



S.A.No.603 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 28.11.2025

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

S.A.No.603 of 2025 and C.M.P. No.20917 of 2025

R. Sujatha @ Sujatha Kalla Gowder

...Appellant

Vs.

Kanaka Bhaskaran

Represented by her

Power Agent Anandraj Bhaskaran

...Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 23.09.2024 passed in A.S. No.18 of 2024, on the file of the District Court, Nilgiris at Udhagamandalam, confirming the Judgment and decree dated 29.01.2024 passed in C.O.S.No.02 of 2023, on the file of the Sub Court at Coonoor.

For Appellant : Mr. K.V. Sajeew Kumar

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for Ms. Reshmi Christy

: Mr.N.R. Elango, Senior Advocate

for Mr. G.R.Deepak

JUDGMENT

This Second Appeal is preferred against the judgment and decree dated 23.09.2024 in A.S. 18/2024 on the file of District Judge, Nilgiris at Udagamandalam, confirming the judgment and decree dated 29.01.2024 in C.O.S.No. 2/2023 on the file of Sub Court, Coonoor.

2. The unsuccessful defendant is on appeal.

3. For the sake of convenience, the appellant has been described as the 'defendant' and the respondent has been described as the 'plaintiff'.

The aforesaid suit pertains to recovery of possession (eviction) and



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recovery of money payable by the defendant as rental arrears and compensation. It is not in dispute that the suit property was given on rent to the defendant in the year 2022 for a monthly rent of Rs.1,00,000/-. 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.

4. The plaintiff has filed the above suit to direct the defendant to quit and deliver the vacant possession of the suit property in Door No.5/39 J “Anand Bhavan”, Corsley Thandhanad Road, Kothagiri, described as Item No.1 and 2 in the schedule of property to the plaintiff; to direct the defendant to pay a sum of Rs.2,80,000/- being dues payable as on 20.11.2022 to the plaintiff; to direct the defendant to pay a sum of Rs.2,00,000/- per month towards double the monthly rent as



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compensation for use and occupation of the suit property to the plaintiff

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from 21.11.2022 till such date of vacating and handing over the vacant possession of the suit premises and for costs.

5. The case of the plaintiff in brief:

5.1. The plaintiff and the defendant entered into a registered rental agreement on 20.05.2022 in respect of the suit property for a period of 11 months at a monthly rent of Rs.1,00,000/-. According to the plaintiff, the suit premises was let out for commercial purpose for running a hotel and lodge under the name and style M/s. White House Resort. Since the defendant defaulted in payment of rent willfully, the plaintiff issued a legal notice terminating the rental agreement. In spite of termination of rental agreement, the defendant neither paid the rent nor vacated the suit property. Since the suit premises was let out for commercial purpose, he was constrained to file a commercial suit. Hence, the suit in C.O.S. No.02



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of 2023.

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6. The above suit is resisted by the defendant stating that there was no breach of agreement and the rents are regularly paid by the defendant. While so, the plaintiff enhanced the monthly rent from Rs.1,00,000/- to Rs.2,00,000/-, exploiting the vulnerable position of the defendant. It is further submitted that the defendant had spent a sum of Rs.6,00,000/- on improvements based on the oral instructions from the plaintiff. It is submitted that the above suit is a counter blast to her reimbursement claim and hence, the same is liable to be dismissed.

7. The trial court, after analysing the oral and documentary evidence, partly allowed the suit by directing the defendant to pay a sum of Rs.1,40,000/- towards the rental arrears as on 20.11.2022 and a sum of Rs.1,00,000/- per month towards compensation for the unauthorised use

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and occupation of the suit property from 21.11.2022 till handing over of

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vacant possession of the same to the plaintiff. Aggrieved over the same, the defendant filed the appeal suit in A.S. No.18 of 2024 before the District Court, Nilgiris at Udhagamandalam. The first appellate court dismissed the appeal suit vide its judgment and decree dated 23.09.2024 with cost of Rs.10,00,000/- to be paid by the defendant to the plaintiff. Challenging the same, the present Second Appeal has been preferred by the defendant.

8. Based on the order passed by the learned Single Judge in CRP SR No.111684 of 2025, this Second Appeal is preferred before this Court.

9. Admittedly, the suit is registered as a commercial suit covered by the Commercial Courts Act, 2015. However, there is a controversy whether the suit ought to have been registered as a regular suit or as



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commercial suit.

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9.1. In order to appreciate the controversy, the relevant definition clause, i.e., 2(1)(c)(vii) of Commercial Courts Act, 2015, and the explanation thereto is reproduced as under :

“Definitions.-(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;

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

(a) It also involves action for recovery of immovable property or for realization of monies out of immovable property given as security or involves any other relief pertaining to immovable property;

(b) One of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;”



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9.2. The explanation in the present case has to be read as part and parcel of clause (vii), for the language of the explanation shows the purpose, and the construction consistent with the purpose which should be placed on the main provision. The main provision, therefore, has to be construed and read in the light of the explanation and accordingly the scope and ambit of sub-clause (vii) to clause(c), defining the expression “commercial dispute”, has to be interpreted. The explanation harmonises and clears up any ambiguity or doubt when it comes to interpretation of the main provision. In *S. Sundaran Pillai v. V.R. Pattabiraman* [\(1985\) 1 SCC 591](#), it was observed that explanation to a statutory provision can explain the meaning and intendment of the provision itself and also clear any obscurity and vagueness to clarify and make it consistent with the dominant object which the explanation seems to sub-serve. It fills up the gap. However, such explanation should not be construed so as to take away the statutory right with which any person under a statute has been



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clothed or to set at naught the working of the Act by becoming a

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hindrance in the interpretation of the same.

9.3. Clause (c) defines the “commercial dispute” in the Act to mean a dispute arising out of different sub-clauses. The expression “arising out of” in the context of clause (vii) refers to an agreement in relation to an immovable property. The expressions “arising out of” and “in relation to immovable property” have to be given their natural and general contours. These are wide and expansive expressions and are not to be given a narrow and restricted meaning. The expressions would include all matters relating to all agreements in connection with immovable properties. The immovable property should form the dominant purpose of the agreement out of which the dispute arises. There is another significant stipulation in clause (vii) relating to immovable property, i.e., the property should be used exclusively in trade or commerce. The natural and grammatical meaning of clause (vii) is that all



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disputes arising out of agreements relating to immovable property when the immovable property is exclusively used for trade and commerce would qualify as a commercial dispute. The immovable property must be used exclusively for trade or business and it is not material whether renting of immovable property was the trade or business activity carried on by the landlord. Use of the property as for trade and business is determinative. Properties which are not exclusively used for trade or commerce would be excluded.

9.4. The explanation stipulates that a commercial dispute shall not cease to be a commercial dispute merely because it involves recovery of immovable property, or is for realization of money out of immovable property given as security or involves any other relief pertaining to immovable property, and would be a commercial dispute as defined in sub-clause (vii) to clause (c). The expression “shall not cease”, it could be



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asserted, has been used so as to not unnecessarily expand the ambit and

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scope of sub-clause (vii) to clause (c), albeit it is a clarificatory in nature.

The expression seeks to clarify that the immovable property should be exclusively used in trade or commerce, and when the said condition is satisfied, disputes arising out of agreements relating to immovable property involving action for recovery of immovable property, realization of money out of immovable property given as security or any other relief pertaining to immovable property would be a commercial dispute. The expression “any other relief pertaining to immovable property” is significant and wide. The contours are broad and should not be made otiose while reading the explanation and sub-clause (vii) to clause (c) which defines the expression “commercial dispute”. Any other interpretation would make the expression “any other relief pertaining to immovable property” exclusively used in trade or commerce as nugatory and redundant.



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9.5. Harmonious reading of the explanation with sub-clause (vii) to clause (c) would include all disputes arising out of agreements relating to immoveable property when used exclusively for trade and commerce, be it an action for recovery of immoveable property or realization of money given in the form of security or any other relief pertaining to immoveable property.

10. In the context of the present case, it is not disputed that the immovable property was being used for commercial purpose, i.e., for running a hotel and a lodge by the defendant. The next question, which arises for consideration, is whether a suit involving action for recovery of rental arrears and compensation is a dispute arising out of agreements relating to immovable property, is a commercial transaction. In the present case, we are dealing with a property given on rent, for being



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exclusively used for trade and business. Order XX Rule 12 CPC

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stipulates that when a suit is filed for recovery of possession and for rent, the Court can pass a decree for possession of the property and also for recovery of rents.

10.1. Lease of immovable property is dealt with under the Transfer of Property Act in Chapter V thereof. The said enactment vide section 105 defines what is lease, lessor, lessee and rent and vide section 107 stipulates how leases are made and can be terminated. Leases can be both oral or in writing. Noticeably, sub-clause (vii) to clause (c) in Section 2 of the Act does not qualify the word “agreements” as referring to only written agreements. It would include oral agreements as well. The provisions of the Transfer of Property Act deal with the effect of non-payment of rent, effect of holding over and most importantly the determination of the leases or their termination. It cannot be disputed that



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action for recovery of immovable property would be covered under sub-

clause (vii) to clause (c) when the immovable property is exclusively used in trade or commerce. Read in this manner, we do not think that claim for recovery of rent or mesne profit, security deposit etc., relating to immovable property which was used exclusively in trade or commerce should not be treated as a commercial dispute in view of the language, ambit and scope of sub-clause (vii) to clause (c) to Section 2 of the Act. These would qualify and have to be regarded as commercial disputes. The use of expression“any other relief pertaining to immovable property” would mean disputes relating to breach of agreement and damages payable on account of breach of agreement would be covered under sub-clause (vii) to clause (c) to Section 2 of the Act when it is arising out of agreement relating to immovable property exclusively used in trade and commerce.



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11. Now the question arises, whether this Second Appeal is maintainable against the judgment and decree passed by a Commercial Appellate Court.

11.1. When the Commercial Courts Act, 2015, came into force with effect from 23.10 2015, its enactment contemplated a Commercial Court at the level of the District Judge and a Commercial Division at the High Court. In other words, there was no Commercial Court below the level of the District Judge. Appeals from the orders of the Commercial Court (District Judge) and the Commercial Division were to lie to the Commercial Appellate Division (Division Bench) under Section 13 of the Act.

11.2. Section 13 of the Commercial Courts Act, 2015 prior to its amendment vide Central Act 28 of 2018 was as follows:



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"13 (1) Any person aggrieved by the decision of the Commercial Court or Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of judgment or order, as the case may be:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908, as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996.

(2) Notwithstanding anything contained in any



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other law for the time being in force or Letters

Patent of a High Court, no appeal shall lie from

any order or decree of a Commercial Division or

Commercial Court otherwise than in accordance

with the provisions of this Act."

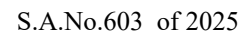
Section 13(1), as it originally stood, was in two parts: Section 13(1) contemplated appeals against decrees (though titled "decision") while the proviso contemplated appeals against certain orders as enumerated in Order 43 CPC. In either case, an appeal was to lie from decrees and orders of the Commercial Division or Commercial Court (District Judge level) to the Commercial Appellate Division of the High Court. Section 13(2) en grafted a bar that no appeal would lie from any decree or order of the Commercial Court or Commercial Division otherwise than in accordance with the provisions of the Act.



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11.3. The Commercial Courts Act, 2015 was amended by Central Act 28 of 2018. Section 3(3) of the Act was amended to enable the State Government, with the prior consultation of the High Court, to establish Commercial Courts below the level of the District Judge. Simultaneously, Section 3-A was introduced enabling the State Government to constitute Commercial Appellate Courts at the level of the District Judge. These Commercial Appellate Courts were to hear appeals against decrees and orders of the Commercial Courts, below the level of the District Judge. This was achieved by substituting a new Section 13(1) providing that an appeal shall lie from a Commercial Court, below the level of the District Judge, to the Commercial Appellate Court at the District Judge level. The old Section 13(1) was now renumbered as Section 13(1-A) and provided for appeals from the Commercial Court (DJ Level) and Commercial Division to the Commercial Appellate Division of the High Court.



11.5. Therefore, the bar under Section 13(2) is not directed against



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the decree of a Commercial Appellate Court, and there would, therefore, be no bar to entertain a second appeal under Section 100 if the matter raises a substantial question of law.

12. The next question arises for consideration is that, whether the cost awarded for the defendant under Section 35 of CPC by the first appellate court is correct.

12.1. The appellant has challenged the judgment and decree both on merits and costs, however, the learned counsel for appellant / defendant restricted his arguments only to the question of costs. Therefore, the only question for consideration is the legality and validity of the order passed by the first appellate court directing the defendant to pay a cost of Rs.10,00,000/- to the plaintiff, holding that there is no contestable defence for the appellant / defendant in the proceedings and



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the same is vexatious. The first appellate court, applying the principle laid down in *La Fin Financial Services Pvt. Ltd., vs. Multi Commodity Exchange of India Limited* dated 21.09.2021, held that, the appellant / defendant is squatting over the property without paying the rent and therefore, the case has to be dealt with under Section 35 CPC (as amended by Commercial Courts Act, 2015 (Central Act 4 of 2016)), which has no limits in awarding costs.

12.2. The commercial suits are governed by Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. With respect to Commercial Suits, the provision of costs under Section 35 CPC stands amended, and the provision of costs with respect to commercial cases is now to be dealt with by the Commercial Courts as per Section 35 CPC amended and as applicable to Commercial Courts as under:



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"Section 35. Costs.— (1) In relation to any commercial dispute, the Court, notwithstanding anything contained in any other law for the time being in force or Rule, has the discretion to determine:

- (a) whether costs are payable by one party to another;*
- (b) the quantum of those costs; and*
- (c) when they are to be paid.*

Explanation.—For the purpose of clause (a), the expression “costs” shall mean reasonable costs relating to—

- (i) the fees and expenses of the witnesses incurred;*
- (ii) legal fees and expenses incurred;*
- (iii) any other expenses incurred in connection with the proceedings."*

A reading of Section 35 CPC as applicable to Commercial Courts shows



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that costs can be imposed at different stages of the suits as provided under

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Sub-section (4) of Section 35 CPC. In making an order of payment of costs, Courts have to take note of the conduct of the parties. Section 16 of the Commercial Courts Act, 2015, states that the provisions of the CPC will apply to commercial disputes, subject to the provisions of the Commercial Courts Act itself. This includes Section 35 CPC. In essence, the Commercial Courts Act builds upon the foundational principles of Section 35 CPC to ensure a most robust and predictable frame work for awarding costs that reflects the commercial nature of the litigation. Therefore, Section 35 of the Civil Procedure Code, 1908, can be invoked to award costs in Commercial Suits, as the Commercial Courts Act, 2015, explicitly incorporates the provisions of the CPC regarding costs. The Court has broad discretion under Section 35 to determine by whom and to what extent costs are to be paid. If the Court decides to make an order for payment of costs, the general rule is that the unsuccessful party shall be



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ordered to pay the costs of the successful party. Therefore, the awarding

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of costs under Section 35 of CPC is sustainable in commercial suits, as the Courts have discretion to determine costs and have been encouraged to award realistic and deterrent costs especially in commercial cases. The Commercial Courts Act, 2015, reinforces this by granting Court's broad discretion to decide who pays, how much, and when costs should be paid in commercial disputes. In ***La Financial Services Pvt Ltd vs Multi Commodity Exchange Of India Ltd*** dated 21.09.2021, the Hon'ble High Court of Bombay has held as follows :

“19. Because this is clearly a vexatious and mischievous proceeding that has unnecessarily wasted the Court's time, I can think of no reason to withhold an order of costs against the Plaintiffs. The quantum of costs cannot be trivial. Amended Section 35 clearly intends the power of ordering



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costs to be used as a deterrent to prevent parties from making such frivolous applications. It would be meaningless to order a paltry amount. Plaintiffs such as this one will understand that Courts are not playgrounds, and litigation is not a pastime.

20. There will, therefore, be an order of costs against the Plaintiff and in favour of the Defendant to be paid within two weeks from today in the amount of Rs.25 lakhs. If not paid in that time, the costs will carry interest at 9% per annum, and the Defendant is entitled to put this order into execution against the Plaintiff for recovery of these costs.”

The first appellate court, following the principles laid down in the case cited supra, has awarded Rs.10,00,000/- as costs to the defendant for squatting in the property even after termination of agreement. In the case



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cited supra, the facts of the case is different. In the above said judgment, it was observed that the suit filed by the plaintiff is clearly vexatious and mischievous. In the present case, the first appellate court has award cost of Rs.10,00,000/- considering the fact that the appellant is squatting over the property, and considering the legal fees and other expenses quantified at Rs.10,00,000/- as costs.

12.3. Unlike in general Civil Suits where awarding costs is more discretionary, the amended Section 35 makes it a general rule that the unsuccessful party shall be ordered to pay the costs of the successful party. However, the costs awarded must be actual and reasonable. In the present case, the appellant has every right to prefer an appeal against the order passed by the trial court, which does not mean that the appellant has initiated a frivolous appeal suit. Hence, this Court is under impression that awarding cost of Rs.10,00,000/- is highly improbable and exorbitant,



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particularly when compensation was awarded for use and occupation of the suit premises by the defendant. Though awarding of costs in commercial disputes generally treated as mandatory, costs should be assessed according to rules in force. Costs can be imposed after taking into the expenses incurred, which includes, court fee, process fee, the Advocate's fee, expenses of witness and other expenses allowable under the Rules. However, there is nothing on record to show on what basis the first appellate court has calculated the costs of Rs.10,00,000/- for the defendant, which requires consideration by this Court. Therefore, this Court is inclined to reduce the cost imposed by the first appellate court from Rs.10,00,000/- to Rs.3,00,000/-.

13. In view of the above, the judgment and decree passed by the first appellate court is modified. This Second Appeal is disposed of in the above said terms. The judgment and decree of the first appellate court is



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upheld in all other aspects. Consequently connected miscellaneous

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petition is closed.

28.11.2025

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The District Judge, Nilgiris at Udhagamandalam.
2. The Subordinate Judge, Coonoor.
3. The Section Officer, VR Section, High Court, Madras.



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