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

+ **FAO (COMM) 178/2025**

ATAM PRAKASH TUTEJAAppellant

Through: **Mr. Harshit Jain, Advocate**

versus

SWARUP PAULRespondent

Through: **Mr. Vishal Sharma, Advocate**

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **15.05.2026**

1. This appeal challenges the order dated 16.05.2025 passed by the learned District Judge (Commercial Court)-02, North West, Rohini Courts, whereby the learned District Judge has returned the plaint filed by the Appellant along with the original documents to the Appellant herein to file the same before an appropriate Court having jurisdiction to try the same.
2. The aforesaid conclusion of the learned District Judge was primarily because the dispute raised by the Appellant before him was not a commercial dispute as is contemplated under Section 2(1)(c)(vii) of the Commercial Courts Act, 2015.
3. The aforesaid finding is primarily based on the ground that the property forming the subject matter of the suit, wherein the Appellant had sought eviction, possession and mesne profits, is neither situated in a commercial area nor falls within mixed land use. The learned Court held that since the



property is situated in a residential area, the mere fact that the Respondent is allegedly carrying on commercial activity therefrom would not, by itself, bring the dispute within the ambit of a commercial dispute.

4. During the course of the submissions, the learned counsel for the Appellant contended that as per the mixed use regulations issued by the DDA as the property in question is situated on the road, which is 28 meters wide, the same shall be construed as a mixed land used area and as such the dispute between the parties is a commercial dispute in view of the judgment of this Court in the case of **“Brij Mohan Saran v. Sushma Chawla; RFA (COMM.) No. 167/2023**, decided on 12.09.2023.

5. Upon a specific query to the learned counsel for the Appellant, whether such a plea was actually pleaded before the learned District Judge, the answer is in the negative.

6. The learned counsel for the Respondent by acknowledging the said submission, says if such an aspect is relevant for the maintainability of the suit, appropriate shall be the matter be remanded back to the learned District Judge for consideration of the said issue, provided the Appellant herein files an affidavit with relevant documents in support of his contention as according to the counsel, the respondent herein is in fact using the property for commercial purposes.

7. If that be so, we set aside the impugned order dated 16.05.2025 passed in CS(COMM) 347/2025 and revive the said suit on the Board of the District Judge (Commercial Court)-02, North West, Rohini Courts with a direction that the appellant shall file an affidavit in support of his stand that the property in question is situated on 28 meters wide road and is governed by the mixed land used regulations issued by the DDA.



8. If such an affidavit is filed, the respondent shall file a response to the same, and based on the said affidavit/pleading, the learned District Judge shall decide the issue of maintainability of the suit and then proceed in accordance with law.

9. For this purpose, we list the matter before the learned District Judge on 01.06.2026. When the parties through their counsel shall appear before the learned District Judge.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

MAY 15, 2026/rhc