



2025:DHC:4976



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 23.05.2025

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C.R.P. 276/2024, CM APPL. 56606/2024

MANOJ SACHDEVA

.....Petitioner

Through: Ms. Arundhati Katju, Sr. Adv. with
Mr. Anish Chawla and Ms. Shaaivi
Shukla and Mr. Abhishek K. Mishra,
Advts.

versus

PRAVEEN KUMAR RATHORE

.....Respondent

Through: Mr. Rakesh Dhingra, Adv. with
Respondent in person.

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

1. The present Petition has been filed under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] impugning the order dated 14.08.2024 [hereinafter referred to as "Impugned Order"] passed by the learned District Judge-03, Central District, Tis Hazari Courts, Delhi in Ex No. 461/2022 captioned ***Dr. Praveen Kumar Rathore v. LA Mercy Jean***. By the Impugned Order, the learned Trial Court has found that there is no merit in the objections filed by the Petitioner/Judgment Debtor No. 2 and dismissed the Application under Section 47 read with Section 151 of the CPC.

2. At the outset, it is apposite to set out the directions passed by this Court on 07.04.2025:

"1. Learned Senior Counsel for the Petitioner submits that the Impugned Order has been passed disposing of the objections filed by the Petitioner in execution proceedings i.e., Ex. No. 461/2022 captioned Dr. Praveen Kumar Rathore v. LA Mercy Jean. It is contended that the execution proceedings emanate from an ex-parte decree passed in a suit filed by the Respondent against the Petitioner.



2. Learned Senior Counsel for the Petitioner submits that one of the objections taken by the Petitioner before the learned Executing Court was that the Court did not have jurisdiction to entertain the dispute in view of the fact that the suit has been filed by the Respondent is a commercial suit. Reliance is placed on Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 and the explanation thereof. In addition, reliance is also placed on the judgment of the Coordinate Bench of this Court in the case of **Virender Kumar v. Rekha Bhayana**; 2022 SCC OnLine Del 2678.

3. Learned Counsel for the Respondent requests for some time to examine these contentions and make submissions in the matter.

4. At his request, list on 23.05.2025.

5. Learned Senior Counsel for the Petitioner also submits that the Impugned Order directs that warrants of attachment be executed and has appointed a Bailiff in the matter.

6. In these circumstances, let the Impugned Order shall remain in abeyance until the next date of hearing.”

3. Learned Senior Counsel for the Petitioner makes two submissions. Relying on the *ex-parte* judgment and decree dated 01.04.2022 [hereinafter referred to “Impugned Judgment and Decree”], she submits that there is no dispute that the agreement that was entered into between the parties was an agreement for rent in respect of an immovable property being a shop in the Karol Bagh area of Delhi. Reliance in this regard is drawn to the extract of the Impugned Judgment and Decree which refers to this aspect:

“6. The present is a suit filed by plaintiff against the defendant who is his tenant, for recovery of possession and arrears of rent. It is the case of the plaintiff that he is landlord of property bearing no. 6161/1, Block I-B, Khasra No. 4059/176, Gali no.4 & 5, Dev Nagar, Karol Bagh, New Delhi-110005. As plaintiff is a Dr. and busy in his work outside Delhi he had authorized one Dr. Shantanu Mandal to look after the property of plaintiff through GPA.

7. Defendant had talked to plaintiff for the purpose of taking the suit premises bearing shop no. 7 of property bearing no. 6161/1, Block I-B. Khasra No. 4059/176, Gali no.4 & 5, Dev Nagar, Karol Bagh, New Delhi-110005 on rent.

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12. Further the property is situated in Karol Bagh and is commercial property. Considering the location of the property the rent of Rs.95,000



which is mentioned in the plaint appears to be genuine though there is no rent agreement in writing on record. In the circumstances, in view of the specific pleadings being made that defendant has not made payment of any rent since October 2016, and the present suit was filed in the year 2018, hence plaintiff is entitled to recovery of rent from October 2016 till 16.06.2020 when possession was received by plaintiff. In the circumstances as plaintiff claimed rent at the rate of Rs.95,000 per month, the same is awarded in favour of plaintiff.

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14. In the circumstances, plaintiff is entitled to a decree of arrears of rent/mesne profits at the rate of Rs 95,000 per month from October 2016 till 16.06.2020. Since the property was commercial in nature and is located in the prime area of Karol Bagh, I also award interest @18% p.a. calculated as simple interest from October 2016 till actual payment.”

[Emphasis supplied]

3.1 Learned Senior Counsel for the Petitioner further submits that Section 2(1)(c)(vii) of the Commercial Courts Act [hereinafter referred to as “CC Act”] and the explanation to the CC Act is clear and unequivocal. It states that the disputes arising out of agreements to be used for trade or commerce, would be a commercial dispute and the provisions of CC Act would be applicable.

3.2 Learned Senior Counsel for the Petitioner further submits that the objection that the suit filed by the Respondent/Decree Holder is commercial in nature and that the Court did not have the jurisdiction to try and decide the same was raised by the Petitioner/Judgment Debtor No. 2 before the learned Executing Court and a prayer was made in the Application under Section 47 of the CPC that the Impugned Judgment and Decree be set aside and the same be declared as null and void as well. In this behalf, she seeks to rely upon the judgment of the Supreme Court in *Sunder Dass v. Ram*



Prakash¹ to submit that where a decree for eviction is a nullity, the Executing Court could declare it to be such and decline to execute it against the Respondent.

4. Learned Counsel for the Respondent, on the other hand, makes two submissions. Firstly, he submits that this Section is only applicable for real estate agents and secondly, that during the pendency of the suit, possession of the tenanted premises was handed back to the Respondent and the only issue of damages and mesne profits remains to be adjudicated which was adjudicated upon by the learned Trial Court.

4.1 Learned Counsel for the Respondent seeks to rely upon judgment of the Supreme Court in **Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP and Anr.**², to submit that the Supreme Court has directed that the provisions of the CC Act have to be strictly construed and that every dispute related to commercial immovable property is not a commercial dispute. Learned Counsel for the Respondent further submitted that the Supreme Court has held that merely because the property is likely to be used in trade and business, the same cannot be used as a ground to attract the jurisdiction of CC Act.

4.2 It is however not disputed that what was let out by the Respondent was a shop and that the Petitioner was carrying out his business from the said shop prior to its vacation.

5. It is no longer *res integra* that the CC Act was enacted as a special legislation for speedy resolution of commercial disputes. The goal of the CC

¹ (1977) 2 SCC 662

² (2020) 15 SCC 585



Act is to ensure that the commercial disputes are disposed of expeditiously, fairly and at a reasonable cost to the litigant.

6. The principle challenge that has been raised by the Petitioner is whether a dispute arising out of an agreement for tenancy of a shop would be a commercial dispute under the provisions of Section 2(1)(c) of the CC Act. The jurisdiction of the Civil Court has been barred as per Section 11 of the CC Act if the dispute is commercial in nature. It is apposite to set out Section 2(1)(c)(vii) of the CC Act on which reliance has been placed by the Petitioner and which reads as follows:

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

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

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

7. It is no longer *res integra* that the provisions of CC Act have to be strictly construed, and if the provisions are given a liberal interpretation, the object behind the Act will be defeated. In ***Ambalal Sarabhai*** case, the Supreme Court observed that the question of whether the suit falls within the scope of a ‘commercial dispute’, as defined under the CC 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.

7.1 The Supreme Court in ***Ambalal Sarabhai*** case has while discussing the definition of commercial dispute, including as provided in terms of the provisions of Section 2(1)(c)(vii) of the CC Act, has laid down the principles



on the basis of which the Courts should invoke the jurisdiction of the CC Act. The Supreme Court has further held that the object of the CC Act would be defeated if every suit merely because it states that it is in respect of commercial dispute, is entertained. It was held that it is necessary to carefully examine whether the dispute will qualify to be a commercial dispute to be tried by a commercial Court and only then would be CC Act be applicable. It was held that in order to adjudicate the same, the averments in the plaint would be relevant and the Court is required to examine the nature of the transaction. 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 advertng 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 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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14. In that view it is also necessary to carefully examine and entertain only disputes which actually answers the definition “commercial disputes” as provided under the Act. In the instant case, as already taken note neither the agreement between the parties refers to the nature of the immovable property being exclusively used for trade or commerce as on



the date of the agreement nor is there any pleading to that effect in the **plaint**. Further the very relief sought in the suit is for execution of the mortgage deed which is in the nature of specific performance of the terms of Memorandum of Understanding without reference to nature of the use of the immovable property in trade or commerce as on the date of the suit. Therefore, if all these aspects are kept in view, we are of the opinion that in the present facts the High Court was justified in its conclusion arrived through the order dated 1-3-2019 [K.S. Infraspac LLP v. Ambalal Sarabhai Enterprises Ltd., 2019 SCC OnLine Guj 1926] impugned herein. The Commercial Court shall therefore return the plaint indicating a date for its presentation before the Court having jurisdiction.

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26. A matter will fall under the jurisdiction of the Commercial Court or the Commercial Division of the High Court on the following factors:

- (i) it shall be a commercial dispute within the meaning of Section 2(1)(c) of the Act; and
- (ii) such commercial disputes are of a specified value as per Section 2(i) of the Act.

27. As per Section 11 of the Act, notwithstanding anything contained in the Act, a Commercial Court or a Commercial Division shall not entertain or decide any suit 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 for the time being in force.

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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]



8. The terms as used in the statute relate to immovable property used in trade and commerce. The words in sub-Section (vii) are clear and unambiguous that any dispute arising from an immovable property to be used for the purposes of trade and commerce would be a commercial dispute.

9. 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 & Ors. v. Mohan Koikal & Ors.***³, 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 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]

10. It is however necessary to examine the averments as set out in the Complaint and the nature of the dispute. Briefly, it is the case of the Respondent/Decree Holder that the Petitioner/Judgment Debtor contracted with the Respondent [Plaintiff before the learned Trial Court] to take on rent the Shop No.7, of property No.6161/1, Block-1B, Khasra No. 4059/176, Gali no. 4 & 5, Dev Nagar, Karol Bagh, New Delhi-110005 [hereinafter referred to as “Shop”] for a period of 11 months. It was stated that the agreement was for 11 months i.e., from 01.07.2016 at a monthly rental of

³ (2011) 4 SCC 266



Rs. 95,000/- per month. It was further stated in the plaint that the rental was paid for the first month, however thereafter, a request for deferment was made by the Petitioner/Judgment Debtor on account of financial difficulties. However, thereafter, no rent was paid. The Respondent/Decree Holder sent two legal notices dated 23.06.2017 and 14.08.2017. Despite the notices, the payment was not made hence, a suit was filed for payment of Rs. 9,50,000/- along with *pendente lite* and future interest at the rate of 2% per annum and future damages in the sum of Rs. 1.9 lacs per month, till vacant possession of the Shop was handed over. It is apposite to extract the prayers as set out in the plaint below:

"It is, therefore, most humbly prayed that this Hon'ble Court may be pleased to:

- a) Direct the defendant to pay the dues of Rs.95,000/- per month, i.e., Rs.9,50,000/- plus pendent elite and future dues of damages for illegal occupation@ Rs.190,000/- per month and @2% per month by defendant to plaintiff from August 2016 till the date of payment to the plaintiff as defendant is in illegal occupation of the property of the plaintiff;*
- b) Hand over the possession of the property/shop no.7 owned by the plaintiff and let out to the defendant;*
- c) allow the costs of the suit, and*
- d) grant any further relief or reliefs, as the case may be, as this Hon'ble Court may deem fit and proper in the circumstances of the case."*

10.1 The summons sent to the Petitioner/Judgment Debtor were received back as served, however since the Petitioner/Judgment Debtor neither appeared nor filed a written statement, he was proceeded *ex-parte* by order dated 04.05.2019 passed by the learned Trial Court. Thereafter, *ex-parte* evidence was led by the Respondent/Decree Holder. As stated above, the Impugned Judgment and Decree sets out that since no evidence was led for future damages, the award of damages was declined by the learned Trial Court. However, the learned Trial Court awarded a decree of arrears of



rent/mesne profits at the rate of Rs. 95,000/- per month from October, 2016 till the date that possession was handed over to the Respondent/Decree Holder.

10.2 The Impugned Judgment and Decree was challenged by the Petitioner/Judgment Debtor before the learned Executing Court. It is the case of the Petitioner/Judgment Debtor that the Petitioner/Judgment Debtor was served during Execution proceedings and thereafter, filed an Application under Section 47 read with Section 151 of the CPC seeking to set aside the Impugned Judgment and Decree and a declaration that it be declared as null and void and unenforceable.

10.3 The learned Executing Court examined the Impugned Judgment and Decree and found that so far as concerns the possession of the Shop, the same had already been handed back to the Respondent/Decree Holder and that the Impugned Judgment and Decree was thus only for recovery of money against the Petitioner/Judgment Debtor. The learned Executing Court however, by the Impugned Order, after examining the issue of service of summons and directed that no sufficient cause is shown by the Petitioner/Judgment Debtor for his non-appearance. Thus, the objections filed by the Petitioner/Judgment Debtor were dismissed which has been challenged by the Petitioner/Judgment Debtor in the present Petition.

11. As discussed above, learned Senior Counsel for the Petitioner has contended that the suit was barred by the provisions of Section 11 of the CC Act and thus, the Impugned Judgment and Decree is a nullity and unenforceable by the learned Executing Court despite which the objections filed by the Petitioner/Judgment Debtor have been dismissed by the learned



Executing Court in Execution Petition No. 461/2022.

11.1 Learned Senior Counsel for the Petitioner has relied upon the provisions of Section 2(1)(c)(vii) of the CC Act to submit that the dispute between the parties was commercial in nature and thus, to be governed by the provisions of CC Act and the learned Civil Court had no jurisdiction to adjudicate the suit.

12. The Supreme Court in *Ambalal Sarabhai* case has held that a dispute becomes a commercial dispute if it falls in Section 2(1)(c)(vii) of the CC Act. The relevant extract of *Ambalal Sarabhai* case is 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.”

[Emphasis Supplied]

12.1 The explanation to Section 2(1)(c) of the CC Act provides that a dispute would not cease to be a commercial dispute, merely because it also involves action for recovery of the shop or for realisation of monies given as security. The explanation to Section 2(1)(c) is set out below:

“Explanation.—A commercial dispute shall not cease to be 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;

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

13. It is the case of the Respondent/Decree Holder that since the Petitioner



did not appear before the learned Trial Court despite service, the Petitioner was proceeded with *ex-parte* and pursuant to *ex-parte* evidence being led, the Impugned Judgment and Decree was passed entitling the Respondent to recovery of rent for the period from October, 2016 till 16.06.2020 when the possession was received by the Respondent at the rate of Rs. 95,000/- per month along with interest at the rate of 18% per annum.

13.1 An examination of the Impugned Judgment and Decree shows that the learned Trial Court has acknowledged the fact that the Shop is situated in Karol Bagh and is a commercial property and that the rental for the property would on the higher side given the location of the property. It is also stated that given the fact that the Shop is located in a prime area of Karol Bagh, the commercial rate of interest at the rate of 18% per annum is awarded. The learned Trial Court also awarded one time litigation cost in the sum of Rs. 60,000/-. It is apposite to extract paragraph 12 to 16 of the Impugned Judgment and Decree in this regard below:

“12. Further the property is situated in Karol Bagh and is commercial property. Considering the location of the property the rent of Rs.95,000 which is mentioned in the plaint appears to be genuine though there is no rent agreement in writing on record, in the circumstances, in view of the specific pleadings being made that defendant has not made payment of any rent since October 2016, and the present suit was filed in the year 2018, hence plaintiff is entitled to recovery of rent from October 2016 till 16.06.2020 when possession was received by plaintiff. In the circumstances as plaintiff claimed rent at the rate of Rs.95,000 per month, the same is awarded in favour of plaintiff.”

13. Plaintiff has also claimed damages for illegal occupation at the rate of Rs.1,90,000 per month and interest @2% per month. However no evidence has been led by plaintiff regarding the damages hence the same are declined.

14. In the circumstances, plaintiff is entitled to a decree of arrears of rent/mesne profits at the rate of Rs.95,000 per month from October 2016 till 16.06.2020. Since the property was commercial in nature and is located in the prime area of Karol Bagh, I also award interest @18% p.a.



calculated as simple interest from October 2016 till actual payment.

15. As far as electricity bills being mentioned in the affidavit, bills have not been filed on record by plaintiff to show which are the bills which are due. Hence no relief/orders for payment regarding electricity bills are made.

16. Plaintiff has also annexed court fee of Rs.33,500 approximately and has included expenses towards litigation also. **Hence I also award one time litigation cost of Rs.60,000 to the plaintiff.** Suit is accordingly disposed off. Decree sheet be prepared accordingly. File be consigned to record room, after due compliance.”

[Emphasis Supplied]

13.2 The suit was filed in pursuance to a rental agreement in respect of a shop in a market place. Undisputably, the shop was being used for trade and commerce, thus bringing the dispute within the definition of Section 2(1)(c)(vii) of the CC Act.

14. There is no dispute that the dispute arose out of an oral agreement relating to the tenancy of the shop, which would qualify as a commercial dispute. Since the tenancy was for a period of 11 months, the agreement did not require registration under the provisions of The Registration Act, 1908.

15. The Petitioner in its Application under Section 47 of the CPC has taken several objections before the learned Trial Court including that the summons were not served at the address of the Petitioner, however, the principle ground for challenge raised by the Petitioner before this Court is that the suit is commercial in nature and thus, the Civil Court had no jurisdiction to adjudicate the same. It is further contended by the Petitioner that a decree passed by the Court not having jurisdiction to entertain the suit is a nullity and thus, such a decree cannot be executed.

15.1 Learned Senior Counsel for the Petitioner has relied upon the judgment of the Supreme Court in ***Sunder Dass*** case to contend that if the



decree is a nullity, the Executing Court would decline to execute such a decree. The relevant extract of the ***Sunder Dass*** case is set out below:

“2....

*The effect of the addition of the proviso with retrospective effect was as if the proviso had always been there right from the time when the Act was enacted. **Therefore, when an application was filed by the appellant for execution of the decree for eviction against the respondent on August 31, 1963, an objection was raised on behalf of the respondent that by reason of the retrospective introduction of the proviso in Section 3, the decree for eviction was tendered null and void as a decree passed by a court without jurisdiction and hence it was not executable against the respondent. This objection was negatived by the executing court on the ground that that was not an objection which could be entertained in execution and the executing court must proceed to execute the decree which had become final between the parties.** The respondent preferred an appeal but the first appellate court took the view that, on the facts of the case, the proviso to Section 3 was not attracted and hence the decree for eviction could not be said to be one passed by a court without jurisdiction and on this view, it upheld the order of the executing court and rejected the appeal. This led to the filing of a further appeal and in this appeal the High Court held that since the certificate of sale was not issued in favour of the appellant, the building continued to belong to the Government but the appellant having paid the full purchase price of the building and the sale of the building in favour of the appellant having been confirmed and possession having been handed over to him in pursuance of the sale, the appellant was legally competent to let out the premises to the respondent and the letting of the premises by the appellant in favour of the respondent on September 1, 1956 was lawful and hence the condition for the applicability of the proviso to Section 3 was satisfied, and since the proviso was introduced in Section 3 with retrospective effect, **it must be held that the Act was applicable to the premises at the date of the institution of the suit and consequently the civil court had no jurisdiction to entertain the suit and in that view, the decree for eviction was a nullity. The High Court accordingly allowed the appeal and held that the decree for eviction being null and void could not be executed against the respondent. This view taken by the High Court is challenged in the present appeal preferred by special leave obtained from this Court.***

*3. **Now, the law is well settled that an executing court cannot go behind the decree nor can it question its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence***



of the court to try the case and a decree which is a nullity is void and can be declared to be void by any court in which it is presented. Its nullity can be set up whenever and wherever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. The executing court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By doing so, the executing court would not incur the reproach that it is going behind the decree, because the decree being null and void, there would really be no decree at all. Vide *Kiran Singh v. Chaman Paswan* [AIR 1954 SC 340 : (1955) 1 SCR 117] and *Seth Hiralal Patni v. Sri Kali Nath* [AIR 1962 SC 199 : (1962) 2 SCR 747]. It is, therefore, obvious that in the present case, it was competent to the executing court to examine whether the decree for eviction was a nullity on the ground that the civil court had no inherent jurisdiction to entertain the suit in which the decree for eviction was passed. **If the decree for eviction was a nullity, the executing court could declare it to be such and decline to execute it against the respondent.**”

[Emphasis Supplied]

15.2 Reliance has also been placed on the judgment of the Supreme Court in *Kiran Singh and Ors. v. Chaman Paswan and Ors.*⁴, to submit that where a decree is passed by a Court without jurisdiction, the same is a nullity. The relevant portion of the *Kiran Singh* case is set out below:

“6. The answer to these contentions must depend on what the position in law is when a court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of Section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this position.”

[Emphasis supplied]

⁴ (1954) 1 SCC 710



16. The Respondent has relied upon *Ambalal Sarabhai* case to submit that the provision of Section 2(1)(c)(vii) of the CC Act is applicable only to real estate agents and that merely because the property is being used in trade and business, the same cannot be used as a ground to attract the jurisdiction of the CC Act.

16.1 This submission of the Respondent is without merit. The Supreme Court in *Ambalal Sarabhai* case has held that the words used in the statute have to be interpreted purposefully and that the word “used” denotes “actually used” and that it cannot be “likely to be used” or “to be used”. These observations were made in the context that the agreement entered between the parties in that case was with respect to a land in issue was going to be used for trade and commerce in the future. It is in this context that the Supreme Court gave a finding as is set out in paragraph 37 of the *Ambalal Sarabhai* case, as reproduced in paragraph 12 above.

17. In the present case, however it is not disputed that the agreement was in respect of a shop situated in a commercial market or that the rental payable was at a commercial rate of Rs. 95,000/- per month. Thus, there cannot be any dispute that the agreement was in respect of an immovable property used in trade and commerce making it a commercial dispute under Section 2(1)(c)(vii) of the CC Act.

18. A Coordinate Bench of this Court in the judgment of *Virender Kumar v. Rekha Bhayana*⁵ while discussing the *Ambala Sarabhai* case has held that in a case where in a non-commercial suit was filed as a commercial suit, the plaint was directed to be returned to the Respondent to be instituted

⁵ 2022 SCC OnLine Del 2678



before the appropriate forum. The relevant extract is set out below:

“16. No doubt, that Ambalal Sarabhai Enterprises involved an instance where a non-commercial suit had been filed before the Commercial Court. The High Court of Gujarat returned the suit to the plaintiff, under Order VII Rule 10, to be presented before the Civil Court. The Supreme Court affirmed and approved this course of action. Once such a course of action stands approved by the Supreme Court, it amounts to a declaration of the law under Article 141 of the Constitution of India, to the effect that, in similar cases, a similar course of action is required to be adopted.

17. It is trite that, where an action is required to be performed in a particular manner, it has to be performed in that manner alone and all other modes of performing the action ipso facto stand foreclosed.

18. Ambalal Sarabhai Enterprises Ltd., in my view, cannot be distinguished merely on the ground that the said case involved an instance in which a non-commercial suit had been filed before the Commercial Court. The principle that, in such a case, the plaint is required to be returned to the plaintiff to be re-presented before a competent forum, in my view, would apply equally, where a commercial suit is instituted before a Civil Court.

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21. In view of the aforesaid, the impugned order dated 19th July 2022, passed by the learned Commercial Court in CS DJ 452/2018 (Rekha Bhayana v. Virender Kumar) is quashed and set aside.”

[Emphasis Supplied]

18.1 Learned Senior Counsel for the Petitioner has contended that since the judgment of the Supreme Court in the *Ambala Sarabhai* case directed the plaint be returned by the learned Trial Court, a similar course of action should be taken with the present case and the plaint as filed before the learned Civil Court is required to be returned to be re-instituted before the learned Commercial Court.

19. A perusal of the Impugned Order shows that the Impugned Order although has discussed in detail the merits of the case, however it has not examined the objections that the proceedings before the Civil Court were barred by the provisions of the CC Act. The objections have been discussed



by the learned Executing Court holding that the plea of the Petitioner/Judgment Debtor that they were not bound by the Impugned Judgment and Decree as they were not served, is without any merit as it was held that no sufficient cause has been shown for non-appearance by the Petitioner/Judgment Debtor.

20. Quite clearly thus, neither the Executing Court nor the Trial Court examined the issue as to whether the dispute is commercial in nature, prior to its adjudication. The Supreme Court in the **Kiran Singh** case has held that a defect in the jurisdiction strikes at the root of the matter and a decree passed by the Court without jurisdiction is a nullity and its invalidity could be enforced even at the stage of execution. A similar view has been taken in the **Sunder Dass** case where the Supreme Court has held that where there is a lack of jurisdiction, it goes to the root of the competence of the Court to try the case and such a decree is nullity and could so be declared to be void by any Court. Thus, the Impugned Judgment and Decree passed by the learned Trial Court cannot be executed as it suffers from an inherent lack of jurisdiction.

20.1 In view of the discussions above, the Impugned Judgment and Decree is set aside. Consequently, the Impugned Order is also set aside.

21. Accordingly, the parties shall appear before the learned Trial Court for taking appropriate steps as requisite in law for return of the plaint to be filed before the Commercial Court. Since, it is not disputed that the possession of the Shop has been returned to the Respondent/Decree Holder, the learned Commercial Court shall adjudicate the aspect *qua* mesne profits and damages for the period from 01.10.2016 till 16.06.2020.



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22. The parties shall appear before the learned Trial Court on 15.07.2025 for further proceedings.

23. The Petition is allowed in the foregoing discussions. Pending Application also stands. It is clarified that this Court has not examined the matter on merits and the rights and contentions of both the parties on the limited examination by the Court are left open to be agitated before the learned Trial Court.

24. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MAY 23, 2025/r

Click here to check corrigendum, if any