



2025:DHC:4890



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 21.05.2025+ **TR.P.(C.) 59/2025****INDIA SOTHEBYS INTERNATIONAL REALTY**PetitionerThrough: Ms. Aakansha Kaul, Mr. Aman
Sahani, Ms. Ashima Chopra, Advs.

versus

GOGIA CAPITAL SERVICES LIMITED AND ORS.RespondentsThrough: Mr. Arav Pandit, Ms. Yashika
Kapoor, Advs.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present transfer petition has been filed by the petitioner for the transfer of the suit bearing no. CS DJ No. 4164/2024 ('the Suit'), filed under Order XXXVII of the CPC, 1908, seeking recovery of INR 76,66,932/- along with *pendente-lite* and future interest, from the learned District Judge-05, Patiala House Court, to the learned District Judge (Commercial), Patiala House Court. The Suit was inadvertently filed as an ordinary suit and was therefore listed before the learned District Judge.

2. It is submitted that since the dispute arises out of an Agreement dated 02.09.2020 (hereinafter the 'Agreement') executed between the parties, whereby the petitioner agreed to render services to locate a suitable property for the respondents at Capital Court, Munirka and to manage the negotiation and execution of the transaction, it falls within the definition of a 'commercial dispute' as defined under Section 2 (c) of the Commercial



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Courts Act, 2015, and is therefore exclusively triable by the Commercial Court, Patiala House Court.

3. The Agreement, *inter alia*, stipulated that the petitioner will be entitled to a Success Fee equivalent to 2 % of the total sale consideration of the property to be purchased by the respondents.

4. Following several rounds of negotiations facilitated by the petitioner, the sale transaction of the Property i.e., “Apartment/Unit bearing No. 106 B, Left Wing at 6th Floor, having a super area measuring 552.77 sq. mt. together with right to park four cars bearing Nos 27, 28, 32 and 33 in the basement of the commercial building known as 'The Capital Court', made over Plot No. M.S.- 1, at Local Shopping Centre, Munirka Phase-III, New Delhi-110067”, was concluded, and a Sale Deed dated 27.08.2021 was executed on 02.09.2021 between the transferor of the Property and the respondent no. 3 in the present Petition.

5. It is submitted that notwithstanding the discharge of its obligations in terms of the Agreement, the respondents refused to make payment of the Success Fee to the petitioner, as contractually agreed, which resulted in the filing of the Suit. It is further submitted that pre-suit mediation under section 12A (1) of the Commercial Courts Act, 2015 was instituted on 19.10.2022. The respondents were called upon to participate in the mediation process for which proceedings were scheduled for 14.11.2022 and 17.12.2022. However, despite issuance of notices the respondents did not participate in the pre-suit mediation. Thus, the process of mediation was treated as non-starter.

6. Subsequently, the Suit was filed and listed before the learned District



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Judge, Patiala House Courts on 27.08.2024. Summons were issued to the respondents on the said date. Thereafter, on 25.11.2024, when the Suit came up before the learned District Judge, the petitioner was directed to place on record the original Agreement from which the dispute emanates and the next date was notified as 27.01.2025.

7. It is submitted that during the course of hearing on 27.01.2025, it was put to the petitioner that the Suit will have to be filed under the Commercial Courts Act, 2015 and as such will have to be heard before the District Judge (Commercial), Patiala House Court. Hence the present petition has been filed by the petitioner.

8. It is rightly contended by the petitioner that Section 24 of the Code of Civil Procedure, 1908 (hereinafter “CPC”) vests the Court with the power to transfer any proceedings pending before its subordinate Courts. In particular, Section 24(5) of the CPC, specifically provides for the transfer of any proceedings pending before a Court which has no jurisdiction to try it.

9. It is noticed that in a similar case, **Namita Gupta Vs. Suraj Holdings Limited**, 2024 SCC OnLine Del 143 this Court copiously examined the provisions of Commercial Courts Act, 2015 and the provisions of CPC and specifically answered the following issue framed by the Court in the said judgment:

“(i) Whether the Act excludes the application of Section 24 of the CPC to the commercial disputes having a specified value?”

It was held as under:-

“60. Therefore, once it is accepted that a Suit, which though relates to a Commercial Dispute of a Specified Amount, is filed as an ordinary Suit before a Civil Court, the plaint, under Order VII Rule 10 CPC, shall be returned to the plaintiff to present the same before the Commercial Court of appropriate jurisdiction, equally, either of the



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parties may invoke the provisions of Section 24 of the CPC to seek transfer of such a Suit.

61. The learned counsel for the petitioner has rightly pointed out that the Suit, which has been filed before the Ordinary Civil Court, may not be complying with the special pleadings, may not contain the Statement of Truth or the affidavit in the prescribed form, and may not even have complied with the provisions of Section 12A of the Act. However, in my view, once it is conceded that the plaint of a Suit filed before the ordinary Civil Court can be returned to be filed before a Commercial Court after making necessary amendments thereto in the form of necessary pleadings, attachment of Statement of Truth, and affidavits, even where the Suit is transferred in the exercise of powers under Section 24 of the CPC, the plaintiff will have to make such necessary amendments in the Suit. Merely because such amendments may have to be made by the plaintiff on transfer of the Suit, the High Court cannot be denuded of the power which it has under Section 24 of the CPC.

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75. The parties shall appear before the learned Transferee Court on the date that must have already been fixed by the Transferee Court.”

10. In view of the authoritative pronouncement in **Namita Gupta Vs. Suraj Holdings Limited** (supra), there is no impediment in allowing the present petition.

11. Consequently, the suit bearing no. CS DJ No. 4164/2024 is transferred from the learned District Judge-05, Patiala House Court to the learned District Judge (Commercial), Patiala House Court.

12. The present petition is allowed in the above terms.

SACHIN DATTA, J

MAY 21, 2025/at