



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3890-2024 (O&M)
Date of Decision: 15.05.2025

HEMANT BHAGAT

. . . . Petitioner

Vs.

SMT. SHASHI JAIN THROUGH LRS

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Aashish Chopra, Sr. Advocate, with
Mr. Bhupinder Ghai, Advocate, for the petitioner.

Mr. Vipul Sharma, Advocate, and
Mr. Devmani, Bansal, Advocate, for the respondent.

DEEPAK GUPTA, J.

CM-9700-CII-2025

This is an application moved by the respondents under Section 151 CPC to place on record documents Annexures A1 to A4 and to exempt from filing certified copies thereof.

Application is allowed.

Annexures A1 to A4 are taken on record.

CR-3890-2024

This revision petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 15.05.2024 passed by the learned Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court, Gurugram (Annexure P-1), whereby the application filed by the petitioner/defendant under Order VII Rule 11(d) of the Code of Civil Procedure (CPC) for rejection of the plaint was dismissed.

2. The suit was filed by the plaintiff-respondent seeking recovery of ₹98,60,000/- along with interest. As per the plaintiff, she was interested

in purchasing a flat in Gurugram. The defendant, being a property dealer, offered to sell Flat No. B-201, 2nd Floor, Tower-5, Orlov Court, Essel Tower, Gurugram, owned by M/s Shakun Buildwell Pvt. Ltd., for a sale consideration of ₹2,95,00,000/-, with the stipulation that ₹1,55,00,000/- was to be paid in cash. It is alleged that the defendant received ₹1.5 crore in cash from the plaintiff on behalf of the flat owner, but failed to pass it on to M/s Shakun Buildwell Pvt. Ltd. The plaintiff came to know about this only when she approached the owner for registration of the sale deed. Upon confronting the defendant, he returned ₹51,40,000/-, but failed to refund the remaining amount, leading to the filing of the present suit.

3. Initially, the suit was instituted before the Court of the learned Civil Judge (Senior Division), Gurugram, and assigned to the Additional Civil Judge (Senior Division), Gurugram. On an application filed by the plaintiff under Section 15 of the Commercial Courts Act, 2015 read with Section 151 CPC, the plaint was returned for presentation before the appropriate forum. This order was challenged before this Court in CR-2285-2022, which was disposed of on 02.06.2022 with liberty to the plaintiff to move a fresh application. Subsequently, vide order dated 23.02.2024, the learned Additional Civil Judge (Senior Division), Gurugram made a reference to the District and Sessions Judge, Gurugram, who vide order dated 12.03.2024, transferred the case to the Commercial Court. The District Judge left it open to the Commercial Court to determine whether the dispute fell within the ambit of a "commercial dispute."

4. Thereafter, the petitioner/defendant moved an application under Order VII Rule 11(d) CPC for rejection of the plaint, primarily contending that the dispute related to a residential flat and did not qualify as a "commercial dispute" under Section 2(1)(c) of the Commercial Courts Act, 2015. It was argued that the suit was a simple suit for recovery and not related to any commercial activity or transaction.

5. The learned Commercial Court, while acknowledging that the transaction pertained to a residential flat, held that the dispute fell within

the ambit of Section 2(1)(c)(xviii) of the Act, which relates to agreements for sale of goods or provision of services. It was reasoned that since the plaintiff had availed the services of the defendant as a property dealer, the transaction involved provision of services and was, therefore, commercial in nature. Accordingly, the application for rejection of the plaint was dismissed.

6. Learned Senior Counsel for the petitioner has assailed this finding, contending that the suit is based upon a Memorandum of Understanding dated 10.03.2015, under which two cheques both dated 21.3.2015 for ₹75 lakh each were issued with a stipulation that they could be encashed, if payment was not made by 20.03.2015. The counsel argued that there was no agreement for provision of services, nor is the recovery based on any such claim. Instead, the suit is founded on breach of the said memorandum. It is further submitted that the plaint, on its own terms, discloses that the recovery is sought based on the defendant's failure to return the amount received under the MOU, and not on account of any services rendered by him. Thus, Section 2(1)(c)(xviii) of the Act is not attracted.

7. Learned counsel for the respondent did not seriously contest the petitioner's argument but submitted that the suit has remained pending since 2015. If the dispute is found to be not of commercial nature, the matter may be remanded back to the original Civil Court for expeditious disposal. This request was not opposed by the petitioner.

8. Section 2(1)(c)(xviii) of the Commercial Courts Act defines "commercial dispute" to include:

"agreements for sale of goods or provision of services."

9. A perusal of the plaint (Annexure P-4) reveals that no specific agreement between the parties has been pleaded for the provision of services. The background of the transaction involving the purchase of the flat has been narrated, but the plaintiff's primary claim is for recovery of money allegedly received by the defendant on behalf of owner of the Flat

and then not paid to the owner. The plaint is based on the Memorandum of Understanding dated 10.03.2015, pursuant to which cheques were issued, and not on any agreement for services.

10. In view of the above, this Court is of the considered view that the learned Commercial Court erred in treating the dispute as a commercial dispute within the meaning of Section 2(1)(c)(xviii) of the Act.

11. Consequently, the impugned order dated 15.05.2024 is hereby set aside to the extent that it holds the dispute to be commercial in nature.

12. Accordingly, it is directed that the Commercial Court, Gurugram shall transfer the suit to the Court of learned Civil Judge (Senior Division), Gurugram for its disposal in accordance with law.

13. Both the counsels have informed that the next date of hearing before the Commercial Court is 31.05.2025. In view of the fact that the case is quite old, the Commercial Court is directed to transfer the case on the same date i.e., 31.05.2025, and then the transferee Court shall proceed expeditiously with the trial by granting short dates.

Disposed of.

15.05.2025

Vivek

(DEEPAK GUPTA)
JUDGE

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes
Yes