IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

OMPs No.1521 & 1522 of 2025
in Civil Suit No.8 of 2025

Reserved on: 12.10.2026

Decided on 28.10.2026

Uploaded on : 28.10.2026

Premium Acres Infratech Pvt. Ltd.

....Plaintiff

Versus

Devi Lal Banga and another

….Defendants

Coram

Hon'ble Mr. Justice Sushil Kukreja, Judge

Whether approved for reporting?[1] *Yes*

For the plaintiff:	Mr. Ajay Kumar, Senior Advocate, with Mr. Atul Jhingan, Advocate.
For the defendants:	Mr. Arun Kumar Verma & Mr. Trigun Singh Negi, Advocate, for defendant No.1.
	Mr. Bimal Gupta, Senior Advocate, with Mr. Sant Ram Sharma, Advocate, for defendant No.2.

Sushil Kukreja, Judge

This common order shall dispose of two applications, i.e. **OMPs No.1521 of 2025,** filed by defendant No.1 & **OMP No.1522 of 2025**, filed by defendant No.2, under Order 7, Rule 11 of CPC, read with Section 2 (C), Explanation A(a) and Section 6 of

[1] Whether reporters of Local Papers may be allowed to see the judgment?

the Commercial Courts Act, 2015 (for short, 'the Act of 2015) and Section 151 of CPC, for rejection of plaint.

2. Brief facts of the case are that the plaintiff filed a suit for recovery of Rs.6,36,71,580/- alongwith interest @ 12% per annum from the date of filing of the suit till recovery of the decretal amount under Section 26, Order VII, Rules 1 and 3 and Order 34, Rules 1 to 6 of CPC, by way of sale/foreclosure of the mortgaged property, I.,e. 2454 undivided shares, measuring 61 bighas and 7 biswas of defendant No.1 in the land comprised in Khewat No.66/55, Khatauni No.107/95, Khasra No.328/29, total measuring 164.04 bighas, situated in Village Sainj, Pargan Bagurkhurd, Tehsil Kandaghat, Hadbast No.416, District Solan, HP and if the sale proceeds of the mortgaged/enumerated property are found short, the balance decretal amount be ordered to be recovered from the defendants under Order 34, Rule 6 of CPC.

3. It has been averred in the plaint that the plaintiff-company is engaged in the business of real estate development and allied activities and defendant No.1 used to be its trusted associate and employee. In the month of January, 2011, defendant No.1 approached the plaintiff-company, representing that he required

funds to purchase land in Himachal Pradesh to set-up a housing project, being an agriculturist of Himachal Pradesh and, therefore, sought loan from the plaintiff-company and he was an agriculturist and competent to buy land in Himachal Pradesh and he was willing to pay reasonable market interest on the loan amount. He further represented that he would get the lien/charge/encumbrance marked in favour of the plaintiff-company and assured that he would return/repay the loan after three years, once the housing project takes off on the land to be purchased with the loan amount taken from the plaintiff. It has been further averred in the plaint that defendant No.2 assured and took responsibility to secure the loan amount by creating equitable mortgage of the property by deposit of title deeds with the company and by getting lien/charge and encumbrance of mortgage of the plaintiff-company marked in the revenue records after sale deed of the land is executed in favour of defendant No.1. Defendant No.1 disclosed to the Directors of the plaintiff-company that he had identified a suitable piece of land measuring 61 bighas and 07 biswas in Village Sainj, Pargana Bagurkhurd, Tehsil Kandaghat, District Solan, HP. Vide resolution dated 18.01.2011, passed by the BOD of the plaintiff-company,

defendant No.2-Sanjay Jain was authorized to complete the formalities for purchase of the land, who made payment to the tune of Rs.48,80,125/- by way of multiple cheques from the account of the plaintiff, which were issued directly in the name of sellers/authorized representatives. Defendant No.2 also took a cash amounting to Rs.1,95,82,875/- from the cash-in-hand held by the plaintiff, which was handed over/remitted to defendant No.1 for purchase of the land. The aforesaid entire money was given to defendant No.1 to purchase the above-mentioned land and defendant No.2, who had taken the responsibility to get all relevant documents executed and also getting the lien/charge marked in favour of the plaintiff, in connivance with defendant No.1 did not get the lien of the plaintiff-company marked on the land, measuirng 61.07 bighas, which was purchased vide two separate sale-deeds bearing No.134/2012 and 140/2012, dated 24.05.2012 and 29.05.2012, respectively, registered in the name of defendant No.1.

4. In the month of August, 2014, it was found that defendant No.2 was involved in misappropriating, cheating and playing fraud upon the Company as a Director, therefore, vide resolution dated 07.08.2014 passed by the Company, Shri

Parminder Singh Sehgal was authorized and empowered to initiate legal action against the defendants and others. Thereafter, the plaintiff-company filed an application before the Tehsildar, Kandaghat to enter its encumbrance/lien/charge and entry of encumbrance on the land purchased by defendant No.1 with the money of the company. On receipt of the said notice, defendant No.1 made a statement/declaration that the money was provided to him by the plaintiff-company. Vide rapat No.178, dated 29.01.2015, the aforesaid application was allowed and lien/charge of encumbrance was entered in the revenue records pertaining to the land so purchased by defendant No.1 on 29.01.2015. Defendant No.1 declared before the Income Tax Authorities that he had received the funds from the plaintiff-company and the entire sale consideration amount for purchase of land was a loan from the plaintiff. The matter was subsequently referred by the Income Tax Officer, Ward (2), Chandigarh to the concerned authorities under the Prohibition of Benami Property Transactions Act, 1988. During the proceedings before the Initiating Officer, under Prohibition of Benami Property Transactions Act, 1988, the competent authority came to the conclusion that defendant No.1 was an agriculturist and

had purchased the aforesaid land measuring 61.07 bighas for a consideration of Rs.2,52,66,500/-, vide Sale Deed No.134/2012, dated 24.05.2012. Defendant No.2 also admitted in his statement during the aforesaid proceedings that the plaintiff-company had made payment for purchase of the aforesaid land and in the final order dated 05.09.2022, the Adjudicating Authority, under the Prohibition of Benami Property Transactions Act, 1988, Delhi held that the provisions of the Act were not applicable to the subject sale transaction as the said transaction had taken place prior to the year 2016. After passing of order dated 05.09.2022 by the concerned Officer under the Prohibition of Benami Property Transactions Act, 1988, defendant No.1 in connivance with defendant No.2 filed an application on 30.06.2023 before the Naib Tehsildar, Kandaghat, District Solan, for seeking deletion of the encumbrance, charge/lien of the plaintiff-company from the revenue records with respect to the share in the land comprised Khasra No.328/29, measuring 61.07 bighas in Mohan Sainj, Tehsil Kandaghat, District Solan. The said application was rejected by the Tehsildar Kandaghat on 16.12.2024. After removal of defendant No.2 as Director of the plaintiff-company in June, 2014, owing to misdeeds and acts of fraud and cheating

and embezzlement as also misappropriation of company funds, it was found that he hand taken way the original sale deeds with him, for which, FIR No.54, dated 23.02.2015 was also registered against him. The plaintiff has been requesting defendant No.1 to return the money advanced by him, but he had been evading on one false pretext or the other. The plaintiff has now come to know that the defendants had surreptitiously and clandestinely formed a Company in the name and style of M/s Co-Living Apartments Pvt. Ltd., with its registered office at Sector 28, Chandigarh and had also secretly entered into an alleged Memorandum of Understanding for Joint Venture (Agreement) on 12.03.2007, without the knowledge of the plaintiff. It has also come to the notice of the plaintiff that the said projected as having been promoted by defendant No.1 and he even signed an alleged Memorandum of Understanding dated 08.11.2019 with the Government of Himachal Pradesh for developing a housing project on the land so purchased in the name of defendant No.1. On the basis of the aforesaid pleadings, the plaintiff-company filed the suit against the defendants for recovery of Rs.6,36,71,580/- alongwith interest @ 12% per annum from the

date of filing of the suit till recovery of the decretal amount by sale of mortgaged property.

5. By way of the instant applications (**OMPs No.1521 & 1522 of 2025**), both the applicants-defendants have made almost common averments. It has been averred on behalf of applicant/defendant No.2 that he was authorized to complete the necessary formalities to buy lands at Kandaghat, from house at Chandigarh and lands at Dera Bassi for the business interest of the plaintiff-company, thus, the alleged transaction, if taken, would fall within the purview of Section 2(C) and Explanation A(a) of the Commercial Courts Act. This Court would not like to exercise the jurisdiction to entertain and try the present suit in view of Section 12A of the Act of 2015 . The subject matter of the suit squarely falls within the definition of a ‘Commercial Dispute’ and the plaintiff has filed the present suit as an ordinary suit, without taking recourse of the provisions of Commercial Courts Act. Moreover, after constitution of a Commercial Division/Court by the Hon’ble Chief Justice, it is the Commercial Court/Division that shall have exclusive jurisdiction to try all suits and applications relating to commercial disputes of a specified value. Hence, the present suit having been

instituted before a forum not vested within the jurisdiction to try commercial disputes, is barred by law and is liable to be rejected under order VII, Rule 11(d) of CPC, read with Section 2(c) read with Explanation A(a) and Section 6 of tthe Act of 2015. It has been further averred that the suit filed by the plaintiff is barred by limitation as the same was filed on 06.01.2025, whereas, as per the plaint, the cause of action to recover the amount accrued in the month of May, 2015, therefore, it should have been filed before 31.05.2018. Hence, it is prayed that the applications may be allowed and in view of the provisions contained under Order VII, Rule 11(d) of CPC, read with Section 2(c) read with Explanation A(a) and Section 6 of tthe Act of 2015, the instant suit may be ordered to be rejected with exemplary costs.

6. In reply(ies) to these applications, it has been averred that the limitation for recovery of money by sale of mortgaged/ charged property under Order 34, Rules 1 to 6 of CPC is 12 years under Article 62 of the Limitation Act, hence, the suit is well within time. It is also averred that for the purpose of decision of application under Order 7, Rule 11 of CPC, only averments made in the plaint are required to be seen. It is a case of purely civil nature

covered by Order 34 of CPC, where the money has been secured by creating charge/mortgage on immovable property and the applicants/defendants are trying to give a totally erroneous, warped, distorted and legally untenable interpretation to the fact of the case that it is a commercial dispute. The subject matter of the present suit is an ordinary civil dispute and by no stretch of imagination, it cannot be termed as commercial dispute. Hence, it is prayed that the applications be dismissed with costs.

7. Learned senior counsel appearing for the defendants/ applicants contended that, the subject matter of the dispute between the parties to the suit is a commercial dispute within the meaning of Section 2(1)(c)(i) of the Act as the transaction between the parties is commercial in nature and all ingredients of Section 2(1)(c)(i) of the Act of 2015 have been satisfied

8. Conversely, learned Senior Advocate appearing for the plaintiff-non-applicant contended that, the suit does not involve a commercial dispute within the meaning of Section 2(1)(c) the Act of 2015. According to him, the character of a suit is determined by the substance of the plaint read as whole and the status of the parties or the commercial setting in which the controversy has arisen.

9. It is settled law that the power conferred on Civil Courts to reject plaint at the threshold is an extra-ordinary power and, therefore, required to be exercised with great care and circumspection. At this stage, it would be relevant to reproduce Oder 7, Rule 11 of CPC, which reads as under:-

> "*11.* ***Rejection of plaint- The plaint shall be rejected in the following cases****:-*
>
> *(a) where it does not disclose a cause of action;*
>
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;*
>
> *(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;*
>
> *(d) where the suit appears from the statement in the plaint to be barred by any law;*
>
> *(e) where it is not filed in duplicate;*
>
> *(f) where the plaintiff fails comply with the provision of Rule 9.*
>
> *Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."*

10. Thus, under Order 7, Rule 11 of CPC, plaint can be rejected on the grounds that the suit is barred by law or it does not disclose the cause of action or proper court fees has not been paid even after order of the court or where it is not filed in duplicate or where the plaintiff fails comply with the provision of Rule 9. It is well settled that the Court, at the stage of considering an application under Order 7 Rule, 11 of CPC has to examine only the plaint averments, and the documents filed along with the suit. Other pleas advanced by parties, including the pleadings in the written statement, have no relevance in order to decide the present application in hand. In ***Liverpool & London S.P. & I Association Ltd. v. M.V. Sea Success I and another, (2004) 9 SCC 512,*** while dealing with the law relating to rejection of plaint under Order VII, Rule 11, CPC, the Supreme Court observed as follows:-

> *"139.Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.*
>
> *151.In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact……..*
>
> *152.So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported*

failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars."

11. In the case of ***Saleem Bhai v. State of Maharashtra, AIR 2003 SC 759***, it was held with reference to Order VII, Rule 11 of CPC that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under Clauses (a) and (d) of Order VII Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

12. In the case of ***Popat and Kotecha Property v. State Bank of India Staff Association, (2005) 7 SCC 510***, it was held as under: -

"20…...The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits…….

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23.Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word "shall" is used clearly implying thereby that it casts a duty on the Court to perform

> *its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13."*

13. Thus, the real object of Order VII, Rule 11, CPC is to keep out irresponsible lawsuits from the Courts and it provides for an independent remedy for the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The Supreme Court in ***Sopan Sukhdeo Sable v. Asstt. Charity Commr., (2004) 3 SCC 137,*** held as under:-

> *" 17.... The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by a searching examination of the party, in case the court is prima facie of the view that the suit is an abuse of the process of the court, in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.*
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> *** *** *** ***
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> *20....Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word —shall‖ is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13."*

14. In ***Azhar Hussain v. Rajiv Gandhi***, ***AIR 1986 SC 1253,*** the Supreme Court further held that the whole purpose of

conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste the judicial time of the Court, in the following words :-

> *"12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action….."*

15. Thus, on the conspectus of the settled position of law, it is crystal clear that the power vested in the Court under Order VII, Rule 11 of CPC is to curb abusive or fruitless litigation which is bound to meet a dead fate. Order VII, Rule 11 CPC is a vital procedural safeguard that prevents the abuse of the legal process and ensures that only legitimate disputes consume judicial time. While the rule acts as a gatekeeper preventing frivolous litigation, courts also exercise caution to ensure that genuine plaintiffs are not unjustly denied their right to seek justice due to hyper-technicalities. The balance lies in a judicious application of the rule, upholding the sanctity of court proceedings while safeguarding access to justice.

16. It is a settled position of law that all commercial disputes do not come within the definition of the commercial disputes as appearing in the Act of 2015. The Act of 2015 has defined "commercial dispute" in Section 2(1)(c). It is only those commercial disputes that have been defined in Section 2(1)(c) of the Act of 2015 which are required to be decided by the Commercial Courts. If a Civil Suit is filed as a commercial suit when it does not qualify as a "commercial dispute" under the Act of 2015, it undermines the scope and object of the Act of 2015, as it essentially misuses the specialized jurisdiction of commercial courts intended for swift resolution of genuine commercial disputes, potentially delaying other legitimate commercial cases. At this stage, it would be relevant to reproduce Section 2(1)(c) (i) of the Commercial Disputes Act which reads as under:-

> *"**2(1)(c)(i)** ordinary translations of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents."*

17. Section 2(1)(c)(i) of the Act of 2015 specifies that, commercial disputes means a dispute arising out of the ordinary transactions of merchants, bankers, financiers and traders such as

those relating to mercantile documents, including enforcement and interpretation of such documents.

18. Recently, in the case of ***M/s. Levitate Mobile Technologies Pvt. Ltd. v. M/s. Standard Chartered Bank Pvt. Ltd. 2025 SCC OnLine Del 818,*** Delhi High Court had an occasion to consider the scope and ambit of the Act of 2015 while rejecting the application under Order XI, Rule 1(5), CPC. It observed as under:

> *"23. A comprehensive reading of the Statement of Objects and Reasons, along with the insights from the Law Commission's 188th and 253rd Reports, provides significant clarity on the rationale behind the enactment of the Act. The Parliament's intention was to overhaul the commercial dispute resolution framework by distinguishing it from other civil disputes, thereby achieving its core goal i.e., the expeditious disposal of commercial disputes in India, keeping in view the larger picture of preserving and boosting the economy of the country. The aim and objective of the Act of 2015 clearly reflect the intent of the Parliament for speedy disposal of high value commercial disputes while setting up an independent mechanism for their early resolution."*

19. In ***Kailash Devi Khanna & Ors vs D D Global Capital Ltd & Ors., 2019 SCC Online Del 9954,*** the High Court of Delhi emphasized that not all suits for monetary recovery qualify as "commercial dispute" under the Act of 2015. The Court specifically observed that for a claim to fall under Section 2(1)(c)(i) of the Act of 2015, it must pertain to "ordinary transactions of merchants, bankers, financiers, and traders," involving mercantile documents

and their enforcement or interpretation. The Court further held that a suit merely seeking recovery of money, without any connection to mercantile transactions or documents, does not meet the criteria of a "commercial dispute" and, therefore, cannot be filed as a commercial suit. Filing a civil suit under the commercial courts' jurisdiction, without meeting these requirements, amounts to a misuse of the specialized forum meant for expeditious resolution of genuine business disputes, ultimately hindering the adjudication of legitimate commercial cases.

20. Further, the High Court at Calcutta in ***Ladymoon Towers (P) Ltd. v. Mahendra Investments Advisors (P) Ltd. 2021 SCC Online Cal 4240,*** clarified that a "commercial dispute" involves transactions typically of merchants, financiers, and traders, and emphasized that disputes should be assessed on the substance of the case rather than procedural objections. Similarly, in ***Rolta (P) Ltd. v. Varanium Cloud Ltd., 2024 SCC Online Bom. 3518*** the High Court at Bombay reiterated that a "commercial dispute" under the Act of 2015 must relate to commercial transactions and not personal loans or other non-commercial engagements. In both these cases, the Courts ruled that disputes

arising from personal loans, even if advanced for business purposes, do not qualify as "commercial dispute" under the definition provided in Section 2(1)(c) of the Act of 2015.

21. Thus on a plain reading of Section 2(1)(c)(i) of the Act of 2015 coupled with the judicial pronouncements as discussed above, it is crystal clear that only those ordinary transactions that concern merchants, bankers, financiers and traders, and relate to mercantile documents, would come under the purview of the "commercial dispute". It would also be apposite to note that under Section 2(1)(c)(i) of the Act of 2015, two essential ingredients must exists simultaneously. The transactions in the suit must be ordinary transaction of merchants, bankers, financiers and traders and that there are mercantile documents with regard to such ordinary transactions between such entities. The overall scheme of the Act of 2015 and the intent underlying therein indicate that both elements must co-exist for a dispute to be termed as a "commercial dispute".

22. At this juncture, it would be necessary to analyze the meaning and significance of "mercantile documents" within the framework of commercial disputes. The Act of 2015 does not define "mercantile documents" as such, however, the plain meaning of

"mercantile" pertains to matters related to trade and commerce. In its ordinary usage, the term "mercantile document" refers to a document associated with merchants, trade, or commercial transactions.

23. Since the Act of 2015 does not provide a specific definition of the term "mercantile" , therefore reference can be made to Black's Law Dictionary, 8th Edition, which defines "mercantile" as "an act relating to a merchant or trading and being commercial in nature. This interpretation suggests that for a dispute to be categorized as a "commercial dispute", the transaction should be supported by a document that records, governs, or evidences trade, commerce, or business activity. The absence of such a document certainly raises doubts as to whether a dispute can be classified as a "commercial dispute" under the provisions of the Act of 2015. A dispute qualifies as a "commercial dispute" when it arises from transactions involving merchants, bankers, financiers, or traders, and relates to mercantile documents, including their enforcement and interpretation.

24. The word "document" is defined under Section 2(d) of the *Bharatiya Sakshya Adhinyam, 2023* (earlier "Indian Evidence Act, 1872") which reads as under:-

> *"(d) "document" means any matter expressed or described or otherwise recorded upon any substance by means of letters, figures or marks or any other means or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter and includes electronic and digital records.*

25. The presence of the word "mercantile" narrows down the scope of the word "document" and thus, the mere presence of a document evidencing the transaction is not enough unless the document qualifies as a mercantile document in the sense discussed above.

26. In ***Ambalal Sarabhai Enterprises Limited Vs. K.S. Infraspace LLP and another, 2020 (15) SCC 585***, the Hon'ble Supreme Court has held that the averments of the plaint would be relevant for determination as to whether, the suit is required to be tried by the Commercial Court under the Act of 2015 or not. It has also held that, the provisions of the Act of 2015 are to be strictly construed. Paras-13 and 14 of the judgment read as under:-

> *"13. The learned senior advocate for the appellant would however, contend that a strict interpretation as in the case of taxing statutes would not be appropriate in the instant case where the issue relates to jurisdiction. In that regard, the learned senior advocate has referred to the statement of*

objects and reasons with which the Commercial Courts Act, 2015 is enacted so as to provide speedy disposal of high value commercial disputes so as to create the positive image to the investors world about the independent and responsive Indian Legal System. Hence, he contends that a purposive interpretation be made. It is contended that a wider purport and meaning is to be assigned while entertaining the suit and considering the dispute to be a commercial dispute. Having taken note of the submission we feel that the very purpose for which the CC Act of 2015 has been enacted would be defeated if every other suit 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 as intended by the law makers. In commercial disputes as defined a special procedure is provided for a class of litigation and a strict procedure will have to be followed to entertain only that class of litigation in that jurisdiction. If the same is strictly interpreted it is not as if those excluded will be non-suited without any remedy. The excluded class of litigation will in any event be entertained in the ordinary Civil Courts wherein the remedy has always existed.

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 01.03.2019 impugned herein. The Commercial Court shall therefore return the plaint indicating a date for its presentation before the Court having jurisdiction."

27. On such principles as has been enunciated in various judicial pronouncements referred to above, the question which arises for consideration before this court is as to whether the subject matter of the dispute between the parties to the suit involves a commercial dispute within the meaning of Section 2(1)(c)(i) of the Act and whether the transaction between the parties is commercial in nature.

28. As observed in ***Ambalal Sarabhai Enterprises case (supra),*** the decision as to whether or not the suit involves a commercial dispute within the meaning of the Act has to be arrived at on the basis of the averments made in the plaint and on a strict construction of the provisions of the Act. Thus, a bare reading of the plaint in the instant case would disclose that the defendants were well known to the plaintiff. Defendant No.1 used to be its trusted associate and employee whereas defendant No.2 was director of the plaintiff-company, with whom, defendant No.1 had close association, which served a reason for the plaintiff to grant loan to defendant No.1. In January, 2011, defendant No.1 approached the plaintiff-company and represented that he required funds to purchase land in Himachal Pradesh to set up a housing

project and thus sought loan from the plaintiff-company for the said purpose. Further case of the plaintiff-company is that defendant No.1 was willing to pay reasonable market interest on the loan amount, which he would secure by mortgaging/encumbering the land purchased by him with the loan amount and would get the lien/charge/encumbrance marked in favour of the plaintiff-company on the purchased land in the relevant revenue records and he assured that he would return/repay the loan after three years once the housing project of defendant No.1 took off on the land to be purchased with the loan amount taken from the plaintiff-company. Defendant No.2 assured and induced the Directors of the Company to extend the loan to defendant No.1 on behalf of the plaintiff-company and he also assured and took the responsibility to secure the loan amount by creating equitable mortgage of the property by deposit of title deeds with the Company and by getting lien/charge and encumbrance of mortgage of the plaintiff-company marked in the revenue records after sale deed of the land was executed in favour of defendant No.1. However, defendant No.2 in connivance with defendant No.1 did not deliberately get the lien of the plaintiff-company marked on the land measuring 61.07 bighas which was

purchased vide two separate sale deeds and in August, 2014, it was found by the plaintiff-Company that defendant No.2 was involved in misappropriating, cheating and playing fraud upon the company as a Director and was hand in glove with defendant No.1. When it came to the notice of the plaintiff-company that the defendants were hand in glove in defrauding and cheating the company, it filed an application before the Tehsildar Kandaghat, District Solan, seeking to enter the plaintiff-company's encumbrance/lien/charge and entry of encumbrance on the land purchased by defendant No.1 with the money of the plaintiff-company.

29. Therefore, upon considering the aforesaid assertions made in the plaint and on perusal of the material available on record, it is seen that the suit has not been filed by the plaintiff-company raising any commercial dispute. Admittedly, present transaction as per the case of the plaintiff is without execution of any document, what to speak of a mercantile document. Plaintiff is neither a banker nor a trader nor a merchant nor had any business dealing with the defendants. Merely because loan amount was payable with interest or that same was to be used by defendant No.1 for the setting up of housing project would not make the

transaction commercial particular in the absence of a mercantile document as discussed above. It is simply a suit filed by the plaintiff under Order 34, Rules 1 to 6 of CPC for recovery of the decretal amount by way of sale/foreclosure of the mortgaged property. As discussed, defendant No.1 approached the plaintiff-company and represented that he required funds to purchase land in Himachal Pradesh to set up a housing project and thus, sought loan from the plaintiff-company for the said purchase and thereafter defendant No.2 made payment of amount of Rs.48,80,125/- by way of multiple cheques from the account of the plaintiff-company which were issued directly in the name of the sellers and their authorized representatives. Apart from the cheques, defendant No.2 also took a cash amount of Rs.1,95,82,875/- from the cash-in-hand held by the plaintiff-company, which too was handed over/remitted to defendant No.1 for purchase of the land. There is no mercantile document involved in the present suit as per Section 2(1)(c)(i) of the Commercial Disputes Act nor had the plaintiff acted in the capacity of a financier. The defendants have failed to show that the plaintiff company was commercially engaged in the activity of financing or lending. A one-off personal loan does not fall within any of the

categories enumerated under Section 2(1)(c) of the Act of 2015, merely because it carries interest. It is only the ordinary transactions involving merchants, bankers, financiers, and traders such as those relating to mercantile documents, which are covered under Section 2(1)(c)(i) of the Act of 2015,therefore, it cannot be said that the suit involves commercial dispute.

30. In light of the foregoing discussion, this Court finds that the claim for recovery in the present suit does not qualify as a "commercial dispute" under Section 2(1)(c) of the Act of 2015. The plaintiff company is not a merchant, trader, banker or financier. It had advanced a loan to defendant No.1 on certain terms and conditions, but such a loan, even if ultimately used for the purpose of setting up of the housing project, does not inherently constitute a "commercial dispute" within the meaning of the Act of 2015 as it does not pertain to ordinary transactions involving merchants, bankers, financiers, and traders such as those relating to mercantile documents. Moreover, the loan was not advanced in the ordinary course of business and has no relation to the trade, commerce, or business of the plaintiff company

31. Consequently, in view of the above discussion, both the applications are dismissed, being devoid of merit.

32. Be it stated that the observations made hereinabove are purely for the disposal of these applications and shall have no bearing on the merits of the main suit.

(Sushil Kukreja)
Judge

October 28, 2026
(V.Himalvi)