



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.50/2025

Yugjeet Gurudayalsingh Kandey,
Aged about 44 years, Occ.-Nil,
R/o.-Vishnu-Priya, Plot No.6, Ring Road, NIT Layout,
Pratap Nagar, Nagpur-440 022.

.... Petitioner.

Versus

1. M/s Selvel Publicity & Consultants Pvt Ltd,
a Company Incorporated under Companies Act,
having its registered Office at 194, Ravindra Annexe,
4th floor, D.V. Road, Mumbai-400 020.
Through Mr. Nitin Kshirsagar, the Power of Attorney holder
for Respondent no.2.
2. Mr. Kekoo S. Nicholson, (Since dead) (~~Deleted as per order dated 28-08-2025~~)
through present Director/Promoter of respondent no.1
having office at Ravindra Annexe, 4th floor, D.V. Road,
Mumbai-400 020.
3. Smt. Sneha Gurudayalsingh Kandey,
aged about Major, Occ.-Household,
4. Raunak Gurudayalsingh Kandey, (Respondent nos.3 and 4 Ori. Defendants)
aged about 45 years, Occ- Business,
Both r/o Vishnu-Priya, Plot No.6, Ring Road, NIT Layout,
Pratap Nagar, Nagpur-440 022.

.... Respondents.

Mr PR. Puri, Advocate for petitioner.

Mr. S.S. Dewani, Advocate for resp. no.1.

Mr. S. Shahane, Advocate and Mr. Ghube, Advocate for resp. nos.3 and 4.

CORAM : PRAFULLA S. KHUBALKAR, J.

Closed on : 20-11-2025.

Pronounced on : 19-12-2025.

J u d g m e n t

Rule. Rule made returnable forthwith. Heard finally by
consent of the parties.

2. This petition takes exception to order dated 19-11-2024
passed by the trial Court, rejecting the application filed by the petitioner
under Order VII Rule 10 of the Code of Civil Procedure (for short, 'C.P.C.').

3. The petitioner is defendant no.4 in Special Civil Suit No.1278/2011 filed by respondent no.1, seeking specific performance of contract/possession/declaration and permanent injunction. In the civil suit defendant no.4 has filed his written statement and is contesting the suit on merits. During pendency of the suit defendant no.4 filed an application under Order VII Rule 10 of the CPC, seeking return of the plaint for presentation before the Commercial Court alleging that the transaction in the suit falls in the definition of 'commercial dispute' as defined under Section 2(1)(c)(xviii) r/w explanation (a) of the Commercial Courts Act, 2015 (for short, 'the Act'). The application was resisted by the original plaintiff and it came to be rejected by order dated 19-11-2024. The petitioner has challenged the said order by way of instant petition.

4. The controversy involved in the instant petition is as to whether in view of the nature of the suit claiming specific performance of contract, the dispute falls in the definition of commercial dispute as per Section 2(1)(c)(xviii) of the Act. A perusal of plaint shows that the plaintiff has sought for specific performance of contract and alternatively for refund of amount. It appears that defendant no.3 had hired hoardings for advertisements from the plaintiff and a dispute arose in which the plaintiff claimed entitlement to recover an amount of Rs. 2,05,22,790/- alleging that although cheques were issued for payment of this amount, but the same were not honoured. To avoid criminal prosecution for dishonour of cheques, a memorandum of understanding dated 31-10-2009 was executed between the parties and accordingly, the

defendant had agreed to sale the suit property for valuable consideration. In the wake of these pleadings in the plaint it has to be seen as to whether the suit falls within the definition of commercial disputes as claimed by defendant no.4 in the suit.

5. Learned Counsel for the petitioner submitted that the original plaintiff had claimed enforcement of contractual and business obligations and the suit is valued for Rs. 4,15,33,790/- and the actual dispute is with respect to 'agreements for sale of goods or provision of services' as provided in Clause (xviii) r/w explanation (a) to Section 2 (1) (c) of the Act. By relying upon the judgment of the Hon'ble Supreme Court in the matter of *Aase Ram vs Amit Kumar* dated 14-07-2025 in Civil Appeal No.9481/2025, learned Counsel for the petitioner submitted that since the dispute is commercial in nature the plaint has to be returned under Order VII Rule 10 of the CPC for presentation to the Commercial Court. He also placed reliance upon the judgment of Telangana High Court in the matter of *M/s Kamadhenu Enterprises, Secunderabad vs Zara Ahmad and others*, reported in *AIR 2022 Telangana 161* and submitted that the subject matter of the suit being commercial in nature, the same has to be tried by a Commercial Court.

6. While opposing the petition learned Counsel for respondent no.1 submitted that although the subject matter of the suit is immovable property valued at Rs.4,15,33,790/-, however, merely on that count it cannot be treated as a commercial dispute. He submitted that the suit is basically claiming a relief of specific performance of contract based on contractual obligations and it does not fall within the definition of Clause

(xviii) r/w explanation (a) to Section 2 (1)(c) of the Act as alleged. He submitted that the dispute does not even fall in Clause (vii) of Section 2(1)(c) of the Act as there is no dispute relating to immovable property 'used exclusively in trade or commerce'. In support of his submissions, he placed reliance on the judgment of Hon'ble Supreme Court in the matter of **Ambalal Sarabhai Enterprises Limited vs K.S. Infraspace LLP and another**, reported in **(2020) 15 SCC 585**.

7. While considering the controversy involved in the matter, it has to be noted that the suit is filed for claiming specific performance of contract. There is nothing to indicate that the dispute is about 'agreements for sale of goods or provision of services', as alleged by the Counsel for petitioner. Although the suit is valued for Rs.4,15,33,790/- including claim for damages on account of losses, however the claim for alternate relief for refund of amount is for an amount of Rs.2,15,33,790/- which was the actual amount due as claimed by the plaintiff alongwith damages and interest. As such a perusal of plaint shows that it is not with respect to any immovable property which is used exclusively in trade or commerce and thus even Clause (vii) of Section 2(1)(c) of the Act does not get attracted.

8. It is profitable to have look at the position of law as laid down by the Hon'ble Supreme Court in the matter of **Ambalal** (supra), relevant paragraph no.37 from the said judgment is reproduced below :-

“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."

9. In view of the position of law as laid down by the Hon'ble Supreme Court, it is clear that every dispute relating to immovable property cannot *per se* be treated to be a commercial dispute and even though the suit is valued for a high amount the actual dispute put forth by way of pleadings has to be seen. Having regard to this legal position, if the plaint in the instant suit is perused, it clearly does not fall in the category of Clause (xviii) r/w explanation (a) to Section 2(1)(c) of the Act.

10. Perusal of impugned order shows that the trial Court has given due consideration to the factual and legal aspects and by considering the position of law as laid down by the Hon'ble Supreme Court in the matter of **Ambalal** (supra), has rejected the application. I find no perversity with the impugned order and it needs no interference on any count.

11. The position of law laid down in the judgments relied upon by the Counsel for petitioner is not disputed. However, in the facts and circumstances of this case, the same is not applicable and hence the judgments are of no assistance to the petitioner.

12. In view of above mentioned factual and legal aspects, no indulgence is warranted with the impugned order. Writ Petition is accordingly dismissed. No order as to costs.

13. Rule is discharged.

(Prafulla S. Khubalkar, J.)