



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4399 OF 2026**

Daswani Co-op Housing Society Ltd. ... Petitioner
versus
Leela Sanjeev Shetty and Ors. ... Respondents

Mr. Drupad Patil i/by Mr. Anup A. Abhang, for Petitioner.
Mr. Kaustubh Thipsay with Mr. Nishchal Anand, for Respondent No.1.

CORAM: N.J.JAMADAR, J.

DATE : 20 APRIL 2026

ORDER :

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 9 March 2026 passed by the learned Civil Judge, Pune, on an application for return of the plaint in SCS No.1710 of 2025 for presentation before the Commercial Court on the ground that the disputes raised by the Plaintiff fall within the ambit of “commercial dispute” as defined under the Commercial Courts Act, 2015.
3. The Respondent No.1 – Plaintiff claims to be a member of Defendant No.1 society. The latter holds a property bearing Final Plot Nos.28-29, CTS No.418-419 admeasuring 16276 sq.ft. situated at Somvar Peth, Pune and the buildings standing thereon (the subject property).
4. The Plaintiff asserts, on 14 September 2024, Defendant No.1 Society has entered into a development agreement to develop the subject property with Defendant No.2, in an unlawful manner and thereby trampled upon the

rights of the Plaintiff over the property described in paragraph No.1A and 1C of the plaint (the suit property). In substance, it is the claim of the Plaintiff that he is entitled to commercial premises in lieu of suit property 1A and 1C, in the proposed redevelopment project.

5. The Plaintiff, thus, instituted a suit for declaration that the resolutions passed in the purported Special General Body meetings of Defendant No.1 Society, including the resolution appointing Defendant No.2 as a developer or approving the draft Development Agreement and Power of Attorney, are illegal, arbitrary and unenforceable to the extent that they disregard, exclude or override the Plaintiff's vested lawful rights and entitlements in suit property 1A and 1C; declare that the Plaintiff is entitled to commercial premises in lieu of suit property 1A and 1C in the proposed redevelopment project and the consequential reliefs.

6. Defendant No.1 Society filed an application for return of the plaint for presentation to the Commercial Court on the ground that the dispute raised by the Plaintiff constitutes 'commercial dispute' within the meaning of Section 2(1)(c)(vi) and (xi) of the Commercial Courts Act, 2015.

7. The learned Civil Judge was persuaded to reject the application recording, inter alia, that, the essential dispute was between the Plaintiff, as a member of the society, and the Defendant No.1 Society, and the Plaintiff was seeking reliefs primarily against Defendant No.1 Society. The provisions

contained in Section 2(1)(c)(vi) and (xi) of the Act, 2015 were, thus, not attracted.

8. Mr. Patil, learned Counsel for the Petitioner, submitted that the learned Civil Judge misconstrued the scope of the provisions contained in sub-clauses (vi) and (xi) of clause (c) of sub-Section (1) of Section 2 of the Act, 2015. Since the Plaintiff is assailing the legality and validity of the development agreement executed by Defendant No.1 Society in favour of Defendant No.2 developer, the dispute squarely falls within the ambit of sub-clause (vi) of clause (c) of sub-section (1) of Section 2 of the Commercial Courts Act, 2015, as, in substance, the challenge is to a construction contract. To buttress this submission, Mr. Patil placed reliance on a judgment of a learned Single Judge of the Delhi High Court in the case of **Raj Kumar Gupta and Anr. V/s. Jagan Nath Bajaj and Ors.**¹, wherein it was enunciated that a restrictive meaning cannot be given to the words 'construction and infrastructure contract'. It would include both 'construction contract' as well as 'infrastructure contract' and cannot be given a restrictive meaning to include only 'infrastructure contract involving construction'.

9. In opposition to this, Mr. Thipsay, learned Counsel for Respondent No.1 would submit that the dispute of the present nature does not fall within the ambit of the commercial dispute, as defined in sub-clause (vi) of Section 2(1)

¹ 2022 SCC Online Del 2995

(c) of the Commercial Courts Act, 2015. It was submitted that the question sought to be raised by the Petitioner is covered by the judgment of a learned Single Judge of this Court in the case of **Sanjay Suganchand Kasliwal V/s. Golden Dreams Buildcon Pvt. Ltd. and Ors.**²

10. Having considered the rival submissions canvassed across the bar, this court finds that the view taken by the learned Civil Judge is justifiable. The dispute in relation to the development agreement, it must be noted, has not arisen between Defendant No.1 and Defendant No.2 so as to examine the question whether the development agreement takes shape of a 'construction contract' covered by sub-clause (vi) of section 2(1)(c) of the Act, 2015. Indeed, the Plaintiff is seeking declaration qua the development agreement and the consequential documents executed by and between Defendant No.1 and Defendant No.2. That nature of the relief, according to Mr. Patil, renders the dispute a flavour of the commercial dispute.

11. I find it rather difficult to accede to the submission of Mr. Patil. From the averments in the plaint and the prayers in the suit, it becomes abundantly clear that the Plaintiff is seeking declaration in relation to the said development agreement and the consequential documents to the extent those documents disregard, exclude or override the Plaintiff's purported vested lawful rights and entitlements in suit property 1A and 1C, on the premise that

2 2023 SCC Online Bom 2469

the Plaintiff is entitled to commercial premises in lieu of suit property 1A and 1C in the proposed redevelopment project. Thus, the dispute between the Plaintiff and Defendant No.1 is in relation to the character of the property to which the Plaintiff would be entitled to, in the event of redevelopment.

12. Defendant No.1 has proposed to redevelop the property of the society only for the residential use. In contrast, the Plaintiff claims, the suit property 1A and 1C are put to commercial use and he is , therefore, entitled to commercial premises in lieu of the said suit properties upon redevelopment. That being the nature of the dispute, the challenge to the development agreement and the consequential documents, restricted to the entitlement of the Plaintiff upon redevelopment, does not partake the character of a full fledged dispute as to 'construction contract' so as to fall within the ambit of sub-clause (vi) of Section 2(1)(c) of the Act, 2015. Nor the dispute pertains to joint venture agreement covered by sub-clause (xi). Resultantly, the submissions canvassed on behalf of the Petitioner do not merit countenance.

13. The approach to be adopted, which has been delineated by the Supreme Court in the case of **Ambalal Sarabhai Enterprises Ltd. V/s K.s.Infraspac LLP**³, guides the Court. The Supreme Court has administered a note of caution that the purpose for which the Commercial Courts Act, 2015 has been enacted would be defeated if every other suit,

³ (2020) 15 SCC 585

merely because it is filed before the Commercial Court, is entertained. This is for the reason that the suits which are not actually relating to commercial dispute but being filed merely because of the high value and with the intention of seeking early disposal would only clog the system and block the way for the genuine commercial disputes which may have to be entertained by the Commercial Courts. The excluded class of litigation will in any event be entertained in the ordinary Civil Courts wherein the remedy has always existed. Therefore, it is also necessary to carefully examine and entertain only disputes which actually answers the definition “commercial disputes” as provided under the Act.

14. Upon an analysis, this court finds that the learned Civil Judge has correctly appreciated the nature of the suit and justifiably rejected the prayer to return the plaint for presentation to the Commercial Court.

15. The Writ Petition, thus, stands dismissed.

(N.J.JAMADAR, J.)