

**IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
ORIGINAL SIDE**

Present:

**The Hon'ble Justice Debangsu Basak**

**And**

**The Hon'ble Justice Md. Shabbar Rashidi**

**APOT 99 of 2025  
With  
CS 126 of 2023  
IA No. GA 1 of 2025**

**Ramji Lal Agarwal**

**Vs.**

**Sourav Agarwal**

**APOT 95 of 2025**

**Sourav Agarwal**

**Vs.**

**Ramji Lal Agarwal**

For the appellant : Mr. Sabyasachi Chowdhury, Sr. Adv.  
Mr. V.V.V. Shastry, Adv.  
Mr. Rahul Poddar, Adv.

For the respondent : Mr. Anuj Singh, Adv.  
Mr. Sourajit Dasgupta, Adv.  
Mr. Varun Kothari, Adv.  
Mr. Shayak Mitra, Adv.  
Mr. Rupal Singh, Adv.  
Mr. Ashok Kumar Singh, Adv.

Hearing concluded on : 03.11.2025

Judgment on : 14.11.2025

**Md. Shabbar Rashidi, J.:-**

**1.** The two appeals are directed against judgment and order dated March 12, 2025 passed in respect of GA No 1 of 2023 and GA No. 2 of 2023 in CS No. 126 of 2023.

**2.** By the impugned judgment and order, the learned trial Court dismissed GA No 1 of 2023 filed in CS No. 126 of 2023 seeking grant of an interim order. By the self-same judgment and order the learned trial Court allowed GA No. 2 of 2023 filed in the said suit whereby, the suit was sought to be dismissed on the ground that the issues involved in the suit were of a commercial nature and as such only a court having been constituted under the provisions of Commercial Courts Act, was competent to decide on the issues involved in such suit.

**3.** Learned senior advocate for the appellant contended that the subject matter involved in the suit emanated out a family arrangement among the members of the family and as such, the same cannot fall within the expression of 'Commercial Disputes' as defined under the provisions of Commercial Courts Act, 2015. The learned trial Court was not justified in passing the impugned judgment and order holding the subject matter of the suit as commercial disputes.

**4.** It was also submitted by learned senior advocate for the appellant that the learned trial Court erred in arriving at a conclusion that the dispute with regard to use of the specific trade mark by the

respondent fell under the definition of commercial disputes in relation to intellectual property and was covered under sub-sections (vii) and (xii) of Section 2 (1) (c) of the Act of 2015. In support of his contention, learned advocate for the appellant relied upon an unreported decision in **IA No. GA-COM/2/2024** in **CS (Com) No. 4 of 2023 (T. E. Thomson & Company Limited Vs. Swarnalata Chopra Nee Kapur & Another)**.

**5.** Learned senior advocate for the appellant further submitted that while passing the impugned judgment and order, learned trial Judge overlooked the fact that the respondent was carrying on business using the goodwill of family business, in complete violation of the terms of family arrangement entered into between the family members.

**6.** Learned Senior advocate for the appellant also submitted that the learned trial Judge failed to appreciate that an order of ad-interim injunction was passed at the initial stage where the learned trial Court was satisfied with the prima facie case made out by the appellants. The respondent carried an appeal from such order being APOT 247 of 2023, which was dismissed. According to learned advocate for the appellants, the points raised before learned Judge was barred by the principles of res-judicata. Nevertheless, the learned trial Court passed the impugned order without considering that the issues raised before it were barred by the principles of res-judicata.

7. In support of the proposition that the subject matter involved in the suit emanated out of a family arrangement which cannot be considered within the purview of 'Commercial Disputes', learned senior advocate for the appellant relied upon **(2006) 4 Supreme Court Cases 658 (Hari Shankar Singhania and Others Vs. Gaur Hari Singhania and Others)**.

8. The learned advocate for the appellant also contended that the learned trial Court erred in passing the impugned judgment and order placing reliance upon the decision reported in **(2020) 15 Supreme Court Cases 585 (Ambalal Sarabhai Enterprises Limited Vs. K.S. Infraspace LLP and Another)**.

9. Against the self-same judgment and order dated March 12, 2025, the defendant in the suit filed a separate appeal being APOT 95 of 2025. The defendant/appellant in APOT 95 of 2025, although, supported the impugned judgment and order insofar as it related to the finding of the learned Trial Court that the Civil Suit being CS No. 126 of 2023 was not maintainable in the Original Jurisdiction of this High Court. As also so far as it related to the order which allowed IA No. GA 2 of 2023 filed on his behalf.

10. According to the defendant/respondent in APOT 95 of 2025, while deciding IA No. GA 2 of 2023 in CS 126 of 2023, the learned Trial Court went on to decide certain issues touching upon the merits of the case. It was contended that since in Original Jurisdiction of this

High Court, it was decided that the suit, as framed, was not maintainable in such jurisdiction, the learned Trial Court had not jurisdiction to pass findings touching upon the merits of the case. Such findings, according to the defendant/appellant were perverse and devoid of cogent reasons. Once the plaint was returned, no other issues raised by the appellants could have been decided by learned Trial Court.

**11.** It was further submitted on behalf of the defendant/appellant that the learned Trial Judge failed to appreciate that the alleged family agreement sought to be enforced against the defendant who was not binding upon him. The defendant was not a signatory to the family agreement inspite of being a major at the time of its execution, could not be bound by such agreement. The defendant also contended that the learned Trial Judge overlooked the fact that the defendant has been running the shop room from the disputed premises since 2017 and the claims lodged by the plaintiff, through the suit, were barred by limitation. The defendant/plaintiff also submitted that the learned Single Judge wrongly rejected his argument that the plaintiff was not entitled to seek enforcement of a negative covenant in the family agreement in terms of Section 42 of the Specific Relief Act, 1963.

**12.** On the other hand, learned Senior advocate for the respondent submitted that the disputes between the parties arose out of a family arrangement but such family arrangement exclusively dealt

with use of goodwill of the family business. Although, the said family arrangement was in respect of the partition or separate allotment of several landed properties but at the same time, the terms and conditions of such family arrangement were exclusively in respect of the family business. In such view of the facts, the disputes involved in the suit, squarely fell within the ambit of 'Commercial Disputes' as defined under Section 2 (1) (c) of the Act of 2015. As such learned trial judge rightly passed the impugned judgment and order holding the suit to be not maintainable in a suit court.

**13.** According to the case made out, one Mangi Lal Agarwal had established a business of dry fruits, dry vegetables and spices with other products in the trade name of 'Sindharam Sanwarmal' which, subsequently, acquired goodwill and reputation in the business of such articles. The said Mangi Lal Agarwal was the father of the plaintiff and grandfather of the defendant in the suit. Mangi Lal Agarwal had five sons who used to run the business under the name and style of 'Sindharam Sanwarmal & Co.' situated at 43/44, Cotton Street, Kolkata- 70007, with their father. The sons of Mangi Lal Agarwal also expanded their family business by setting up several outlets of the business at different locations across the country.

**14.** During continuance of such business, Mangi Lal Agarwal died on January 2, 2006. His wife died on July 28, 2016 and one of the sons of Mangi Lal Agarwal had also died on February 4, 2016.

Following the aforesaid deaths, the heirs of Mangi Lal Agarwal agreed and executed a family arrangement on January 13, 2017. In the said family arrangement, provisions were made and agreed by the parties to ensure that the goodwill earned by the trade name 'Sindharam Sanwarmal & Co.' can be used by all the five branches of the sons of Mangi Lal Agarwal in their individual business.

**15.** By the family arrangement, the shops, godown and other establishments wherefrom the five branches of the heirs of Mangi Lal Agarwal used to carry on their business were identified and separately allotted to such branches of heirs. Under such family arrangement, the plaintiff was allotted with one shop room on the ground floor (facing roadside), in premises No. 43/44, Cotton Street, Kolkata- 70007, where he used to carry on business of dry fruits, spices, dry vegetables and other products in the name and style of 'Sindharam Sanwarmal. Whereas, the father of the defendant namely Mohan Kumar Agarwal, who died on September 22, 2019, was allotted with one shop room on the ground floor (facing roadside), in premises No. 43/44, Cotton Street, Kolkata- 70007. The father of the defendant used to carry on business of dry fruits, spices, dry vegetables and other products from such shop room, allotted to him in the family arrangement, under the name and style of 'Shree Hanuman Stores'.

**16.** It was further case that from both the shop rooms, namely, 'Sindharam Sanwarmal & Co' and 'Shree Hanuman Stores', the

business of dry fruits, spices, dry vegetables and other products were carried on. The trade name 'Sindharam Sanwarmal & Co' was registered with its logo under the Trademarks Act in the name of Gopal Agarwal and Smt. Rita Devi Agarwal (since deceased), wife of Mohan Kumar Agarwal who was the mother of the defendant, though, the business was always treated as family effect. It was further case that according to the family arrangement all the branches of the heirs of Mangi Lal Agarwal were entitled to use the name of 'Sindharam Sanwarmal & Co' with either a suffix or prefix. However, as per clause 3 of the family arrangement, none of the heirs of the five branches was entitled to operate any business with such a name within a radius of 1 km of the existing shop room. The existing shoproom identified in clause 3 of the family arrangement, where the shop rooms situated on the ground floor of premises No. 43/44, Cotton Street, Kolkata 700007 carrying on business in the name and style of 'Sindharam Sanwarmal & Co' and 'Shree Hanuman Stores'.

**17.** A case was made out that in flagrant violation of the terms of the family arrangement, the defendant started the business of dry fruits, spices, dry vegetables and other products in the name and style of 'Sindharam Sanwarmal Mewawala' from the shop room which was earlier running the same business in the name of 'Shree Hanuman Stores'. It was contended that the defendant was permitted to run any

business in the trade name of Sindharam Sanwarmal' but not within a radius of one Kilometer of the existing shop room.

**18.** Per contra, the defendants came up with a case that the goodwill to the trade name Sindharam Sanwarmal is a coparcenary asset belonging to the joint family of late Mangi Lal Agarwal and its successors. The plaintiff/appellant cannot claim an exclusive right over such asset. The defendant/respondent has been carrying on business in the name and style of 'Sindharam Sanwarmal Mewawala' for over five years. He has obtained Goods and Service Tax Certificate and Enlistment Certificate in his name in respect of such business. The plaintiff/ appellant allowed such business to be carried on in the said premises by the defendant for such period. As such, the plaintiff is now not entitled to raise such dispute at a belated stage.

**19.** It was also contended on behalf of the defendant/respondent that inspite of him being a major at the time of family arrangement, he was not required to sign such agreement. Since all the family members did not agree to the terms of such family arrangement, it has no binding force. He has been carrying on business in the trade name of Sindharam Sanwarmal Mewawala', on the strength of the goodwill attached to such trade name being joint family asset of Mangi Lal Agarwal and the defendant being legal heir and successor of said Mangi Lal Agarwal.

**20.** It was also contended on behalf of the defendant/respondent that the alleged family arrangement was in respect of partition of the joint family business together with the properties from where such business was conducted. According to the defendant, the disputes raised by the appellant/plaintiffs falls within the definition of 'Commercial Disputes' as defined under Section 2 (1)(c) of the Commercial Courts Act, 2015. In such view of the facts, no suit court has the jurisdiction to try such suit. The Commercial Courts only, has the jurisdiction to decide on the issues raised in the suit.

**21.** The plaintiff/appellant filed IA No. GA1 of 2023 seeking an order of injunction restraining the defendant/respondent from carrying on business in the name of Sindharam Sanwarmal Mewawala. At the same time, the defendant also filed IA No. GA 2 of 2023 seeking dismissal of the suit being CS No. 126 of 2023 on the ground that the issues raised in such suit were commercial in nature and could only be adjudicated by a Commercial Court. Upon hearing the parties, the learned trial judge, by the impugned judgment and order, allowed IA No. GA 2 of 2023 and dismissed IA No. GA 1 of 2023 filed on behalf of the appellants.

**22.** In the facts and circumstances of the case, the only issue that has fallen for our consideration is, whether the issues raised under the suit being CS No. 126 of 2023, are commercial in nature and falls under the definition of Commercial Disputes as defined under Section

2 (1) (c) of the Commercial Courts Act, 2015 and whether the suit as framed is triable before the suit court or before the Commercial Court having jurisdiction.

**23.** The learned trial Court, while allowing GA 2 of 2023 filed on behalf of the appellant/plaintiff, held that,

*“30. The defendant is running the business in the premises in question under the name and style of “Sindharam Sanwarmal Mewawala”. The only question raised by the plaintiff that the defendant cannot run the business under the name and style of “Sindharam Sanwarmal Mewawala” in the said place in terms of Clause 3 of the Family Agreement. In the case of Ambalal Sarabhai Enterprises Limited vs. K.S. Infraspace LLP & Anr. reported in (2020) 15 SCC 585 the Hon’ble Supreme Court held as follows:*

*“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.”*

*31. In the present case also the defendant is using the trademark “Sindharam Sanwarmal Mewawala” and is exclusively using the said premises for the purpose of business, thus, the case is totally covered in Clause (vii) and (xvii) of Section 2(1)(c) of the Commercial Courts Act, 2015.*

*32. In view of the above, this Court finds that the suit filed by the plaintiff is not maintainable before this Court. Accordingly, the plaint is returned to the plaintiff with the liberty to file the same before the appropriate court.”*

**21.** Admittedly, late Mangi Lal Agarwal started a business of dry fruits, spices, dry vegetables and other products and earned goodwill in the trade name of “*Sindharam Sanwarmal*”. The successors and legal heirs of late Mangi Lal Agarwal jointly ran the family business and on the death of their predecessor, continued to deal in the same family business. There was a family arrangement in respect of division of the family business in the trade name of “*Sindharam Sanwarmal* and the properties from where it was operated, although, the defendant claimed that he was not a signatory to such arrangement. It is also not in dispute that the plaintiff was allotted a shop room in the ground floor of premises No. 43/44, Cotton Street, Kolkata 700007 under the name and style of “*Sindharam Sanwarmal & Co*”. whereas the defendant was allotted a shop room in the ground floor of premises No. 43/44, Cotton Street, Kolkata 700007 under the name and style of “*Shree Hanuman Stores*”.

**22.** The family arrangement considered the two shop rooms allotted in favour of the plaintiff/appellant and the defendant/respondent as the ‘existing’ establishment and contained a covenant that all the five branches of the legal heirs of late Mangi Lal Agarwal would be entitled to use the goodwill of family business under

the trade name of “Sindharam Sanwarmal & Co” but no one would carry on business in such trade name within a radius of one Kilometer of the existing establishment.

**23.** The plaintiff came up with a case that the defendant converted the trade name of the shop room allotted in his share from ‘Shree Hanuman Stores’ to “Sindharam Sanwarmal Mewawala”. Such an action on the part of the defendant, according to plaintiff, was in violation of the terms of the family arrangement. The defendant was not entitled to use of goodwill of the trade name of “Sindharam Sanwarmal” within one kilometer of the existing establishment.

**24.** The defendant came up with a case that the disputes raised by the plaintiff in the suit being CS 126 of 2023 were exclusively in the nature of Commercial Disputes as defined under the Commercial Courts Act, 2015 and could only be adjudicated by a Commercial Court.

**25.** Section 2 (1) (c) of the Act of 2015 defines Commercial Disputes. It would be appropriate to set out the provisions, more specifically Section 2 (1) (c)(vii) and (xii) which are as under:

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

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

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

*(xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits.”*

**26.** According to the plaintiff/appellant, the family arrangement was merely to effectuate partition of the immoveable properties, more specifically, the shop rooms, held by the parties to such family arrangement, either in their individual name or jointly or in their trade name including tenancies, and therefore, it does not fall within the definition of ‘Commercial Disputes’ as defined under the provisions of the Act of 2015.

**27.** At the time of execution of the family arrangement, some 26 numbers of immoveable properties were enumerated which were sought to be divided amongst the legal heirs of late Mangi Lal Agarwal. In order to adjudicate the nature of the disputes, it would be apposite to set out the terms of such family arrangement which are in following terms, that’s to say:

1. *“That the parties agree on and undertake with each other to sign and execute and if necessary register all necessary documents, papers and deeds of giving effect to the allotments as hereinabove stated. The allottees of the concerned property shall be at the cost and expenses were of.*
2. *The parties Arianna and undertake to each other to do all acts deeds and things which may be required for effectuate thing the terms and conditions of the family arrangement. The*

*respective allottees shall be handed over all the concerned original deeds/papers of their respective shares.*

3. *It is recorded that there are three shop rooms either under the tradename Sindharam Sanwarmal or with some suffix which has been allotted to First Party, Third Party and Fifth Party and only the second party and for party can start only one shoproom each using tradename Sindharam Sanwarmal with some prefix or suffix. For your no business shall be started with these names within 1 km of the existing shoproom.*

4. *It is recorded that none of the parties or their sons shall give franchise of tradename of Sindharam Sanwarmal to any other person(s)/entity without prior written consent of all the parties as directed in the last will dated April 5, 2016 of late Smt. Santra Devi Agarwal.*

5. *It is recorded that Sindharam Sanwarmal & Co. Has been registered under the Trademarks Act, 1999 wide Trade Mark Nos. 880166 and 880167 dated October 6, 1999 with the logo in the name of fifth party, Gopal Agarwal and Smt. Rita Devi Agarwal, wife of fourth party Mohan Kumar Agarwal. However it is recorded that all the parties herein shall use the said logo of Sindharam Sanwarmal.*

6. *It is further recorded that the respective allottees have been allotted their respective shares with all the assets and liabilities and shall be liable and responsible for payment of Income Tax, Sales Tax, Municipal Tax and all other statutory liabilities in respect of the allotments made herein including arrears, if any.*

7. *That this agreement shall be binding upon the parties, executors and legal representatives of all the parties.*

8. *That the parties hereto shall have separated in business and properties for all time to come from the date of*

*these presents. It is recorded that the parties are already separated in residence and mess.*

*9. That it is recorded that the segment has been arrived at for the benefit of and peace in the family.*

*10. That it is recorded that this agreement has been arrived at without any coercion, fraud and undue influence.”*

**28.** Therefore, from the terms of the family arrangement dated January 13, 2017 it is evident that it was executed to record division of 26 numbers of immoveable properties held by the legal heirs of late Mangi Lal Agarwal. Such properties included the shop rooms exclusively used for the purpose of running business in the Trade name of Sindharam Sanwarmal, its godowns and other establishments which ostensibly included the residential flats etc. However, clause 8 of the family arrangement, in unequivocal terms declared that “It is recorded that the parties are already separated in residence and mess.” If that be so, the family arrangement was therefore, exclusively limited to the divisions of business establishments, godowns etc. using the trade name Sindharam Sanwarmal. It also provisioned for usage of the goodwill of the trade name Sindharam Sanwarmal by the successors and legal heirs of late Mangi Lal Agarwal. In that view of the facts, the issues raised in the suit squarely falls within the definition of ‘Commercial Disputes’ in terms of Section 2 (1) (c) (vii) of the Act of 2015.

**29.** A Coordinate Bench of this Court, in **T.E. Thoson & Company Limited** (supra) observed that,

*“68. The expression ‘relating to’ mentioned in section 6 is of wide import. In order to decide whether a suit involves a commercial dispute, we may have to refer to a definition of ‘commercial dispute’ as given in Section 2(1)(c) of the Act of 2015.*

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

*.....*

*(c) “Commercial Dispute” means a dispute arising out of —*

*..... (emphasis supplied)*

*69. The instant matter is in relation to a suit concerning an immovable property. Hence for the present purpose, the discussion is confined to sub-clause (vii) of Section 2 (1)(c) of the Act of 2015. The said sub-clause (vii) of 2 (1)(c) reads as follows:-*

*“2(1)(c)(vii)- agreements relating to immovable property used exclusively in trade or commerce”.*

*70. Section 6 read with the aforesaid clause of the Act of 2015 would confer jurisdiction on the Commercial Court to decide a dispute arising out of an agreement relating to immovable property used exclusively in trade or commerce. The expression used “exclusively in trade or commerce” has not been referred to the Special Bench and hence we are not expressing any view*

*on the said expression. The expressions “relating to” and “arising out of” are of wide import and considered to be same and similar to the expression “concerned with” or “connected with” the dispute, as would appear from the decision of the Hon’ble Supreme Court in Mansukhlal Dhanraj Jain & Ors.*

*(supra) where in paragraphs 11, 14 to 16 the scope and ambit of these expressions were considered. It is stated thus:-*

*“11. In order to resolve the controversy posed for our consideration, it will be appropriate to note the relevant statutory provision having a direct bearing on this question. Section 41(1) of the Small Cause Courts Act reads as under:*

*.....  
.....”*

**30. *Hari Shankar Singhania*** (supra) deals with the binding effect and applicability of a family arrangement vis-à-vis Limitation Act. To our considered view, it has no bearing on the scope of such arrangement, if it deals in immovable properties exclusively used in trade and commerce and implication of the Act of 2015. In such case, the Hon’ble Supreme Court laid down that,

*“42. Another fact that assumes importance at this stage is that, a family settlement is treated differently from any other formal commercial settlement as such settlement in the eye of the law ensures peace and goodwill among the family members. Such family settlements generally meet with approval of the courts. Such settlements are governed by a special equity principle where the terms are fair and bona fide, taking into account the well-being of a family.*

*43. The concept of “family arrangement or settlement” and the present one in hand, in our opinion, should be treated differently. Technicalities of limitation, etc. should not be put at risk of the implementation of a settlement drawn by a family, which is essential for maintaining peace and harmony in a family. Also it can be seen from decided cases of this Court that, any such arrangement would be upheld if family settlements were entered into to allay disputes existing or*

*apprehended and even any dispute or difference apart, if it was entered into bona fide to maintain peace or to bring about harmony in the family. Even a semblance of a claim or some other ground, as say affection, may suffice as observed by this Court in Ram Charan Das v. Girjanandini Devi*

44. *In Lala Khunni Lal v. Kunwar Gobind Krishna Narain the Privy Council examined that it is the duty of the courts to uphold and give full effect to a family arrangement.*

45. *In Sahu Madho Das v. Pandit Mukand Ram placing reliance on Clifton v. Cockburn and Williams v. Williams this Court held that a family arrangement can, as a matter of law, be implied from a long course of dealings between the parties. It was held that: (SCR p. 43)*

*“[S]o strongly do the courts lean in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all, that we have no hesitation in taking the next step (fraud apart) and upholding an arrangement....”*

46. *The real question in this case as framed by the Court was whether the appellant-plaintiff assented to the family arrangement. The Court examined that “the family arrangement was one composite whole in which the several dispositions formed parts of the same transaction”.*

**31.** In ***Ambalal Sarabhai Enterprises Limited*** (supra) while dealing with an order relating to an application under Order VII Rule 10 of the Code of Civil Procedure, the Hon’ble Supreme Court formulated the point of adjudication to the following:

*“6. At the outset, it is noticed that the consideration required in the instant case is as to whether the transaction between the parties herein which is the subject-matter of the suit could*

*be considered as a “commercial dispute” so as to enable the Commercial Court to entertain the suit. In that regard, it is necessary to take note of Section 2(1)(c)(vii) of the CC Act, 2015. The said provision to the extent relevant is extracted here below for reference.*

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

*(a)-(b)                   \*                   \*                   \**

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

*(i)-(vi)                   \*                   \*                   \**

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

*(viii)-(xxii)                   \*                   \*                   \*”*

*From a perusal of the provision relied upon by the learned Senior Advocates it is noticed that the disputes arising out of agreements relating to immovable property used exclusively in trade or commerce will qualify to be a commercial dispute to be tried by Commercial Courts. The question therefore would be that, in the instant case though the parties have entered into a sale transaction of the immovable property and presently in the suit the registration of a mortgage deed pertaining to the immovable property is sought, whether the immovable property involved could be considered as being used exclusively in trade or commerce.”*

**32.** In such case, Hon’ble Supreme Court laid down the principles in the following terms that’s to say:

*“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."*

**33.** In the said case of **Ambalal Sarabhai Enterprises Limited** (supra), the Hon'ble Supreme Court further laid down that,

*"42. The object and purpose of the establishment of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of the High Court is to ensure that the cases involved in commercial disputes are disposed of expeditiously, fairly and at reasonable cost to the litigants. Keeping in view the object and purpose of the establishment of the Commercial Courts and fast tracking procedure provided under the Act, the statutory provisions of the Act and the words incorporated thereon are to be meaningfully interpreted for quick disposal of commercial litigations so as to benefit the litigants especially those who are engaged in trade and commerce which in turn will further economic growth of the country. On the above reasonings, I agree with the conclusion arrived at by my esteemed Brother A.S. Bopanna, J."*

**34.** Coming back to the facts of the case at hand, as noted above, the legal heirs and successors of late Mangi Lal Agarwal, entered into and executed the family arrangement dated January 13, 2017 agreeing to divide their immovable properties amongst themselves. The family arrangement exclusively dealt in the immovable properties viz. shop

rooms, godowns and other establishments exclusively used in the trade name of their family business Sindharam Sanwarmal. Such family arrangement also dealt in the usage of the trade name Sindharam Sanwarmal by the legal heirs and successors of late Mangi Lal Agarwal. We have also noted hereinabove that although, certain residential properties were also sought to be ostensibly divided by the family arrangement amongst such heirs but the terms of the arrangement specifically declared that the parties had already separated in residence and mess.

**35.** In that view of the facts, the subject matter of the family arrangement dated January 13, 2017, apparently, were the immoveable properties which were exclusively used for family trade in the name of Sindharam Sanwarmal. It was the shop rooms, godowns and other establishments. Such dispute squarely falls within the definition of 'Commercial Disputes' in terms of Section 2 (1) (c) (vii) of the Act of 2015.

**36.** We have also taken into account that the suit being CS 126 of 2023 has been filed by the appellant/plaintiff on an allegation that, in blatant violation of clause 3 of the terms and conditions of the family arrangement, the defendant converted the trade name of the shop room allotted in his favour, to 'Sindharam Sanwarmal Mewawala' from 'Shree Hanuman Stores' and has been running the selfsame business of dry fruits, spices, dry vegetables and other products from such

shop room situated in premises No. 43/44, Cotton Street, Kolkata-70007.

**37.** The plaint of such suit does not disclose any exclusive dispute with regard to immoveable property per se. It unveils a dispute which is out and out a dispute with regard to the use of trade name or goodwill attached to such trade name. The Civil Suit, as it transpires, was filed by the appellant/plaintiff seeking following reliefs, namely:

- a. Mandatory injunction against the defendant to perform the negative argument as expressly and/or impliedly contained in clause 3 of the family agreement being Annexure 'A' hereto.
- b. Perpetual injunction restraining the defendant from carrying on any business using the trade name 'Sindharam Sanwarmal with any prefix or suffix thereto, either at the premises No. 43/44, Cotton Street, Kolkata 70007 or at any area within a radius of 1 kilometer thereof.
- c. Perpetual injunction restraining the defendant from permitting third parties to use the trade name 'Sindharam Sanwarmal either with any prefix or suffix, for running shops at various places without obtaining the prior written consent of all the parties to the family agreement including the plaintiff.
- d. An enquiry into damages suffered and a decree for such sum as may be payable upon such enquiry, against the defendant.
- e. Injunction.

- f. Attachment.
- g. Receiver.
- h. Costs.
- i. Further and/or other reliefs.

**38.** By an application being IA No. GA 1 of 2023, the plaintiff/appellant sought similar reliefs by way of temporary injunction. A perusal of the reliefs sought in CS No. 126 of 2023, there appears no doubt that the disputes raised in such suit were commercial disputes as defined under Section 2 (1) (c) of the Act of 2015. It is not confined to a dispute with regard to immovable property simplicitor. The learned trial Judge was quite justified in holding the disputes to be Commercial Disputes and rightly passed the impugned judgment and order allowing IA No. GA 2 of 2023. Therefore, we find no justification to interfere with the impugned judgment and order. The same is hereby affirmed.

**39.** At the same time, a plain reading of the reliefs sought in the suit, specifically prayer (b) and (c) that's to say, Perpetual injunction restraining the defendant from carrying on any business using the trade name 'Sindharam Sanwarmal with any prefix or suffix thereto, either at the premises No. 43/44, Cotton Street, Kolkata 70007 or at any area within a radius of 1 kilometer thereof and Perpetual injunction restraining the defendant from permitting third parties to use the trade name 'Sindharam Sanwarmal either with any prefix or

suffix, for running shops at various places without obtaining the prior written consent of all the parties to the family agreement including the plaintiff, manifestly demonstrates that the dispute between the parties involve disputes in respect of intellectual property rights relating to registered and/or unregistered trademarks.

**40.** If that be so, the disputes involved in the suit being CS 126 of 2023 indubitably involve disputes with regard to intellectual property rights, i.e. use of the trade name 'Sindharam Sanwarmal'. Therefore, such disputes squarely fall within the purview of Commercial Disputes as defined under Section 2 (1) (c) of the Act of 2015 and for such reason, CS 126 of 2023 falls within the category of Commercial Suit triable exclusively by a Commercial Court established under the provisions of the Act of 2015. The High Court, in its ordinary Original Jurisdiction, has no power to try such suit.

**41.** No relief with regard to right and title in respect of immoveable property, whatsoever, has been sought in the suit. Even if we assume that the suits involves disputes with regard to immoveable property arising out of the family arrangement, we cannot dissect the reliefs to bring the suit out of the purview of Commercial Suit.

**42.** It has been held in the impugned judgment and order that the suit filed by the plaintiff is not maintainable before it and the plaint was directed to be returned to the plaintiff with liberty to file the same before the appropriate Court. It is hereby clarified that in case the

plaint is presented before the appropriate Court, if so advised, the appropriate Court shall proceed to decide all points raised by the parties in such suit including the maintainability and limitation of such suit without being prejudiced by any of the observations made in the impugned judgment and order passed by this Court. All points that may be raised by the parties are kept open to be adjudicated by the appropriate court having jurisdiction.

**43.** Consequently, the instant appeals being APOT 99 of 2025 and APOT 95 of 2025 along with connected applications, if any, are accordingly disposed of without any order as to costs.

**44.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

**[MD. SHABBAR RASHIDI, J.]**

**45.** I agree.

**[DEBANGSU BASAK, J.]**