



2025:DHC:4455



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 17.04.2025*+ **C.R.P. 275/2023**

VIJAY KOHLI & ANR.

.....Petitioners

Through: Mr. Alok Kumar Pandey and Ms.
Muskaan Dewan, Advs.

versus

SANJAY JETHWANI

.....Respondent

Through: None.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. None appears for the Respondent.
2. The present Petition has been filed under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) impugning the order dated 02.08.2023 [hereinafter referred to as "Impugned Order"] passed by the learned ADJ-08/West/Tis Hazari Courts, Delhi. By the Impugned Order, two Applications, one under Order VII Rule 11 of the CPC filed by the Petitioner and the other Application under Order VII Rule 10 and 10A read with Section 151 of the CPC, filed by the Respondent have been dismissed by the learned Trial Court by a composite order.
3. Since this Petition has been filed by the Petitioners (Defendants before the learned Trial Court), the only aspect which requires examination by the Court is the Application under Order VII Rule 11 of the CPC which was filed by the Petitioners wherein it has been averred that the suit is not maintainable. The Impugned Order, so far as it decides the Application under Order VII Rule 10 of the CPC as filed by the Respondent (Plaintiff) has not been challenged by the Respondent and is not subject matter of



examination in the present Petition.

4. A Coordinate Bench of this Court by its order dated 09.02.2024 directed that the proceedings before the learned Trial Court shall remain in abeyance. The matter has continued as is till today. Given the directions passed by the Coordinate Bench of this Court, this Court deems it apposite to hear and decide the matter today.

5. Learned Counsel for the Petitioners raises only one contention. He submits that the dispute between the parties is a commercial dispute. This contention was raised by the Petitioners before the learned Trial Court as well. The learned Trial Court analysed the definition of a commercial dispute as set out in the Commercial Courts Act, 2015 [hereinafter referred to as the “CC Act”] and the nature of the case, and found that the dispute between the parties is not a commercial dispute.

5.1 The learned Trial Court held that the suit filed is a simpliciter case of specific performance of Agreement dated 09.04.2018 and for other reliefs which arise out of a building contract agreement entered into between the parties and thus, it was contended since the Agreement is a building contract agreement and was thus a commercial contract and governed by the CC Act.

6. Briefly, the facts are that the Respondent/Plaintiff filed a “*suit for specific performance/recovery of due amount with interest and for permanent injunction*”. It is the case of the Respondent/Plaintiff in the Plaint that the Petitioners/Defendant Nos. 1 to 3 were the joint owners of property bearing address J5/9, Rajouri Garden, New Delhi – 110027 [hereinafter referred to as “suit property”]. An Agreement dated 09.04.2018 termed as a building contract agreement was entered into between the Respondent and



Petitioner No.1 [hereinafter referred to as “Agreement”]. The Agreement was for completion of building works including installation of lift, interior work i.e., electrical, sanitary, plumbing, wood work, flooring, POP and other works. It further stated therein that Petitioner No.1 has approached the Respondent to complete the pending work of suit property within a specified period and in lieu thereof, consideration shall be paid to the Respondent by Petitioner No.1.

7. It is the case of the Respondent/Plaintiff that although the Respondent/Plaintiff completed his entire part of the Agreement and had notified the Petitioners/Defendants that he is ready and willing to complete anything which remains, but the Petitioners/Defendants chose not to respond to the Respondent/Plaintiff.

7.1 It is in these circumstances that the Respondent/Plaintiff filed a suit for specific performance of the Agreement. It is apposite to set out the relevant extract of the Plaint in this behalf is reproduced below:

“3. That the defendants were completing the construction of the suit property from their Personal Finances but were unable to complete the entire building and the construction was left incomplete and the defendants were looking for a contractor cum builder who could complete the building from his personal finances for the defendants. Thereafter, the plaintiff was approached by the defendants to complete the construction of their building.

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7. That as per the terms of the agreement, the construction was to be completed within 6 months from date of the agreement, i.e., by 08.10.2018, and the entire payment was to be released to the plaintiff within two months thereafter, i.e., 08.12.2018. It was also agreed that if the defendants failed to make the payment to the plaintiff by the said date, defendant no. 1 shall sell the upper second floor of the property at prevalent market rates to make good the payment due to the plaintiff.



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9. **That the plaintiff completed the entire building work on time and there was no complaint from any of the defendants regarding any balance work at any time. After completion of the entire work from his own sources and finances to the entire satisfaction of the defendants, the plaintiff asked the defendants to make good the payment due to the plaintiff. However, the defendants failed to make the agreed payment in time to the plaintiff and the plaintiff was constrained to send a legal notice to defendant No.1 on 17.02.2019 asking for repayment of the amount due to the plaintiff. Copy of the notice dated 17.02.2019 and courier receipt of the same are annexed to the plaint. After the receipt of the said notice, defendant no.1 met the plaintiff and requested for some more time stating that he will have to sell the upper second floor of the suit property to make good the payment of the plaintiff as he will not be able to manage the payment through his personal finances. The defendant no.1 also requested the plaintiff to find prospective buyer for the said upper second floor of the suit property.**

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14. **That when the defendants did not come forward to make good the payment of the plaintiff, the plaintiff met defendants in the first week of August 2021 requesting them to either perform their part of the agreement or else plaintiff threatened legal action against all the defendants.** When the defendants did not seem to be moved at the threat of legal action at the hands of the plaintiff, the plaintiff sent a legal notice to all the three defendants through his counsel on 10.08.2021, but all the three defendants refused to accept the said notice and returned the notice back since they were aware that plaintiff will be initiating legal action. All the three original envelopes containing the original notices are annexed with the plaint. On account of refusal and / or avoidance of the service of the said notice, it became clear to the plaintiff that the defendants have no intentions to perform their part of the agreement.

15. **That the plaintiff has completed his entire part of the agreement and has clearly notified to the defendants that he is ready and willing to complete anything which remains as per the agreement dated 09.04.2018, even though nothing remains to be performed on part of the plaintiff, but the defendants chose not to accept the notice and refused the same. The plaintiff is left with no other remedy except to approach this Court for performance of defendant's part of the agreement which is yet to be performed and for recovery of payment due to be paid by the defendants to the plaintiff.** It is clear that the defendants have no intentions to honor their part of the agreement. ”

[Emphasis Supplied]



7.2. The prayers in the Plaint were for specific performance of the Agreement or in the alternate, a decree for recovery of money due with interest and damages. The prayers in the Plaint are set out below:

“a. Pass a decree of specific performance in favor of plaintiff and against the defendant no. 1 thereby directing the defendant no. 1 to perform the sale of upper second floor of the property and pay the due amount of Rs. 1,15,00,000/- (One Crore Fifteen Lakh only) to the plaintiff alongwith interest at a rate of 1.75% per month from 09.12.2018 onwards;

OR IN THE ALTERNATIVE

b) Pass a decree of recovery in favor of plaintiff and against the defendant no. 1 thereby directing the defendant no. 1 to pay the due amount of Rs. 1,15,00,000/- (One Crore Fifteen Lakh only) to the plaintiff alongwith interest-at a rate of 1.75% per month from 09.12.2018 onwards from his accounts and assets;

c) Pass a decree of recovery in favor of the plaintiff as against the defendants thereby directing the defendants to pay any due amount left balance out of total amount of Rs. 1,15,00,000/- (One Crore Fifteen Lakh only) plus interest as ordered by the Hon'ble Court to the plaintiff in the event that the upper second floor of the suit property is sold at a price less than the total decreed amount, from their personal accounts and assets;

d) Pass a decree of permanent injunction in favor of plaintiff as against the defendants, their agents, representatives, assignees, heirs and attorneys etc. from disposing or creating any third party rights in any portion (basement, stilt parking, upper ground, upper first, upper second, upper third and roof of upper third floor) of the suit property bearing no. J 5/9, Rajouri Garden, New Delhi attached; 27, shown in RED in site plan

e) Award cost of the suit to the plaintiff;

f) Award damages to the plaintiff as the Hon'ble Court may deem fit and proper given the circumstances of the suit;

g) Any other relief or order that the Hon'ble Court may deem fit and proper under the facts and circumstances of the case may also be passed in favor of the plaintiff as against the defendants.”

8. It is settled law that in an Application under Order VII Rule 11 of the CPC, the Court is required to examine the plaint and the documents filed



along with the plaint. It is the contention of the Petitioner that the Agreement is a commercial agreement in view of the Agreement being a construction contract between the parties. However, a careful perusal of the Agreement does not reflect the same. The Agreement is clearly between two individuals and the recitals of the Agreement state that the Agreement is a pure building contract agreement where construction of a residential building needs to be completed which was left incomplete by an earlier person.

8.1 The Supreme Court in the case of ***Sushil Kumar Agarwal v. Meenakshi Sadhu***¹, has clarified the difference between a construction contract and a collaboration agreement where there is a transfer of some part of the land as well. It was held that an agreement wherein the owner of the immovable property engages someone to carry out the work of construction on the property for monetary consideration, such a contract is a pure construction contract. It has further been explained that the contractor has no interest in either the land or the construction which is carried out in a construction contract. The relevant extract of the ***Sushil Kumar Agarwal case*** is reproduced below:

“17. The expression “development agreement” has not been defined statutorily. In a sense, it is a catch-all nomenclature which is used to be describe a wide range of agreements which an owner of a property may enter into for development of immovable property. As real estate transactions have grown in complexity, the nature of these agreements has become increasingly intricate. Broadly speaking, (without intending to be exhaustive), development agreements may be of various kinds:

17.1. An agreement may envisage that the owner of the immovable property engages someone to carry out the work of construction on the property for monetary consideration. This is a pure construction contract;

¹ (2019) 2 SCC 241



17.2. An agreement by which the owner or a person holding other rights in an immovable property grants rights to a third party to carry on development for a monetary consideration payable by the developer to the other. In such a situation, the owner or right holder may in effect create an interest in the property in favour of the developer for a monetary consideration;

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18. When a pure construction contract is entered into, the contractor has no interest in either the land or the construction which is carried out. But in various other categories of development agreements, the developer may have acquired a valuable right either in the property or in the constructed area. The terms of the agreement are crucial in determining whether any interest has been created in the land or in respect of rights in the land in favour of the developer and if so, the nature and extent of the rights.

[Emphasis Supplied]

8.2 A perusal of the Agreement entered between the parties shows that the Agreement does not grant any interest to the Respondent in the suit property and the Agreement only provides for the Respondent to complete the construction of the suit property. Thus, the Agreement is a pure construction contract.

9. In order to ascertain whether the transaction between the parties which is the subject matter of the suit could be considered as a “commercial dispute”, it is relevant to examine the provisions of Section 2(1)(c) of the CC Act which provides for the definition of “commercial disputes”. Section 2(1)(c) of the CC Act is reproduced below:

“ 2. Definitions.— (1) In this Act, unless the context otherwise requires,—

...

(c) “commercial dispute” means a dispute arising out of—

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

(ii) export or import of merchandise or services;

(iii) issues relating to admiralty and maritime law;



(iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;

(v) carriage of goods;

(vi) construction and infrastructure contracts, including tenders

(vii) agreements relating to immovable property used exclusively in trade or commerce;

(viii) franchising agreements;

(ix) distribution and licensing agreements;

(x) management and consultancy agreements;

(xi) joint venture agreements;

(xii) shareholders agreements;

(xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;

(xiv) mercantile agency and mercantile usage;

(xv) partnership agreements;

(xvi) technology development agreements;

(xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;

(xviii) agreements for sale of goods or provision of services;

(xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;

(xx) insurance and re-insurance;

(xxi) contracts of agency relating to any of the above; and

(xxii) such other commercial disputes as may be notified by the Central Government...

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 realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;...

[Emphasis Supplied]

9.1 Section 2 (1) (c) of the CC Act, provides for a wide range of disputes which have been recognized by the legislature as commercial disputes and



which are incorporated from clause (i) to (xxii). It includes ordinary transactions of merchants and bankers to export and import of merchandise, admiralty and carriage of goods, license agreements etc. The definition of commercial disputes under this provision is thus exhaustive and detailed and covers each kind of commercial transaction and a wide range of categories.

9.2 Section 6 read with Section 2(1)(i) of the CC Act provides that in order to be categorized as a commercial dispute under Section 2 (1) (c) of the CC Act, only a commercial suit of the specified value where the subject matter exceeds Rs. 3 lacs, would fall within the definition of a commercial dispute. In addition, Section 11 of the CC Act also provides that Commercial Court shall not entertain or decide any suit, application or proceedings relating to any commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law.

10. At its core, a commercial dispute arises when the terms or consequences of an agreement extend beyond a purely private arrangement between the contracting parties and generate broader commercial activity between them. The specific types of agreements listed under Section 2(1)(c) of the CC Act suggest that not every dispute can automatically be classified as commercial dispute. It is essential to examine the substance and detailed provisions of the agreement to determine whether it aligns with any of the categories outlined in the sub-clauses of Section 2(1)(c). A key consideration is whether the parties, at the time of entering into the contract, recognized and intended for the agreement to fall within the scope of sub-clauses (i) to (xxii) of Section 2(1)(c) of the CC Act.



10.1 It is no longer *res integra* that the provisions of CC Act have to be construed and interpreted in a narrow sense in order to fulfil the object of the Act. In ***Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP***², the Supreme Court observed that the question of whether the suit falls within the scope of a ‘commercial dispute’, as defined under the Commercial Courts Act, cannot be dealt with in abstract. Instead, the nature of the dispute and the jurisdiction to try the same is to be reflected in the suit itself, since in a civil suit, the pleadings, namely, averments in the plaint would, at the outset, be relevant to confer jurisdiction. It was further held that the very purpose for which the Commercial Courts Act has been enacted is to expedite the adjudicatory process and to place the trial of the suits relating to Commercial Dispute on a fast track. The provisions of the Act are, therefore, required to be strictly construed, as if the provisions are given a liberal interpretation, the object behind the Act will be defeated. The relevant extract of the ***Ambalal Sarabhai*** case is below:

“8. Though such rival contentions are put forth by the learned Senior Advocate on either side, these aspects cannot be dealt with in abstract. Instead the nature of the dispute and the jurisdiction to try the same is to be reflected in the suit itself since in a civil suit the pleadings, namely, averments in the plaint would at the outset be relevant to confer jurisdiction. Hence before advertinq to the other aspects it would be necessary to carefully examine the plaint. The plaintiff has in detail referred to the nature of the transaction between the appellant and the respondents herein. In Para 5 thereof the detail of the land bearing R.S. No. 122 corresponding to City Survey Nos. 1101 and 1100/1 having land area of 9207 sq m at Mouje Subhanpura Reg. District, Vadodara is referred. Further the schedule of the property is indicated in Para 6 and reference is made to the Memorandum of Understanding where again the reference is made to the land. It is averred therein that it would be the total responsibility of Respondent 1 herein (Defendant 2 in the suit) to change the land use as well as to pay the amount that may be required for the permission. The amount to be paid as premium is referred and the right of

² (2020) 15 SCC 585



the plaintiff to secure the mortgage deed in view of the terms of the MoU is stated. In the entire plaint there is no reference to the nature of the land or the type of use to which it was being put as on the date of the agreement to sell/sale deed/memorandum of understanding or as on the date of the suit.

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36. A perusal of the Statement of Objects and Reasons of the Commercial Courts Act, 2015 and the various amendments to the Civil Procedure Code and insertion of new rules to the Code applicable to suits of commercial disputes show that it has been enacted for the purpose of providing an early disposal of high value commercial disputes. **A purposive interpretation of the Statement of Objects and Reasons and various amendments to the Civil Procedure Code leaves no room for doubt that the provisions of the Act require to be strictly construed. If the provisions are given a liberal interpretation, the object behind constitution of Commercial Division of Courts viz. putting the matter on fast track and speedy resolution of commercial disputes, will be defeated.** If we take a closer look at the Statement of Objects and Reasons, words such as “early” and “speedy” have been incorporated and reiterated. **The object shall be fulfilled only if the provisions of the Act are interpreted in a narrow sense and not hampered by the usual procedural delays plaguing our traditional legal system.**”

[Emphasis Supplied]

11. The commercial dispute is defined in Section 2(c)(vii) of the CC Act as a dispute which is arising out of an agreement relating to immovable property exclusively used in trade or commerce. The words that are used by the Legislature in this sub-Section must be regarded as having been used deliberately, and thus, the intention that where there are contracts or agreements relating to immovable property which are being used only in trade and commerce, disputes arising out of such agreements and contracts are to be included as commercial disputes. The emphasis has been laid on the words “*exclusively in trade or commerce*” thus keeping out of its ambit transactions which are other than trade and commerce.

12. Section 2(1)(c)(vi) includes commercial disputes relating to “*construction and infrastructure contracts, including tenders*”. Relying on



Section 2 (1) (c) (vi) of the CC Act, the Respondent was contended that the Agreement is a commercial dispute.

12.1 Both terms “construction” and “infrastructure” are defined separately. To gain a clearer understanding of these terms, it is apposite to refer to the definitions of the term “construction” and “infrastructure,”. Black’s Law dictionary³ defines the terms “construction” and “infrastructure” in the manner set out below:

“BLACK’S LAW DICTIONARY

Construction 1. The act of building by combining or arranging parts or elements; the thing so built. 2. The act or process of interpreting or explaining the sense or intention of a writing (usu. a constitution, statute, or instrument); the ascertainment of a document's meaning in accordance with judicial standards.

Infrastructure. The underlying framework of a system; esp., public services and facilities (such as high- ways, schools, bridges, sewers, and water systems) needed to support commerce as well as economic and residential development.”

12.2 The Oxford Advanced Learners Dictionary⁴ and Merriam Webster Dictionary⁵ also defines these two terms in the following manner:

“OXFORD ADVANCED LEARNERS DICTIONARIES:

Construction-

- (1) The action or manner of constructing
- (2) a thing constructed
- (3) a sense in which words, statements, etc are to be understood
- (4) the way in which words are put together to form a phrase, clause or sentence:

³ Black’s Law Dictionary, Eight Edition

⁴ Oxford Advanced Learner’s Dictionary Fifth Edition

⁵ Webster’s New Collegiate Dictionary



Infrastructure-

The basic structures and facilities necessary for a country or an organisation to function efficiently, for example buildings, transport and water and energy resources and administrative systems.

MERRIAM WEBSTER DICTIONARY:

Construction-

- (1) The arrangement and connection of words or groups of words in a sentence: syntactical arrangement*
- (2) The process, art, or manner of constructing; also : a thing constructed*
- (3) The act or result of construing, interpreting, or explaining*
- (4) A sculptural creation that is put together out of separate pieces of often disparate materials*

Infrastructure-

- (1) The underlying foundation or basic framework (as of a system or organisation)*
- (2) The permanent installations required for military purposes.”*

12.3 Thus, what can be construed from the above is that construction is an activity while infrastructure is the outcome of that activity. The term construction would essentially mean building while infrastructure would relate to creating public facilities needed to support commerce.

13. It is settled law that where wordings of a statute are absolutely clear and unambiguous, only a literal interpretation may be given. In the case of **B. Premanand v. Mohan Koikal**⁶, the Supreme Court has discussed the principles of interpretation of statutory interpretation. The relevant extract of the **B. Premanand** case is below:

“9. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if

⁶ (2011) 4 SCC 266



*read literally would nullify the very object of the statute. **Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AB v. SEBI [(2004) 11 SCC 641 : AIR 2004 SC 4219].***

[Emphasis Supplied]

13.1. In the case of ***Gopal Krishan v. Daulat Ram***⁷, the Supreme Court while relying on Justice G.P. Singh's, Principles of Statutory Interpretation has held that the word “or” is normally disjunctive while the word “and” is normally conjunctive and the ordinary, grammatical meaning displayed by the words of the statute should be given effect to unless the same leads to ambiguity, uncertainty or absurdity. The relevant extract is below:

*“21. In the considered view of this Court, the learned Single Judge fell in error in arriving at such a finding for the words used in the section, which already stands extracted earlier, read — “or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a...”. That being the case, there is no reason why the “or” employed therein, should be read as “and”. **After all, it is well-settled that one should not read “and” as “or” or vice-versa unless one is obliged to do so by discernible legislative intent. Justice G.P. Singh's treatise, Principles of Statutory Interpretation tells us that the word “or” is normally disjunctive while the word “and” is normally conjunctive. Further, it is equally well-settled as a proposition of law that the ordinary, grammatical meaning displayed by the words of the statute should be given effect to unless the same leads to ambiguity, uncertainty or absurdity. None of these requirements, to read a word is which is normally disjunctive, as conjunctive herein, are present.**”*

[Emphasis Supplied]

14. The expression “and” generally has a cumulative effect which requires the fulfilment of all the conditions that it joins together. The term “and” is considered as a conjunction that connects words or phrases which expresses the idea that the later has to be added to or taken along with the

⁷ (2025) 2 SCC 804



first. Black's Law Dictionary⁸ defines the term "and" in the following manner:

"BLACK'S LAW DICTIONARY

And. A conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first. Added to; together with; joined with; as well as; including. Sometimes construed as "or." ***Land & Lake Ass'n v. Conklin, 182 A.D. 546, 170 N.Y.S. 427, 428.***

*It expresses a general relation or connection, a participation or accompaniment in sequence, having no inherent meaning standing alone but deriving force from what comes before and after. In its conjunctive sense the word is used to conjoin words, clauses, or sentences, expressing the relation of addition or connection, and signifying that something is to follow in addition to that which proceeds and its use implies that the connected elements must be grammatically co-ordinate, as where the elements preceding and succeeding the use of the words refer to the same subject matter. While it is said that there is no exact synonym of the word in English, it has been defined to mean "along with", "also", "and also", "as well as", "besides", "together with". ***Oliver v. Oliver, 286 Ky. 6, 149 S.W.2d 540, 542.***"*

14.1 The words of Section 2(1)(c)(vi) of the CC Act are absolutely clear and ambiguous and as "Construction AND Infrastructure". In view of the settled law, Section 2(1)(c)(vi) of the CC Act has to be interpreted strictly in the terms as provided by the legislature.

15. In addition, to give purposeful interpretation to the object of the CC Act, the expression "*construction and infrastructure contracts*" must be interpreted as one unified phrase and not as two distinct terms, namely *construction contracts* and *infrastructure contracts*. A construction and infrastructure contract must inherently possess a commercial nature — right from the conceptualisation of the project, through its execution, and culminating in a commercially viable outcome, one that holds tangible market value and is expected to yield profit.

⁸ Black's Law Dictionary, Sixth Edition



16. The Agreement states that it is a building contract agreement for completion of balance pending work. It is dated 09.04.2018 and executed between one Mr. Vijay Kohli (owner) (Petitioner No.1 herein) and Mr. Sanjay Jethwani (contractor) (Respondent herein). The Agreement states that while the basement, second floor and third floor with terrace rights are owned by Mr. Vijay Kohli, the upper ground floor and first floor are owned by Mr. Ajay Kohli.

16.1 The Agreement further states that Mr. Vijay Kohli has taken up the responsibility to get the balance pending construction work completed under his supervision, and the contractor, Mr. Sanjay Jethwani, has approached him to complete the said work, which includes installation of lift, interior work i.e., electrical, sanitary, plumbing, wood work, flooring, POP, false ceiling and other works in terms of the Annexure to the Agreement.

16.2 The Agreement provides for a time period of six months to complete the balance work. The Agreement states that the amount of Rs.90,00,000/- will be the costs to be incurred by the contractor, Mr. Sanjay Jethwani to complete the balance work.

16.3 Clause 2 read with Clause 5 of the Agreement states that Mr. Vijay Kohli (owner) shall pay Mr. Sanjay Jethwani (contractor) Rs.90,00,000/- for expending on the construction. Clause 2 of the Agreement states that a consideration amount in the sum of Rs.25,00,000/- shall be paid to Mr. Sanjay Jethwani (contractor) after the building is completed, from the sale of the second floor. Clause 2 further states that in case of delay of payment after 8 months, Mr. Vijay Kohli (owner) shall sell the second floor at market price and clear the payment of Mr. Sanjay Jethwani (contractor).



16.4 Clause 5 of the Agreement further states that in the first instance, the expenses in the sum of Rs.90,000,00/- shall be expended by Mr. Sanjay Jethwani (contractor), which will be paid to him (reimbursed) after 2 months after the work is complete. The fees/charges for the work of Mr. Sanjay Jethwani (contractor) are affixed at Rs.25,000,00/-. Clause 2 and 5 of the Agreement are reproduced below:

*“1. **The second party shall complete the entire work as per ANNEXURE signed by both the parties at his own cost within a period 6 months from the date of signing this agreement.** The total cost of completing the balance work that is incomplete work has been estimated at Rs.90,00,000/- (Rs. Ninety Lacs only) This amount has to be spent by the second party to complete the balance work within a period of SIX months from the date of signing this agreement.*

*2. In consideration of the above mentioned work to be completed (as per annexure) by the second party with an investment of Rs.90,00000/- (Rs. Ninety Lacs) **within period of Six months the first party has agreed to pay an amount of Rs.25,00000/- (twenty five lacs) over and above the amount invested by the second party within a period of 08 months (that is two months after completion of the above mentioned building) from his own resources or by selling the Second Floor of the said property which is owned by the first party.** In case of delay of payment after 8 months, **the first party is bound to sell the second floor at market prices and clear the payment of the second party.***

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5. After the completion of the entire work (full and final) in all respects the first party shall pay to the second party an amount Rs.90,Lacs/- (Ninety lacs) plus Rs.25 lacs (twenty five lacs) totalling an amount of Rs 1 crore 15 lacs /- (one crore fifteen lacs only) as consideration amount for the above mentioned work done by the second party within a period of 2 months after completion of the work as per annexure (full and final).”

[Emphasis Supplied]

16.5 The Annexure to the Agreement sets out details with respect to the flooring, including the type of marble and the prices, wiring, electricals, wood work and similarly details are set out for electricals, wood work,



parking, air conditioner, basement etc.

17. As discussed above, a perusal of the Agreement shows that the intention of the parties while entering into the Agreement was for mere completion of construction of the suit property, which was being used for residential purposes. The Agreement does not contain any provision granting the right of sale to the contractor. There is no element of trade and commerce contained therein. Admittedly the suit property is a residential property and not a commercial property and there is no involvement in any commercial activity *qua* the suit property.

18. Thus, the Agreement as entered between the parties can be termed as a pure building contract agreement where construction of a building needs to be completed and nothing else. The Agreement lacks any infrastructure component.

19. A reading of the pleadings and the Agreement makes it evident that the Agreement in question is a private arrangement for competition of construction of the suit property. As such, it does not fall within the scope of a "commercial dispute" as defined under Section 2(1)(c)(vi) of the Act.

19.1 As stated above, the Plaint as filed by the Respondent only seeks prayer of specific performance of the Agreement and other reliefs which arise of a building contract agreement for a residential property. Thus, the finding of the learned Trial Court on the aspect of the suit being a suit for simpliciter suit for specific performance not a commercial suit does not warrant any interreference.

20. In view of the foregoing discussions and for the reasons as stated above, this Court finds no infirmity with the Impugned Order.



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21. The Petition is accordingly dismissed. Interim order dated 09.02.2024 stands vacated.
22. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

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Click here to check corrigendum, if any