

Sharada

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL APPEAL FROM ORDER NO.14 OF 2025
WITH
INTERIM APPLICATION NO.7505 OF 2025

Rajendra Madhhukar Joshi, Sole Prop.
Chaitanya Builders and Developers

...Appellant

Versus

Shanubai Vasant Vaskar & Ors.

...Respondents

SHARADA
RANGNATH
WAHULE

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Mr. Surel Shah, Senior counsel a/w Mr. Ziyad Madon, Sakshaat
Relekar i/b Omkaar Kulkarni, for the Appellant.

Mr. Sanjay Sarraf and Adv. Mohammed Yassen Shaikh for
Respondents Nos.2 to 7.

CORAM : R.I. CHAGLA J
FARHAN P. DUBASH, J

DATE : 4TH NOVEMBER 2025

ORDER :

1. By this Commercial Appeal, the Appellant is impugning the order dated 15th February 2025 passed by the learned District Judge-2, Panvel in Commercial Suit No.6 of 2023 (**impugned order**) whereby the plaint was directed to be returned under the provisions of Order VII Rule 10 of the Code of Civil Procedure, 1908 (**Code**).

2. At the outset, Mr. Shah, learned senior counsel appearing on behalf of the Appellant/original Plaintiff points out that though Respondent No.1 is not represented, service on Respondent No.1 has been affected by the Appellant. Mr. Sanjay Sarraf, learned counsel appears on behalf of Respondent Nos. 2 to 7. Mr. Shah tenders an affidavit of service dated 3rd November 2025 showing service on the other Respondents including Respondent Nos. 1, 8, 9, 10 and 11 who are not represented by their counsel today.

3. By the impugned order, the learned District Judge-2, Panvel has returned the plaint under Order VII Rule 10 of the Code by recording a finding that the subject agreement of which, specific performance has been sought in the suit, is in respect of agricultural land and conversion of agricultural land into non-agricultural land for the purposes of the sale of the premises and that the resultant dispute thereon, between the parties is not a '*commercial dispute*' within the definition of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 (**CC Act**). Accordingly, the impugned order holds that the Commercial Court lacks jurisdiction to try and entertain the said dispute and as a result, the plaint has been returned to the court hearing regular suits with a further direction to the original

Plaintiff/Appellant herein, to make an application to the said court, specifying the court in which he proposes to present the plaint after its return and seeking the fixation of a date for the appearance of the parties in the said court and for notice of the same to be issued to all the parties thereto.

4. Mr.Shah has referred to the Sale Deed of Plot and Assignment of Lease dated 4th August 2015 (**subject agreement**) entered into between Respondent Nos.1 to 7 herein and the Appellant. He has particularly referred to clause 8 of the subject agreement wherein it is recorded that Respondent Nos.1 to 7 herein do not have the requisite financial capability as well as knowledge to construct the buildings on the said plots since they do not have sufficient funds available. In view thereof, he submitted that Respondent Nos.1 to 7 decided to sell the said plot to the Appellant (Developer).

5. Mr.Shah has also referred to clause 20 of the subject agreement wherein the parties have agreed that the Appellant (Developer) shall have the right to develop, sell or re-sell the subject plot to be allotted by CIDCO to Respondent Nos.1 to 7, who shall have no objection in this regard. He has further submitted that the

Appellant/original Plaintiff has sought specific performance of the subject agreement by filing the said suit and as a result, the same clearly falls within the definition of a ‘*commercial dispute*’ under Section 2(1)(c)(vi) of the CC Act which *interalia* includes a dispute arising out of construction and infrastructure contracts, including tenders.

6. Mr.Shah has submitted that though the subsequent Agreement to Lease dated 6th January 2023 executed between CIDCO and Respondent Nos.1 to 7, at clause 4(A) provides that the subject plot allotted to Respondent Nos.1 to 7 is to be used for residential purposes, the same permits 15% of the admissible Floor Space Index to be utilized for commercial purposes. He has submitted that a combined reading of the subject agreement and the subsequent Agreement to Lease clearly reveals that the subject agreement falls within Section 2(1)(c)(vi) of the CC Act. Mr.Shah has referred to a decision of this Court in ***Vaijanath Dayanand Kale V/S Nerkar Properties LLP¹*** which categorically holds that:

“7. Any Construction Contract, whether it is for residential or commercial use, is nonetheless, in the first place, a construction contract and would be covered as such by sub-

¹ 2021 (3) Mh.L.J 202

clause (vi) of clause (c) of Section 2(1) of the Act so as to give rise to a commercial dispute”.

The Writ Petition filed in that case was impugning an order passed by the District Court at Nashik which had rejected the application filed under Order VII Rule 10 of the Code for return of plaint *inter alia* holding that it was a commercial suit under sub-clause (vii) of clause (c) of Section 2(1) of the CC Act. By this decision, this Court was pleased to dismiss the said Writ Petition.

7. Mr. Shah has accordingly submitted that in the present case, the suit being a commercial suit, the learned District Judge ought not to have allowed the application filed under Order VII Rule 10 of the Code, and directed return of the plaint to the court which would have jurisdiction over regular suits.

8. Mr. Sarraf, learned counsel appearing for Respondent Nos. 2 to 7 has supported the impugned order. He has placed reliance on the decision of the Hon'ble Supreme Court in ***Ambalal Sarabhai Enterprises Limited V/S K. S. Infraspace LLP and Anr.***² [(2020) 15 SCC 585] which has held that for a dispute to be a commercial

² (2020) 15 SCC 585

dispute under Section 2(1)(c)(vii) of the CC Act, the agreement between the parties thereto must refer to immovable property used/being used exclusively in trade or commerce. The said decision further holds that the word “used” occurring in that provision denotes “actually used” and it cannot be either “ready for use” or “likely to be used” or “to be used”. Mr. Sarraf has submitted that the impugned order has rightly relied upon the said decision in ***Ambalal Sarabhai Enterprises (supra)***. He has submitted that by the impugned order, the learned District Judge has correctly held that the subject agreement is not an agreement used exclusively in trade or commerce but is a transaction relating to an agreement for sale in respect of agricultural land and conversion thereof from agricultural land into non-agricultural land for the purposes of sale of the premises to be constructed thereon and hence, the said transaction is not a commercial transaction within the definition of Section 2(1)(c)(vii) of the CC Act.

9. Mr. Sarraf has further submitted that the subject agreement was required to be a Tripartite Agreement with Respondent No.8/CIDCO as a necessary party for grant of permission to develop the subject plot. He has submitted that the subject agreement has

been entered into without CIDCO being made a party thereto and hence, without the approval of CIDCO for development of the subject plot which would also require its conversion from agricultural to non-agricultural user, no rights therein can be claimed by the Appellant/original Plaintiff. He has therefore submitted that the transaction is not a commercial dispute. He points out that Section 2(1)(c)(vi) of the CC Act is not applicable as the subject agreement is not an agreement for '*construction and infrastructure contracts*'. He accordingly submits that the impugned order has been correctly passed by the learned District Judge and this Court ought to dismiss the present Commercial Appeal.

10. We have considered the submissions and perused the relevant clauses of the subject agreement. Clauses 8 and 20 thereof are important inasmuch as, they indicate the intention of the parties thereto. Under clause 20, parties have expressly contemplated development of the subject plot which was to be allotted by CIDCO to Respondent Nos.1 to 7 and upon such development, the said clause further permits the Appellant (Developer) to transact with other third parties in connection with the said developed plot and also provides that Respondent Nos.1 to 7 herein would have no objection in this

regard. The purpose for Respondent Nos. 1 to 7 to enter into the subject agreement is also spelt out in clause 8 thereof which records that Respondent Nos.1 to 7 were facing family and financial difficulties and as a result, did not have the requisite financial capability as well as knowledge to construct on the subject plot.

11. It is the subject agreement of which specific performance has been sought in the Commercial Suit which has been filed before the learned District Judge and the subject agreement being one involving a construction contract, the same would clearly fall within the definition of '*commercial dispute*' under Section 2(1)(c)(vi) of the CC Act. The judgment in ***Vaijanath Dayanand Kale (supra)*** clearly holds that any contract for construction of a building, whether for residential or commercial use, is nonetheless, in the first place, a 'construction contract' and would be covered as such, by sub-clause (vi) of clause (c) of Section 2(1) of the CC Act so as to give rise to a commercial dispute. In ***Ambalal Sarabhai Enterprises Limited (supra)***, the Supreme Court has dealt with and interpreted the provisions of Section 2(1)(c)(vii) and not Section 2(1)(c)(vi) which is applicable to the subject agreement and which has been considered by us.

Hence, the said decision is clearly distinguishable and would not apply to the present case.

12. We have also perused the Agreement to Lease executed by CIDCO in favour of Respondent Nos. 1 to 7 and we have observed that though clause 4(A) thereof, provides that the subject plot allotted to Respondent Nos.1 to 7 is to be used for residential purposes, it permits 15% of the admissible Floor Space Index to be utilized for commercial purposes, which has already been provided for in the subject agreement that was already entered into by the said parties, prior thereto. We thus find that the subject agreement of which specific performance has been sought in the commercial suit is clearly a 'commercial dispute' falling within the meaning of Section 2(1)(c)(vi) of the CC Act and accordingly, the impugned order passed by the learned District Judge-2, Panvel which holds otherwise, is required to be set aside.

13. Accordingly, we allow the Commercial Appeal by setting aside the impugned order dated 15th February 2025 passed by the District Judge-2, Panvel.

14. We hold that the Commercial Suit has been correctly filed and is accordingly restored to file and shall be entertained by the District Judge-2, Panvel.

15. The Commercial Appeal is accordingly disposed of. There shall be no order as to costs.

16. In the premises, the interim application taken out by the Appellant in the Commercial Appeal does not survive and the same is also disposed of.

[FARHAN P. DUBASH, J.]

[R.I. CHAGLA J.]