

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO. 1987 OF 2025
IN
COMMERCIAL SUMMARY SUIT NO. 57 OF 2021**

Prime Developers and another ... Applicants

In the matter between :

Mayank Jaswantlal Shah ... Plaintiff

Versus

Prime Developers and others ... Defendants

**WITH
INTERIM APPLICATION NO. 1988 OF 2025
IN
COMMERCIAL SUMMARY SUIT NO. 58 OF 2021**

Minaxi P. Satra ... Applicant

In the matter between :

Mayank Jaswantlal Shah ... Plaintiff

Versus

Minaxi P. Satra ... Defendant

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Mr. Zal Andhyarujina, Senior Advocate alongwith Mr. Aditya Mehta, Ms. Serena Jethmalani, Ms. Krushi N. Barfiwala, Mr. Shlok Bodas and Ms. Ishika Lodha instructed by Parinam Law Associates, Advocates for the Applicant/Defendants.

Mr. Sanjay Jain alongwith Mr. Kunal Vaishnav, Mr. Suraj Iyer, Mr. Mani Thevar, Mr. Vijeet Trivedi and Ms. Gauri Joshi instructed by Ganesh & Co., Advocates for the Respondent/Plaintiff.

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CORAM : ABHAY AHUJA, J.
RESERVED ON : 11th AUGUST 2025
PRONOUNCED ON : 06th NOVEMBER 2025

ORDER :

1. The suits in respect whereof these applications have been filed have been filed as Commercial Summary Suits by the Plaintiff against the Defendants seeking recovery of Rs.17,34,26,187/- (Rupees Seventeen Crores Thirty-Four Lakhs Twenty-Six Thousand One Hundred and Thirty-Seven only) alongwith interest at the rate of 15% p.a. from the Applicants and Mr. Praful Satra (Original Defendant No.2) in one suit and recovery of Rs.15,57,32,851/- (Rupees Fifteen Crores Fifty Seven Lakhs Thirty Two Thousand Eight Hundred and Fifty One only) along with interest at the rate of 18% p.a. from the Applicant/Defendant therein in another suit.

2. Appearance was entered into on behalf of the Defendants and thereafter, Summons for Judgment had been taken out in both the suits.

3. After the pleadings in the Summons for Judgment were completed, on 21st February 2023, the aforementioned two Interim Applications have been taken out seeking return of the plaints under

Order VII Rule 10 of the Code of Civil Procedure, 1908 (the “CPC”) on the ground that the suits are not commercial suits under the Commercial Courts Act, 2015 (the “Act”) and the plaints are to be returned to the Plaintiff to be presented to the appropriate court in which the suits should have been instituted.

4. The Interim Applications had been heard on 5th May 2025 and 16th June 2025. On 23rd June 2025, the matter was adjourned to 16th July 2025 for the learned Senior Counsel for the Applicant to rejoin. On 16th July 2025, the learned Counsel for the Respondent sought to sur-rejoin, which was heard on 28th July 2025. On 11th August 2025, the arguments in the matter were concluded and the Interim Applications were reserved for orders.

5. Mr. Andhyarujina, learned Senior Counsel, appearing for the Applicants has submitted that the two suits do not pertain to commercial disputes but are filed before the commercial division for early disposal which would just clog the system and block the path for genuine commercial disputes and hence, it is crucial for the commercial Court to exclude those cases that are not commercial in nature. In support, Mr. Andhyarujina has placed reliance on the decision of the

Hon'ble Supreme Court in the case of *Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP*¹.

6. Mr. Andhyarujina has also drawn this Court's attention to the decision of this Court in the case of *Chanda Kochhar v. ICICI Bank Ltd.*² submitting that if the Court comes to the conclusion that the dispute is not a commercial dispute, the suit is required to be tried by the competent Court in accordance with provision contained in the CPC and only if the suit concerns a commercial dispute, a special procedure as envisaged by the CPC as amended by the Act is required to be peremptorily followed. It is submitted that the two suits do not meet the necessary conditions for the subject matter of the suits to fall under the ambit of a "commercial dispute". Mr. Andhyarujina has also relied upon the following decisions in support of the contention that the complaints in the two suits be returned under Order VII Rule 10 of the CPC:

- (i) *Chorus Call INC v. Gurmeetpal Singh Bindra*³,
- (ii) *Bharat Hudanna Shetty v. Ahuja Properties & Developers and Ors.*⁴,
- (iii) *Varanium Cloud. Ltd, in the matter of Rolta Private Limited v. Varanium Cloud Ltd*⁵.

1 (2020) 15 SCC 585

2 Order dated 12th April 2022 passed in Interim Application (L) No.10192 of 2022 in Commercial Suit No.43 of 2022

3 2023 SCC OnLine Bom 2352

4 2021 SCC OnLine Bom 13984

5 Order dated 11th November 2024 passed in Interim Application (L) No.6341 of 2024 in Summary Suit No.18 of 2023

7. Mr. Andhyarujina has further submitted that although Order XLIX of CPC excludes the application of Order VII Rule 10 of CPC to Chartered High Courts, however Rule 283 in Chapter XX of the Bombay High Court (Original Side) Rules, 1980 (the “O.S. Rules”) which is akin to Order VII Rule 10 of CPC is not excluded and hence this Court being a Chartered High Court has the power to exercise its jurisdiction under Rule 283 of the O.S. Rules and pass orders for return of plaints. Mr. Andhyarujina has relied upon two decisions of this Court in the cases of *Hindustan Organic Chemicals Ltd. v. ICI India Ltd.*⁶ and *Shree Sai Plast Pvt. Ltd. v. Prince Pipes and Fittings Ltd.*⁷.

8. Mr. Andhyarujina has submitted that once a plaint is returned under Order VII Rule 10 of CPC / Rule 283 of O.S. Rules, the same needs to be freshly presented before the Court having competent jurisdiction and trial needs to be conducted *de novo*. That return of plaint cannot be considered to be continuation of the suit wrongly filed in the Court not having jurisdiction. It is submitted that the Respondent/Original Plaintiff has relied upon several Judgments/Orders of this Court as well as other High Courts, regarding

6 2018 SCC OnLine Bom 365

7 Order dated 14th March 2024 passed in Interim Application (L) No.2548 of 2024 in Commercial IP Suit (L) No.27330 of 2023.

the contention that the present suits have to be transferred and just re-numbered. Mr. Andhyarujina submitted that in none of the said Judgments/Orders has the issue of transfer of suits been contested.

9. Mr. Andhyarujina has submitted that Hon'ble Supreme Court in the decision of ***EXL Careers v. Frankfinn Aviation Services (P) Ltd.***⁸ has categorically held that once a plaint is returned under Order VII Rule 10 of the CPC, the same has to be presented to the Court having competent jurisdiction and shall be considered to be filed afresh and the trial has to be conducted *de novo*, even if it stood concluded before the earlier Court. It is submitted that the Court while exercising jurisdiction under Order VII Rule 10 of CPC cannot exercise any discretion and the suit has to commence *de novo*. Mr. Andhyarujina has also relied upon decision of this Court in ***Oriental Insurance Company v. Sunrise Biscuit Company***⁹, submitting that this Court has followed the law laid down by the Hon'ble Supreme Court in the case of ***EXL Careers v. Frankfinn Aviation Services (P) Ltd.*** (*supra*) and held that pursuant to an order for return of plaint being passed, the new proceedings initiated by the Plaintiff cannot be said to be proceedings in continuation of the earlier proceedings.

8 (2020) 12 SCC 667

9 2024 SCC OnLine Bom 1135

10. Mr. Andhyarujina has submitted that therefore considering the relevant provisions of law and the law laid down by the Hon'ble Supreme Court as well as this Court, there is no power vested in this Court to transfer the suits, renumber it and proceed from the same stage. The procedure laid down in Order VII Rule 10 of the CPC as interpreted by the Hon'ble Supreme Court ought to be followed strictly and the plaint will have to be returned to the Plaintiff for presentation before the Court having jurisdiction for commencement of the proceedings *de novo*. That this would mean that the date of presentation of the plaint would be the date on which the Plaintiff files the returned plaint before the Court having competent jurisdiction.

11. Mr. Andhyarujina has further submitted that the conversion of the present suits from commercial suits to civil suits is not just a change in nomenclature. That the constitution of the commercial division came with significant changes to the procedure under the CPC. Learned Senior Counsel submits that one of the most significant changes brought in through the Act is that the timelines for filing the pleadings under Order V and VIII have been changed. Further, the procedure under Order XIII-A for summary judgment only applies to commercial disputes as defined under Section 2(1)(c) of the Act. That therefore,

these significant changes create a major difference in the procedure that needs to be followed in a commercial dispute as opposed to a non-commercial dispute.

12. Mr. Andhyarujina has submitted that in view thereof since the Act, stipulates stricter timelines that are mandated to be followed, the present suits cannot be simply transferred to the Court having competent jurisdiction, but the same ought to be returned as per the provisions under Order VII Rule 10 of CPC/ Rule 283 of the O.S. Rules. It is submitted that if the subject matter of the dispute is not maintainable before the Commercial Division but is maintainable before the Ordinary Original Civil Jurisdiction of this Court, the present suits cannot be deemed to be a continuation of the proceedings held before the Commercial Division upon its return.

13. Mr. Andhyarujina has submitted that the Respondent/Original Plaintiff have erroneously submitted that the Applicants/Original Defendants case is that this Court has no jurisdiction at all even considering the fact that the assignment for a commercial summary suit as well as an ordinary summary suit lies with this Court itself. It is submitted that this has never been the case of the Applicants/Original Defendants. It is submitted that there is no embargo on the fact that

the assignment of a commercial summary suit as well as the ordinary summary suit is before this very Court, however this Court while exercising jurisdiction of a commercial Court cannot pass orders in the jurisdiction of the original civil court. Learned Senior Counsel submits that in effect of which, this Court cannot pass an order for conversion/transfer of the present suits to the ordinary original jurisdiction of this Court and continuation of the proceedings from the present stage thereafter, as that would amount to passing an order *dehors* the jurisdiction being exercised while entertaining the present suits in the commercial jurisdiction.

14. Without prejudice to the aforesaid Mr. Andhyarujina has submitted that, in any event the stage in the present suit is only at the hearing of summons for judgment, and that the Applicants/Original Defendants have a very good case on merits for seeking unconditional leave to defend the present suits. Hence, no prejudice will be caused to the Respondent/Original Plaintiff if the present suits are returned to be filed afresh before the Court having competent jurisdiction. However, if the present applications are not allowed, passing of any further order would be bad in law as the same would be outside the jurisdiction being exercised by this Court.

15. Mr. Andhyarujina has submitted that since the subject matter of the present dispute does not lie with the Commercial Division of this Court, the Commercial Suits are not maintainable under the Act and considering the legislative intent of amending the CPC and introduction of the Commercial Courts Act, 2015, the complaints in the said Commercial Suits are liable to be returned to the Court having competent jurisdiction i.e. the Ordinary Original Civil Jurisdiction of this Court to be filed and commenced *de novo*.

16. On the other hand, Mr. Jain Learned Counsel for the Respondent/original Plaintiffs has submitted that the sole ground for these Applications is that the dispute does not fall within meaning of 'commercial dispute' as defined under the Commercial Courts Act and the only contention of the Applicant is that the present suits ought to have been instituted on the Original Side of this Court as regular summary suits and could not have been filed with the commercial division of this Court. Mr. Jain has submitted that the Applicant does not dispute that the Bombay High Court is the civil court that would have jurisdiction in respect of the present dispute.

17. Mr. Jain, learned Counsel, appearing for the Respondent/ original Plaintiffs has however submitted that the subject matter of the summary suits in question do not fall within the purview of the definition of “commercial dispute” under Section 2(1) (c) of the Act and are not commercial suits, however, submitting that therefore the proper course of action would be to rename the suits as ordinary/regular suits and renumber them as such and not return the plaints under Rule 283 of the O.S Rules in as much as the plaints have already been presented in this Court which has jurisdiction.

18. Mr. Jain has taken this Court through the preamble of the Act, Section 4 of the Act under which the Commercial Division of a High Court is constituted and Section 7 of the Act which pertains to the jurisdiction of Commercial Divisions of the High Court. Mr. Jain has also referred to the Practice Note No.48 dated 04.05.2016 which specifies that all suits, applications and matters relating to commercial disputes of a specified value shall be filed on the Ordinary Original Civil Jurisdiction and Civil Appellate Jurisdiction as the case may be of High Court on the Commercial Division.

19. Mr. Jain has submitted that on a combined reading of the aforesaid, it can be inferred that a Judge sitting on the Original Side of the Bombay High Court in its Commercial Division is not a separate/distinct Court from a Judge sitting on the Original Side. Mr. Jain would submit that in fact the reliance of the Applicant on Rule 283 of the O.S. Rules and the decisions in *Shree Sai Plast Pvt. Ltd. v. Prince Pipes and Fittings Ltd (supra)* and *Hindustan Organic Chemicals Ltd. v. ICI India Ltd. (supra)* fortifies the submissions made on behalf of the Respondent/Plaintiff.

20. Mr. Jain has further submitted that the Applicant has sought to artificially create two separate Courts and incorrectly treats the Commercial Division and the Original Side as two separate courts, when they are divisions of a single court.

21. Mr. Jain has submitted that the present case is not a case of jurisdiction but merely a case of nomenclature and re-numbering and that Courts have time and again directed that suits which were incorrectly instituted as commercial suit but before the correct Court be re-numbered as an ordinary/regular suit. Mr. Jain has in support of the submission has placed reliance on the decision of the Delhi High Court

in the case of *P&M Movies Private Limited v. Sapna*¹⁰. On the aspect that when a dispute is not a commercial dispute, the courts had directed renaming and renumbering of the suits/ transfer of the Suit from its Commercial Division to the Ordinary Original Jurisdiction and not return of the plaint for filing afresh again, Ld. Counsel has also relied upon the decisions of this Court in the cases of *Bharat Hudanna Shetty v. Ahuja Properties & Developers and Ors. (supra)*, *Chanda Kochhar v. ICICI Bank Ltd. (supra)* and), *Chorus Call INC v. Gurmeetpal Singh Bindra (supra)*.

22. Mr. Jain has submitted that assuming the Applicant's contention that Commercial Division of this Court is a separate Court from the Original Side of this Court, is accepted, then the provision for return of plaint under Rule 283 would not apply to a Court under a Commercial Division as the commercial division of the High Court is not a separate court but the very same court.

23. Mr. Jain has urged that the returning the plaints to the Plaintiff and then requiring him to re-present it before the very same Court would only cause delay, prejudice and irreparable harm to the Plaintiff

¹⁰ 2022 SCC OnLine Del 4480

and the entire proceedings would have to be restarted and the same would cause unnecessary hardship and multiplicity of proceedings. Mr. Jain has placed reliance upon the decision of the Hon'ble Supreme Court in the case of *Pasupuleti Venkateswarlu v. The Motor & General Traders*¹¹ and submits that equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice, subject, of course, in the absence of other disentitling factors or just circumstances.

24. Mr. Jain has submitted that therefore this Court reject the applications filed by the Applicants and direct the Suits to be renamed and re-numbered as Ordinary Suits.

25. I have heard the Learned Senior Counsel and the Learned Counsel at length and also considered the rival contentions.

26. Although the Applications have been filed under Order VII Rule 10 seeking return of plaints, Order XLIX of CPC excludes the application of Order VII Rule 10 of CPC to Chartered High Courts, but this Court being a Chartered High Court has the power to exercise its

¹¹ AIR1975 SC 1409

jurisdiction under Rule 283 of the O.S. Rules and pass an order for return of plaint. I, therefore, agree with Mr. Andhyarujina, when he relies upon the decisions of this Court in the cases of *Hindustan Organic Chemicals Ltd. v. ICI India Ltd. (supra)* and *Shree Sai Plast Pvt. Ltd. v. Prince Pipes and Fittings Ltd. (supra)*.

27. Ergo the present applications are being considered under Rule 283 of the O.S. Rules, which reads thus:-

“283. Return of plaint

(i) *The Court or the Judge in Chambers may at any stage of the suit order the plaint to be returned to the plaintiff to be presented to the Court in which the suit should have been instituted.*

(ii) *When an order for return of the plaint is made, the Prothonotary and Senior Master or any officer subordinate to him shall endorse on the plaint,--*

(a) *the date of its presentation,*

(b) *the date of the order for its return,*

(c) *the date on which the plaintiff furnishes a copy of the plaint and the date on which it is certified as a true copy by the office of the Prothonotary and Senior Master, as provided in sub-rule (iii) of this rule, and*

(d) *the date of the return of the plaint.*

(iii) *The plaint shall be returned only after the plaintiff has furnished, for the record of the Court, a copy of the plaint and the said copy has been certified as a true copy by the office of the Prothonotary and Senior Master.”*

(emphasis supplied)

28. As can be seen at any stage of a suit, the court under this rule can order the plaint to be returned to the Plaintiff to be presented to the court in which the suit should have been instituted. The rule contemplates presentation of the plaint that has been returned to the Plaintiff to the court in which the suit should have been instituted. The rule presupposes that the plaint has been filed in the wrong court and then upon return be presented in another court where it should have been instituted; it definitely does not contemplate presentation of the plaint from one bench of the same High court to another bench of the very same High court.

29. The Respondents/Original Plaintiffs, during the course of arguments, as noted above, have conceded to the fact that the subject matter of the summary suits do not in fact fall within the purview of “commercial dispute” under Section 2(1)(c) of the Act and hence are not a commercial Suits. Therefore, although the principles discussed / laid down in the decisions in the cases of *Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP (supra)*, *Chorus Call INC vs. Gurmeetpal Singh Bindra (supra)*, *Bharat Hudanna Shetty vz. Ahuja Properties & Developers and Ors. (supra)*, *Varanium Cloud.Ltd, in the matter of Rolta Private Limited v. Varanium Cloud Ltd.(supra)*, as regards the

definition and ambit of “Commercial Dispute” under the Act are settled law, but in view of the stand taken by the original Plaintiff that the two Suits under consideration are not commercial suits, no further discourse is necessary with respect to the above said decisions.

30. The only issue left for consideration of this Court, therefore, is whether the two suits be renamed and renumbered as ordinary or regular suits or the plaints be returned under Rule 283 of the Bombay High Court (O.S) Rules to the Respondent/Original Plaintiff for fresh presentation of the same before the court in which the suits should have been instituted.

31. To answer this, it would be first pertinent to refer to the Act, viz. the Commercial Courts Act, 2015. Section 2(1) (b) of the Act defines “Commercial Court” to mean the Commercial Court constituted under sub-section (1) of Section 3.

32. Section 4 of the Act deals with constitution of a Commercial Division of a High Court. Section 4 of the Act reads thus:

“4. Constitution of Commercial Division of High Court -
(1) In all High Courts, having ordinary original civil jurisdiction, the Chief Justice of the High Court may by order, constitute Commercial

Division having one or more benches consisting of a single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Act.

(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Division.”

(emphasis supplied)

33. Therefore, the constitution of a Commercial Division in a High Court under this Act depends on whether the High Court in a State has “ordinary original civil jurisdiction”.

34. The jurisdiction of the Commercial Division constituted under Section 4 of the Act is set out in Section 7 of the Act which requires that, all suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court.

35. The specified value as per the Act is not to be below Rs.3 Lacs. However, since the pecuniary jurisdiction of the Court is above 10 crores, if a suit relates to a commercial dispute of a value of above 10 crores, then in a High Court having Ordinary Original Civil Jurisdiction, the said Suit is to be heard and disposed of only by a Commercial Division.

36. No where it is provided that a separate Court is to be constituted by the High Court for commercial disputes. The word constitute in Section 4 means to designate and not create a separate jurisdiction. Merely designating certain benches on the Original Side of the High Court as Commercial Division does not amount to creation of a separate or distinct jurisdiction. Commercial Division is only a nomenclature.

37. Even the Practice Note No.48 dated 04.05.2016 issued by the Prothonotary and Senior Master High Court, Original Side and Registrar (Judl – I) High Court, Appellate Side for the fresh filing of Suits, Applications, Appeal matters under Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 provides that with effect from 1st June 2016, all fresh Suits, Applications and matters relating to commercial disputes of a specified value as above within a meaning of the said Act shall be filed on the Ordinary Original Civil Jurisdiction and Civil Appellate Jurisdiction as the case may be of High Court on the “Commercial Division” of the High Court of Judicature at Bombay and they shall specifically state in the Cause Title of the such matters relating to commercial dispute that the same is filed in it’s “Commercial Division” of the High Court and all

categories of the matters shall be preceded by the words “Comm”.

38. The directions issued by the Learned Prothonotary and Senior Master, High Court, Original Side dated 10.05.2016, for filing of matters to be heard and decided by the Commercial Division and Commercial Appellate Division has provided the nomenclature of Commercial Dispute matters according to different types of matters.

39. The aforesaid as can be seen only provides for a nomenclature for the suits/applications involving commercial disputes, but not creation of a jurisdiction.

40. The High Court functions in two distinct spheres of jurisdiction: the Ordinary Original Jurisdiction and the Appellate Jurisdiction. On the Ordinary Original Jurisdiction, the Court exercises jurisdiction in the first instance, entertaining suits and causes of action that lie within its territorial and pecuniary jurisdiction. The Appellate Jurisdiction, on the other hand, is not merely an internal division but a substantive head of jurisdiction, whereby the High Court hears appeals from decrees and orders passed by district Courts and tribunals.

41. The Commercial Division, however, stands on a different footing. It is neither a separate Court nor a distinct jurisdiction in the sense of Original and Appellate Jurisdiction. It is but a division of the Court's pre-existing original civil jurisdiction and appellate jurisdiction into a designated Division for commercial disputes. Its foundation is not the creation of a new head of jurisdiction, but only the statutory and administrative allocation of jurisdiction already vested in the High Court. Thus, while the distinction between the Ordinary Original Civil Jurisdiction and Appellate Jurisdiction lies in the very nature of jurisdiction but the Commercial Division does not constitute a jurisdiction distinct from or external to the Ordinary Original Civil Jurisdiction of the High Court; but a part of the Original Side of the High Court itself exercising its ordinary original civil jurisdiction in a particular class of matters viz. commercial disputes. And even if under the Commercial Courts Act, there are different time lines and procedures prescribed that does not mean that commercial division is a Court with a jurisdiction other than the Ordinary Original Civil Jurisdiction.

42. From the above elucidation it emerges that the aforesaid provisions designate benches of the High Court as commercial division

but do not create of a new or a different Court. It is the Court as a body which is to have and exercise such jurisdiction; but in as much as it would neither be convenient nor practicable for the entire Court to sit for the trial and determination of every commercial dispute, provision is made for its exercise by one or more Judges specifically designated as the Commercial Division. The effect, therefore, is not to carve out a fresh or independent jurisdiction, but to regulate the manner in which the pre-existing jurisdiction of the Court is to be exercised for the more effective administration of justice in commercial disputes.

43. I, therefore, agree with Mr. Jain that the Applicants have sought to artificially create two separate Courts and incorrectly treat the Commercial Division and the Original Side as two separate courts, when they are division of a single court.

44. I do not think, this is a case of complaints having been instituted in a Court not having jurisdiction, but have been instituted in the High Court having Ordinary Original Civil Jurisdiction but with an incorrect nomenclature as the Commercial Division of this Court but cannot proceed as the same do not involve commercial dispute as defined under the Commercial Courts Act. This is, therefore, not a case of

jurisdiction but only a case of erroneous nomenclature required to be renamed and renumbered. I am, therefore, unable to accept the argument of the Applicants that the Plaints be returned to the Respondent/Plaintiff for fresh presentation of the Plaints before the Court having competent jurisdiction.

45. Also, since the applications are being considered under Rule 283 of the OS Rules, it is implicit that the suits have been filed in the correct jurisdiction viz. Ordinary Original Civil Jurisdiction of this Court but erroneously named as Commercial. Therefore, also the question of returning the complaints to be presented to another bench of the same Court would not arise.

46. In the case of *Bharat Hudanna Shetty vz. Ahuja Properties & Developers and Ors. (supra)*, this Court has in similar facts held that the suit ought to be treated as a summary suit rather than a commercial summary suit and directed that after renumbering the suit, the registry to place it before the Court in the following week.

47. In the case of *Chanda Kochhar vs. ICICI Bank Ltd (supra)*, this Court observing that the dispute arose out of contract of service and

did not involve a commercial dispute within the meaning of Section 2(1)(c) of the Act, directed removal of the plaint from the list of suits of commercial causes of this Court to be placed before the High Court in the Ordinary Original Civil Jurisdiction also directing the Prothonotary & Senior Master to convert the suit into regular suit to be entertained and tried by the High Court in its Ordinary Original Civil Jurisdiction.

48. In the case of *Chorus Call INC vs. Gurmeetpal Singh Bindra (supra)*, this Court observing that the dispute was a commercial one directed removal of the suit from the list of suits to the list of commercial suits in the commercial division of this Court and to convert the suit into register of commercial suits and be placed before the appropriate bench.

49. As can be seen, in neither of the aforesaid matters the plaints were returned under Order VII Rule 10 of CPC or under Rule 283 of the O.S. Rules.

50. The Hon'ble Delhi High Court in the case of *P&M Movies Private Limited v. Sapna (supra)* in paragraphs 16-20 has observed as under:

*“16. There are instances where a commercial Suit is filed before this Court and the Court comes to a conclusion that the Suit so filed is not commercial Suit or vice versa, where the Suit is filed as an ordinary Suit and the Court comes to the conclusion that the same is a commercial Suit. In such cases, the plaint is not liable to be returned under provisions of Order VII Rule 10 of the CPC. Reference in this regard may be made to *Rachit Malhotra v One97 Communications Limited*, 2018 SCC OnLine Del 12410*

*17. In *Rachit Malhotra (supra)*, this Court held as under:*

“18. The last contention of the Counsel for the applicant/defendant is, that though the present Suit qualified as a commercial Suit, but the Plaintiff has filed as an ordinary Suit and the Suit has been registered as such and is liable to be rejected. Attention, in this regard is drawn to Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Commercial Courts Act) However, on enquiry, as to which is the Commercial Division of this Court, the Counsel for the applicant/defendant admits that the Suit is pending in this Court which a Court of Ordinary Civil Jurisdiction as well as Commercial Division of the High Court.

19. I have also enquired from the Counsel for the applicant/defendant, whether not it is only a case of nomenclature and even if this Suit were to be a commercial Suit, the same can always be registered as a commercial Suit.

20. The Counsel for the applicant/defendant states that the plaint does not contain the declaration as a plaint in a commercial Suit is required to contain.

*21. Even if that be so, it has been held in *Uday Shankar Triyar v. Ram Kalewar Prasad Singh* (2006) 1 SCC 75, *Union of India v. Shanti Gurung* 2014 SCC OnLine Del 989, *Haldiram (India) Pvt Ltd v. Haldiram Bhujawala*, (2009) 109 DRJ 647 (SLP (Civil) No. 11587/2009 preferred whereagainst has been dismissed vide order dated 14th May, 2009) that non-compliance with procedural requirements*

should not entail automatic dismissal or rejection if the defect or irregularity is curable.”

18. *In Apnaghar Builders Pvt Ltd v Intense Fitness and SPA Pvt Ltd., 2021 SCC OnLine Del 418, this Court held as under:*

“19. There is another reason why the said application is to be dismissed. As observed by this Court in Rachit Malhotra (supra), ultimately it is only a case of nomenclature and, even if, this Suit was to have been found to be a commercial Suit, it could always be registered as a commercial Suit by directions of this Court. Such a mis-description of the Suit cannot entail its rejection. When a Suit is re-numbered, as a commercial Suit, obviously, Section 12A of the Act, would not and cannot come into play. Of course, the discretion of the Court still remains under Section 89 of the CPC, to refer the parties to mediation, to work out an amicable settlement between the parties before embarking on the trial, subject of course, to the time-frame provided under the Act.

19. *To similar effect are the judgments in Kailash Devi Khanna v. DD Global Capital Ltd., 2019 SCC OnLine Del 9954 and De Lage Landen Financial Services India Pvt Ltd. v. Evan Multi specialty Hospital & Research Centre Pvt Ltd., 2019 SCC OnLine Del 7762*

20. *The reasoning of the aforesaid orders would equally be applicable to the District Courts. If the Commercial Court comes to a conclusion that a Suit has wrongly been filed as a commercial matter and the subject matter thereof is not a commercial dispute or vice versa, that the Suit has been filed as an ordinary Suit when it is a commercial Suit, the correct course to follow would be to refer the Suit to the Principal District & Sessions Judge for allocation to a Court of competent jurisdiction, which is what was done in the present case. There is no merit in the submission of the review petitioner that the Commercial Court ought to have*

returned the Suit under provisions of Order VII Rule 10 of the CPC for it to have been filed again as an ordinary Suit. Axiomatically, there is no merit in the submission that the earlier orders passed by the Commercial Court before the transfer of Suit were without jurisdiction”

(emphasis supplied)

51. I, therefore, do not agree with the Applicant’s submission that the plaints if transferred from the commercial list to the list of regular suits, the orders passed by this Court prior to transfer would be without jurisdiction in view of the plaints not having been instituted in a Court not having jurisdiction.

52. In view of the aforesaid discussion and the admitted position that the suits in respect whereof these Interim Applications have been filed are not in respect of a commercial dispute, I also propose to only rename and renumber the two Summary Suits and not return the plaints in the two suits. In my view, this exercise is neither transfer nor conversion of the Suits but only of changed nomenclature, renaming and renumbering and nothing more.

53. Since this Court has held that this is not a case where the plaints are to be returned to be presented to the Court in which the suits ought to have been instituted, as the suits have been correctly instituted in the Bombay High Court in its Ordinary Original Civil Jurisdiction, the decisions in the cases of *EXL Careers vs. Frankfinn Aviation Services (P) Limited (supra)* and *Oriental Insurance Co. v. Sunrise Biscuit Company. (supra)*, relied upon by Mr. Andhyarujina for the Applicants, where it has been observed that after an order of return of plaint under Order VII Rule 10 of CPC, the new proceedings that would be initiated by the Plaintiff cannot be said to be proceedings in continuation of the earlier proceedings and the suit has to commence *de novo* would not be applicable and render no assistance to the Applicants, as the Plaints in the two Suits are not being returned under any of the provision.

54. Ergo, there does not appear to be any merit in the submission of the Applicants that the Commercial Court ought to return the plaints for them to be filed again as an ordinary summary suit in a competent court.

55. Consequently, the complaints and pending proceedings and the Suits are required to be renamed, renumbered as ordinary/regular summary suits without the prefix “Commercial”. The other arguments on behalf of the Applicants are therefore, not necessary to be dealt with.

56. Accordingly, the following order is passed:

ORDER

(i) The Prothonotary and Senior Master of this Court shall rename the summary suits and the connected proceedings by removing the prefix Commercial and re-number the Summary Suits as well as the connected proceedings as Ordinary/Regular Suits/proceedings to be entertained and tried by the High Court in its Ordinary Original Civil Jurisdiction as Summary Suits and not as Commercial Summary Suits.

(ii) The two Interim Applications accordingly stand disposed as above.

(ABHAY AHUJA, J.)