2006 floated by the defendant/respondent, the Asansol Durgapur Development Authority (ADDA), for development of a housing project for certain categories of State Government employees.
6. As per Clause 9 of the MOU, the appellants were to complete the project within a period of four years from the date of receiving necessary clearances and sanctions from all concerned authorities. As per the contract, in the event such timeline was exceeded, penalty would have to be paid by the plaintiffs at the rate of ₹ 5 lakh per month after the completion of the stipulated period.
7. In the year 2015, the plaintiffs applied for an extension of the timeline and the terms of the contract were revised to the effect that the time for completion of the project was extended for a further period of two years, during which the plaintiffs would have to pay a penalty of ₹1.5 lakh per month; in the event the project could not be completed within the said extended period, penalty would be chargeable at the rate of ₹5 lakh per month.

8. Subsequently, the plaintiffs expressed their inability to fetch buyers for commercial units and, on the request of the plaintiffs, the defendant/respondent applied before the Urban Land Development Authority for conversion of the project to a residential one.
9. In the meantime, construction was substantially completed and necessary sanctions and revised plan were obtained and allotment of the flats/apartments/plots also started partially. However, the defendant allegedly having insisted upon payment of penalty for the entire period of delay at the rate of ₹5 lakh per month and in view of the plaintiffs having allegedly invested huge sums of money and erroneously paid a part of the penalty, although in view of the necessary permission sought by the defendant/respondent for conversion of the project to a residential one being still pending and the plaintiffs are allegedly not liable to pay any penalty whatsoever, the plaintiffs instituted Money Suit No. 25 of 2025 and filed the first injunction application therein. Subsequently, the defendant having taken a decision by way of an order dated May 16, 2025 whereby the defendant insisted that the plaintiffs were liable to pay the entire penalty and that the MOU had come to an end in view of the construction having not been completed within the stipulated period, the second injunction application was filed.
10. At the outset, learned counsel appearing for the defendant/appellant raises a preliminary objection as to the jurisdiction of the learned trial judge in entertaining the suit and

the injunction applications on the ground that the dispute between the parties comes within the purview of “commercial dispute” within the contemplation of the Commercial Courts Act, 2015 (for short, “the CC Act”). It is argued that since the valuation of the suit is above the “specified value” and the dispute comes within the purview of “commercial dispute”, the suit had to be filed before the designated commercial court having jurisdiction instead of the trial court, which is an ordinary civil court.

- 11.** Learned senior counsel appearing for the appellants contends that the suit does not come within the purview of any of the sub-clauses of Section 2(1)(c) of the CC Act, which lays down the various categories of disputes which can be termed as “commercial dispute” under the said Act. It is contended that the only sub-clauses of Section 2(1)(c) under which the present dispute could possibly be argued to come are sub-clauses (vi), (vii), (xi) and (xv).
- 12.** Sub-clause (vi) refers to “construction and infrastructure contracts, including tenders”. In the present case, the MOU between the parties, it is argued, is not a construction agreement simpliciter but a development agreement, whereby the defendant/landowner granted right, title and interest over a part of the land as well as the construction to be made thereupon to the plaintiffs, with exclusive rights to the plaintiffs to transfer major portions of the new construction, along with associated land rights, to third parties. The sewerage, roads, drainage system and other facilities to be built by

the plaintiffs are merely amenities associated with the housing project and do not qualify independently as “infrastructure”. Hence, it is argued by the appellants that sub-clause (vi) of Section 2(1)(c) is not attracted at all.

13. Learned senior counsel takes the court through the various provisions of the MOU in support of such contention and cites *Rameshwar and others v. State of Haryana and others*, reported at (2022) 17 SCC 1, where the Hon’ble Supreme Court observed that in a pure construction contract, the contractor has no interest in either the land or the construction which is carried out, but in various other categories of development agreements, the developer may have acquired a valuable right either in the property or in the constructed area. The terms of the agreement are crucial in determining whether an interest has been created in the land or in respect of rights in the land in favour of the developer and if so, the nature and extent of the rights. In the latter case, it was held that there is a transfer of rights, which denudes the contract of the character of a pure construction agreement.
14. Learned senior counsel appearing on behalf of the appellants next cites *Sanjay Suganchand Kasliwal v. Golden Dreams Buildcon Pvt. Ltd. and Others*, reported at 2023 SCC OnLineBom 2469, where a learned Single Judge of the Bombay High Court had interpreted a development agreement to be excluded from the conspectus of a pure construction agreement in the context of the CC Act.

15. Learned senior counsel for the appellants further argues that sub-clause (vii) of Section 2 (1)(c) of the CC Act envisages agreements relating only to those immovable properties which are used exclusively in trade or commerce at the time of the parties entering into the contract. In the present case, at the time of execution of the MOU, the property in question was a vacant land.
16. Learned senior counsel relies on *Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP and Another*, reported at (2020) 15 SCC 585, wherein the Hon'ble Supreme Court observed that a purposive interpretation of the Statement of Objects and Reasons of the CC Act and various amendments to the Code of Civil Procedure leaves no room of doubt that the provisions of the CC Act are required to be strictly construed. In such context, it was held that the words "used exclusively in trade and commerce" are to be interpreted purposively. The word "used" denotes "actually used" and it cannot be either "ready for use" or "likely to be used" or "to be used" but should be "actually used".
17. In support of the said proposition, learned senior counsel also cites *Gora Lall Seal v. Fine Infra Projects Pvt. Ltd.*, reported at 2023 OnLine Cal 1987, where *Ambalal Sarabhai (supra)*¹ was followed.
18. Learned senior counsel for the appellants next refers to sub-clause (xi) of Section 2(1)(c) of the CC Act, by which joint venture

1. *Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP and Another*, reported at (2020) 15 SCC 585

agreements have also been brought within the purview of the CC Act. Placing reliance on *Faqir Chand Gulati v. Uppal Agencies Private Limited and Another*, reported at (2008) 10 SCC 345, the appellants argue that in order to be a joint venture, there should be elements of shared profits and losses and each member has to have an equal voice in controlling the project. The unilateral construction and development by one of the parties to the agreement, without any control by the other or sharing of profit or loss, it is contended, does not come within the definition of “joint venture”.

- 19.** Learned senior counsel next cites *Abdul Rashid v. Bidhan De Sarkar and Another*, reported at 2025 SCC OnLine Cal 2048, where a learned Single Judge of this Court had observed in the context of the CC Act that a development agreement, by which the landowner permits the developer to make construction and transfers some rights as well, cannot be termed as a joint venture.
- 20.** Thus, in the present case, it is contended that the MOU between the parties does not comprise of a joint venture and, hence, falls outside the ambit of a “commercial dispute”.
- 21.** Lastly, the appellants submit that it is the case of none of the parties that a formal partnership agreement was entered into between the parties, although the expression “in partnership” has been loosely used in a stray sentence in the MOU. Hence, sub-clause (xv) of Section 2(1)(c) of the CC Act is also not attracted.

- 22.** It is argued by the appellants that, as such, the suit has rightly been instituted before the ordinary civil court having jurisdiction and not the designated commercial court, since the dispute involved in the suit is not a “commercial dispute” under the CC Act.
- 23.** Next addressing the merits of the case, learned senior counsel for the appellants contends that as per Clause 9 of the MOU, the project was to be completed within a period of four years from the date of receiving necessary clearances and sanctions from all concerned authorities. The defendant/respondent having applied for necessary permission on February 2, 2022, albeit on the request of the plaintiffs, which is still pending, the deadline for finishing the project stands extended and has not yet expired. Thus, the defendant/respondent has made a premature claim of penalty, since the liability to pay such penalty has not yet arisen.
- 24.** Moreover, it is submitted that the respondent has not yet terminated the contract, which is still alive. As such, the respondent is bound to honour the same by executing the necessary transfer deeds in favour of third party-purchasers. By withholding such execution, the defendant/respondent is shirking its contractual obligations.
- 25.** In any event, it is submitted that since the claim of refunds and damages is now *sub judice* in the suit and the respondent has not taken any legal action for recovery of penalty, the respondent

cannot stall the execution of transfer deeds in favour of third parties pursuant to the MOU.

- 26.** Learned counsel appearing for the defendant/respondent refutes the arguments of the appellants and contends that even if it may be argued that the MOU is not a partnership agreement, it has all the features of a joint venture agreement. Taking the court through the different clauses of the MOU, learned counsel seeks to impress upon the court that the project is contemplated in the agreement as a residential infrastructure project and the defendant/respondent has retained control jointly with the plaintiffs/appellants at all stages of the same.
- 27.** In Clause 4 of the MOU, it is provided that the function of providing necessary assistance and logistics support in the process of sanctioning of the plans for the project and also obtaining requisite clearances from the required authorities, including extending the necessary help to maintain liaison with the Government Agencies, rests with the respondent.
- 28.** It is the respondent which is to approve the detailed planning, engineering estimates and structural design for the project as well as to supervise the execution of the entire project, as provided in Clauses 5, 8 and 14 of the MOU.
- 29.** Again, the appellants are to keep the respondent informed about the guiding principles in the matter of marketing of the developed property, the marketing strategies adopted in its furtherance and

the changes thereto, if any, from time to time under Clauses 14 and 15 of the MOU, apart from the respondent having lent its name as the public partner towards marketing of the residential infrastructural development project for promotion and marketing, subject to prior approval of the contents, advertisements, publicity materials, etc. by the defendant/respondent in terms of Clause 10 of the contract.

- 30.** In view of the above, learned counsel for the respondent argues that the project is a joint venture within the contemplation of Section 2 (1)(c), sub-clause (xi) of the CC Act.
- 31.** Secondly, it is argued that the project is for construction and infrastructure and the MOU was awarded in terms of a tender floated by the defendant/respondent. Thus, the dispute is a “commercial dispute” under sub- clause (vi) of Section 2(1)(c) of the CC Act as well.
- 32.** Learned counsel appearing for the defendant/respondent cites *Bunga Daniel Babu v. Sri Vasudeva Constructions and Others*, reported at (2016) 8 SCC 429, where the Hon’ble Supreme Court held, inter alia, that it is only joint control by landlord and builder that can make an agreement a joint venture, irrespective of title or nomenclature or caption given to such agreement or contents of its body. However, the judgement was rendered in the context of the Consumer Protection Act and the question for consideration was whether the landowner was a “consumer” under the said Act.

Hence, it is argued, the ratio in the said judgements and other similar decisions do not have any bearing on the present question.

- 33.** Learned counsel for the respondent next relies upon a Division Bench judgement of the Andhra Pradesh High Court in the matter of *Blue Nile Developers Private Limited v. Movva Chandra Sekhar and Ors.*, reported at 2021 SCC OnLine AP 3964 where it was held that either giving any restrictive meaning or reading of a clause in isolation and expansion of one word only in the said clause would hamper and frustrate the meaningful definition of the said clause on its expansion, by abrogating certain category of transactions from the purview of the benefits of the CC Act. It was further held that all types of commercial transactions are saved in Section 2(1)(c) of the CC Act subject to the condition that it satisfies the specified value stipulated under the Act. It was observed by the Division Bench that no category of commercial transaction is excluded from the purview of the said Act.
- 34.** Learned counsel next contends that the plaintiffs have failed to meet the deadline stipulated for completion of the project as per the MOU and hence, have become liable to penalty at the rate of ₹ 5 lakh per month. Although for a brief period of two years, a relaxation was given subject to completion of the contract, by reducing the penalty to ₹ 1.5 lakh per month, in view of the plaintiffs/appellants having failed the extended timeline as well, the defendant/respondent is entitled to recover penalty at the rate stipulated in the contract.

- 35.** It is argued that the learned trial judge rightly refused to grant an interim injunction, thereby restraining the defendant/respondent from claiming any monetary amount by way of penalty or otherwise, which is not sanctioned by the Specific Relief Act.
- 36.** Moreover, it is argued, in the event the plaintiffs insist upon execution of transfer deeds in favour of third parties by the respondent, the plaintiffs/appellants are required to pay the contractual amount of penalty first to the defendant/respondent. Since such payments have not been made, the plaintiffs/appellants are not entitled to any injunction compelling the defendant/respondent to execute any such transfer deed.
- 37.** Learned counsel for the respondent next draws the attention of the court to the reliefs sought in the plaint and submits that the suit is entirely in the nature of a money suit and the plaintiffs/appellants cannot, in the garb of injunction, obtain the relief of specific performance of the MOU at the interlocutory stage.
- 38.** Accordingly, the respondent prays that the appeals be dismissed.
- 39.** Upon hearing learned counsel for the parties, this Court is of the opinion that before entering into the merits of the respective contentions of the parties, the preliminary objection as to the maintainability of the suit before an ordinary civil court is required to be adjudicated by resolving whether the dispute involved in the suit is a “commercial dispute” within the contemplation of the CC Act.

40. In order to decide the said question, Section 2(1)(c) is required to be set out:

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

....

- (c) *“commercial dispute” means a dispute arising out of—*
- (i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;*
 - (ii) export or import of merchandise or services;*
 - (iii) issues relating to admiralty and maritime law;*
 - (iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;*
 - (v) carriage of goods;*
 - (vi) construction and infrastructure contracts, including tenders;*
 - (vii) agreements relating to immovable property used exclusively in trader or commerce;*
 - (viii) franchising agreements;*
 - (ix) distribution and licensing agreements;*
 - (x) management and consultancy agreements;*
 - (xi) joint venture agreements;*
 - (xii) shareholders agreements;*
 - (xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;*
 - (xiv) mercantile agency and mercantile usage;*
 - (xv) partnership agreements;*
 - (xvi) technology development agreements;*
 - (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;*
 - (xviii) agreements for sale of goods or provision of services;*

- (xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;*
- (xx) insurance and re-insurance;*
- (xxi) contracts of agency relating to any of the above, and*
- (xxii) such other commercial disputes as may be notified by the Central Government.*

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

- (a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable 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;”*

41. Under sub-clause (vii) of Section 2(1)(c) of the CC Act, an agreement relating to immovable property comes within the ambit of “commercial dispute” only when such immovable property is used exclusively in trade and commerce.

42. In *Ambalal Sarabhai (supra)*², the Hon’ble Supreme Court has categorically observed that the words “used exclusively in trade or commerce” has to be interpreted purposefully and that the word “used” denotes “actually used” and it cannot be either “ready for use” or “likely to be used” or “to be used”. It was highlighted that the property should be “actually used” to come within the purview of commercial dispute under the CC Act.

2. *Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP and Another, reported at (2020) 15 SCC 585*

- 43.** Although the same principle was discussed in *Gora Lall Seal (supra)*³ by a Division Bench of this Court, no ratio was laid down in the order passed therein, which has been cited before us, and the matter was left open for adjudication after the amendment to the plaint was considered. Thus, much reliance cannot be placed on the said judgement as a precedent insofar as the present *lis* is concerned.
- 44.** In the instant case, it is an admitted position that the land in question, at the time when the tender was floated and the MOU was entered into between the parties, was a vacant land. Thus, it was not being used actually and at that juncture in either trade or commerce. Future use or contemplated use for commercial purpose, as per the ratio laid down in *Ambalal Sarabhai (supra)*⁴, cannot bring the dispute arising out of the agreement within the fold of a “commercial dispute”. Hence, the applicability of sub-clause (vii) of Section 2(1)(c) of the CC Act cannot but be ruled out in the present case.
- 45.** Proceeding further on the deductive path of elimination, it is required to be explored whether the MOU between the present parties comprises a partnership agreement. Although there is a stray phrase in the MOU that the respondent was desirous of

3. *Gora Lall Seal v. Fine Infra Projects Pvt. Ltd., reported at 2023 OnLine Cal 1987*

4. *Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP and Another, reported at (2020) 15 SCC 585*

undertaking the work of development of residential infrastructure on the land “in partnership” with the private developer/partner, the necessary ingredients of a partnership, including sharing of profit and loss, joint and several liability of the partners and other key components of a partnership are missing in the jural relationship between the parties created by the MOU. In fact, learned counsel for the respondent has not seriously argued that the MOU comprises a partnership agreement. As such, the applicability of sub- clause (xv) of Section 2(1)(c) of the CC Act can be ruled out as well at the outset.

- 46.** The next argument made by the respondent is that the MOU pens a joint venture between the parties. In *Faqir Chand (supra)*⁵, the Hon’ble Supreme Court discussed threadbare the essential ingredients of a joint venture. The learned Single Judge of this Court, in *Abdul Rashid (supra)*⁶, relied on the said judgment of the Supreme Court and came to the conclusion that the development agreement between the parties therein was not a joint venture agreement.
- 47.** Two of the ingredients discussed in *Faqir Chand (supra)*⁵, that is, an express agreement and a common purpose that the group intends to carry out by way of a business undertaking for a single defined project, are present in the instant case. However, the similarity with

5. *Faqir Chand Gulati v. Uppal Agencies Private Limited and others*, reported at (2008) 10 SCC 245

6. *Abdul Rashid v. Bidhan De Sarkar and Another*, reported at (2025) SCC OnLine Cal 2048

a joint venture agreement ends there insofar as the MOU between the instant parties is concerned.

- 48.** The other two key features of a joint venture, as discussed in the said report, namely sharing of profits and losses and the equal voice of each member in controlling the project, are missing. The contractual clauses relied on by the respondent in this regard cannot be elevated to the plane of control by the respondent. The respondent is merely a name-lender, enabling the developers/appellants to use the goodwill of the respondent, which is a public authority, for the purpose of marketing the project. Clause 14 of the MOU grants the respondent the right of “overall supervision”, which is rather toothless and without any sanction in the event the respondent wants to interfere with the execution of any key phase of the project.
- 49.** Although in terms of Clause 5 of the MOU the appellants are to get the approval of the respondent in respect of detailed planning, engineering estimates and structural design, it is the appellants who would be responsible for preparation of the same as per the self-same clause.
- 50.** The role of the respondent is limited to providing necessary assistance and logistic support in the process of sanctioning of the plans for the project and obtaining requisite clearances from the required authorities and to extend necessary help to maintain liaison with Government Agencies and Statutory Bodies for the

purpose of water supply, drainage, power supply and other related matters relevant to the project, at the ground level, the said functions are to be discharged under the MOU primarily by the appellants. Clause 4 of the MOU provides so.

- 51.** Clause 7 of the MOU stipulates that the appellants shall finance and institute both the remunerative and non-remunerative components of the project and, as per Clause 8, it is the appellants who are to execute the project in accordance with the guiding principles of the project.
- 52.** The marketing of the project, particularly the remunerative portion of the residential infrastructure development, to the prospective parties interested to purchase the flats/apartments/residential plots/commercial spaces, as per Clause 11 of the MOU, is also to be done by the appellants, who would have the sole discretion and prerogative, as per Clause 12, to market the remunerative property and to determine and realise the premium of the developed residential plots, bungalows, multi-storied buildings and commercial spaces as well as car parking spaces and entitled to take such premium without any objection of the defendant/respondent and without involving the defendant/respondent in any way.
- 53.** In other words, the entire project has to be concluded by the appellants/developers without any active interference or participation on the part of the defendant/respondent. Also, the

respondent would only have the rights to hold lottery for distribution of the LIG (Low Income Group) section of the residential houses which would come up at the completion of the project.

54. Thus, in the absence of any sharing of profits and losses between the parties and/or control over the project of the respondent, the MOU between the parties cannot be construed to be a “joint venture” agreement within the contemplation of sub-clause (xi) of Section 2(1)(c) of the CC Act.
55. This leaves for consideration only whether sub-clause (vi) of Section 2(1)(c) of the CC Act comes into play in the case at hand.
56. In *Rameshwar (supra)*⁷, the consideration before the Hon’ble Supreme Court was entirely different from the context of the CC Act. Certain land-owners challenged a land acquisition proceeding as fraudulent, inasmuch as the State machinery was used to further private ends by compelling the land-owners to transfer lands to colonizers/developers on the one hand and, on the other, by cancelling the land acquisition process. In such context, the Hon’ble Supreme Court entered into the question whether the agreements entered into by the land-owners were “development agreements” or pure “construction agreements”. The Hon’ble Supreme Court came to the conclusion that the agreements did not comprise of mere construction agreements but amounted to transfer of right, title and interest in the land and came to its conclusions in

7. *Rameshwar and others v. State of Haryana and others*, reported at (2022) 17 SCC 1

respect of compensation payable and other ancillary reliefs. Thus, the context of the said judgment was entirely different from the present consideration. Since it is well-settled that a judgment operates as a precedent only for what it decides directly and not any derivative interpretation thereof, the said report is not apt in the instant context.

57. In the said judgment, the Hon'ble Supreme Court relied on *Faqir Chand (supra)*⁸. However, in *Faqir Chand (supra)*⁹, the scope of consideration was whether the land-owners were "consumers" under the Consumer Protection Act. It was held in the said report, upon a consideration of the agreements-in-question, that if there was equal controlling participation by both the parties and sharing of profit and loss was contemplated, the same would be a joint venture, thereby taking the land-owners outside the ambit of the definition of "consumers". Thus, the said judgment was also rendered in a completely different context than the present one.

58. The Hon'ble Supreme Court, in *Rameshwar (supra)*⁹ also relied on a Three-Judge Bench decision of this Court in *Ashok Kumar Jaiswal v. Ashim Kumar Kar*, reported at 2014 SCC OnLine Cal 3497, where the Special Bench was considering whether the development agreements entered into between the parties therein came within the purview of Section 14(3)(c) of the Specific Relief Act. In such

8. *Faqir Chand Gulati v. Uppal Agencies Private Limited and others*, reported at (2008) 10 SCC 245

9. *Rameshwar and others v. State of Haryana and others*, reported at (2022) 17 SCC 1

context, it was observed that there were different types of development agreements. If the agreement was coupled with transfer of title and rights and not merely restricted to construction by the contractor, it would go outside the ambit of “construction” simpliciter. Hence, it is obvious that the said judgment is also not applicable to the present case, since here the scope of consideration is restricted to the examination as to what are “commercial disputes” under the CC Act.

59. The learned Single Judge of the Bombay High Court, in *Sanjay Suganchand Kasliwal (supra)*¹⁰, was considering whether the disputes between the parties was a commercial dispute within the scope of sub-clause (vii) [as opposed to sub-clause (vi)] of Section 2(1)(c) of the CC Act. In fact, the learned Single Judge held that the Trial Court therein had erroneously analysed the plaint with reference to sub-clause (vi) of the said Section and the conspectus was covered by sub-section (vii). Thus, the said judgment, even on a plain reading thereof, is not an authority on sub-clause (vi) of Section 2(1)(c) of the CC Act.

60. *Bunga Daniel Babu (supra)*¹¹, cited by the respondent, is also not apposite in the present context, since the consideration therein was also whether development agreements having been entered into between the parties, the land-owner could be said to be a

10. *Sanjay Suganchand Kasliwal v. Golden Dreams Buildcon Pvt. Ltd. and Others*, reported at 2023 SCC OnLineBom 2469

11 *Bunga Daniel Babu v. Sri Vasudeva Constructions and Others*, reported at (2016) 8 SCC 429

“consumer” under the Consumer Protection Act. The Hon’ble Supreme Court, in the said report, followed *Faqir Chand (supra)*¹² and came to the conclusion that if there was no say or control on the part of the land-owner over the construction and he does not participate in the business, the land-owner would be considered to be a consumer. As such, we do not find that the said judgment lays down any precedent in respect of the CC Act.

61. Rather, the Division Bench judgment of the Andhra Pradesh High Court in *Blue Nile Developers (supra)*¹³ is apposite to the present context. There, the Division Bench came to the conclusion that the legislature had included various types of commercial transactions within the fold of “commercial dispute” and either giving restrictive meaning or reading of a clause in isolation and expansion of one word only would hamper and frustrate the meaningful definition of the said clause. The Division Bench held that sub-clause (vi) would take within its fold not only construction contracts or infrastructure contracts simpliciter but also contracts which had components of both.

62. Let us now examine the language of Section 2(1)(c)(vi) of the CC Act itself.

12. *Faqir Chand Gulati v. Uppal Agencies Private Limited and others*, reported at (2008) 10 SCC 245

13. *Blue Nile Developers Private Limited v. Movva Chandra Sekhar and Ors.*, reported at 2021 SCC OnLine AP 3964

- 63.** As held by the Hon'ble Apex Court in *Ambalal Sarabhai (supra)*¹⁴, a purposive interpretation in consonance with the object and purpose of the CC Act has to be given to the Sections thereof, thus implying a strict construction. Going by the said yardstick, sub-clause (vi) refers to “construction and infrastructure contracts, including tenders”. Hence, the interpretation of the said provision, to be in consonance with the object and purpose of the CC Act, has to be through the focal lens of “commercial dispute”. The yardstick to be applied is not whether an agreement is a pure construction agreement or a development agreement but whether it comprises of a commercial transaction.
- 64.** It is not necessary for a transaction to involve equal controlling interest or profit-earning on the part of both parties, to be labelled as “commercial”, it would suffice if the transaction is ‘commercial’ from the perspective of even one of the parties, such as regular business transactions by traders. In sub-clause (xx) of Section 2(1)(c), even insurance and re-insurance contracts have been included, in which only one of the parties, being the insurer, looks at the contract from the perspective of commerce whereas the insured has no commercial benefit or profit therefrom. Thus, it is fairly indicated in the different sub-clauses of Clause (c) of Section 2(1) that for an agreement to be a commercial one, it is not

14. *Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP and Another*, reported at (2020) 15 SCC 585

necessary that both parties have to have a commercial interest or share in profit and loss. It would suffice if the transaction is a commercial one even from the viewpoint of one of the parties.

- 65.** Applying such yardstick, what has to be looked into is whether an agreement is for construction, be it in the form of a development agreement or a construction agreement simpliciter. If it is a development agreement, it is all the more a commercial transaction, since a developer would definitely enter into the same with commercial motive. Thus, the distinction between pure construction agreements and development agreements, as highlighted in the cited judgments in the context of other statutes, would be an erroneous yardstick under the CC Act and juxtaposing the rationale of the said decisions to the present case would be a comparison between disparate concepts, somewhat like the adage “apples and oranges”.
- 66.** In the present case, there cannot be any doubt that both the ingredients of ‘construction’ and ‘infrastructure’ are met by the MOU between the parties. The relevant clauses of the MOU indicate that for completion of the project, an elaborate network of roads, sewerage, drainage system and other infrastructural constructions have also to be built up. Moreover, the MOU itself is the result of a tender process. Thus, the MOU clearly comes within the definition of a “commercial dispute” within the scope of sub-clause (vi) of Section 2(1)(c) of the CC Act, since all the ingredients envisaged

therein, including construction, infrastructure and tender, are satisfied.

- 67.** Thus, the dispute raised in the suit is specifically covered by Section 2(1)(c)(vi) of the CC Act and is a “commercial dispute” of more than the specified value as enumerated in the said Act. Hence, the learned Trial Judge, being an ordinary civil court and not a designated commercial court under the CC Act, did not have jurisdiction to entertain the suit or pass any orders therein.
- 68.** We are aware that the objection as to jurisdiction was not taken specifically by the respondent in the trial court. However, since such issue relates to the subject-matter jurisdiction of the court, there is no bar in the appellate court looking into the same for the first time. The CC Act, 2015, along with the consequential amendments to the Code of Civil Procedure, not only designate a different forum for institution of such suits but fast-tracks the suit by providing a complete eco-system, including a summary procedure and other trappings, thus hitting at the root of the jurisdiction of an ordinary civil court to take up such matters. As such, the objection directly pertains to the subject-matter jurisdiction of the court and hits at the roots of its authority.
- 69.** As a result of the above conclusion, the option before the Trial Court would be to return the plaint to be presented before the appropriate Commercial Court having jurisdiction. Since Section 15 of the CC Act, 2015 relates only to already pending suits, there is no scope of

transfer of the suit, since it was instituted after enactment of the CC Act, 2015. The question which thus arises is whether, in view of coming to the conclusion that the impugned orders were passed without inherent jurisdiction, we should also deal with the other issues raised in the appeal, since the Trial Court refused ad interim injunction on merits by the impugned orders. We prefer to answer the said question in the affirmative, since in the event the suit goes to some other court, the challenge to the other grounds on which the ad interim injunction was refused would stand unresolved, despite being adjudicated by the Trial Court in its own way.

70. Hence, we choose to deal with the other grounds of appeal as well.

71. On merits, insofar as the first impugned order dated May 17, 2025 is concerned, the ad interim order sought by the plaintiffs/appellants is directly contradictory to Section 41(b) of the Specific Relief Act, 1963, since it tantamounts to restraining the defendant/respondent from making any claim on the basis of the MOU, including monetary claims. Hence, such prayer was rightly turned down by the learned Trial Judge.

72. Insofar as the second impugned order dated June 9, 2025 is concerned, the same stems from a subsequent injunction application filed by the plaintiffs/appellants herein. By the order dated May 16, 2025, which supposedly furnished cause of action for the second injunction application, the defendant/respondent merely reiterated its stand that the time stipulated for completion of the

project in the MOU had already expired and the plaintiffs are liable to pay penalty in terms thereof and no further effect can be given to the terms of the MOU.

- 73.** Hence, the restraint order regarding coercive or consequential steps on the basis of such order overlap with the prayers made in the first injunction application to a large extent, since, if such an injunction is granted, the respondent would still be restrained from making any claim on the basis of the MOU, in respect of penalty or otherwise, which cannot be granted for the reasons as attributed above.
- 74.** Insofar as the interference with the appellants' project activities are concerned, it would be premature at this stage to grant an ad interim injunction, which would tantamount to compelling the defendant /respondent to execute deeds of transfer in favour of third parties pursuant to the MOU without resolution of the issue as to whether the rights of the plaintiffs under the MOU to complete the project still subsists, in view of the same having not been completed even within the extended time.
- 75.** That apart, the said order would be in the nature of a mandatory injunction directing the respondent to comply with the terms of the MOU, which would not only be premature at this stage, since the liability of payment of penalty on the part of the plaintiffs stands unresolved, but would traverse beyond the scope of the reliefs sought in the main suit. The suit, as framed, is entirely based on

money claims, relating to refund of penalty already paid, damages and other consequential reliefs. In such a suit, in the garb of an injunction, a relief of specific performance cannot be obtained at this stage, without any amendment to the plaint to that effect.

76. A bare perusal of the reliefs sought in the plaint indicates that prayers (a) to (e) therein relate directly to money claims. Relief (f) is for declaration that no penalty is payable under Clause 9 of the MOU dated June 7, 2007 and prayer (g) is for injunction restraining the defendant from taking any coercive action demanding or claiming any amount by way of penalty in terms of the said Clause. Thus, the main reliefs sought, as discussed above, all relate to money claims and/or orders seeking to resist money claims on the part of the defendant/respondent. Nowhere within the four corners of the plaint prayers do we find any relief for specific performance of the MOU. As such, the learned Trial Judge was justified in passing the second impugned order which comprises of a deemed refusal of the prayer made in the second injunction application at the ad interim stage.

77. Thus, we do not find any scope of interference with either of the impugned orders.

78. Accordingly, F.M.A. No. 1484 of 2025 is dismissed on contest, thereby affirming Order No. 02 dated May 17, 2025 passed by the learned Civil Judge (Senior Division) at Durgapur, District – Paschim Bardhaman in Money Suit No. 25 of 2025.

- 79.** F.M.A. No. 1485 of 2025 is also dismissed on contest, thereby affirming Order No. 03 dated June 9, 2025, passed by the learned Civil Judge (Senior Division) at Durgapur, District – Paschim Bardhaman in Money Suit No. 25 of 2025.
- 80.** The learned Trial Judge shall return the plaint to the plaintiffs/appellants, to be presented before the appropriate Commercial Court having jurisdiction to take up the suit, in compliance with the procedure prescribed in Order VII Rule 10 of the Code of Civil Procedure, within a fortnight of communication of this order to the learned Trial Court.
- 81.** CAN 1 of 2025, in connection with both the appeals, are also dismissed accordingly.
- 82.** There will be no order as to costs.
- 83.** Urgent certified copies, if applied for, be supplied to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)