

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :  
NAGPUR BENCH : NAGPUR.

Writ Petition No.4080 of 2018

- 1] Kanchanganga Realtors Pvt. Ltd,  
through its Director  
Company registered under the Companies act,  
Office at, 4, Survi Gomati Apartments, Mata Mandir,  
Gokulpeth, Nagpur-40.
- 2] Rajesh Ashokji Dawda,  
aged about 43 years, Occ.-Business,  
R/o.-132, Ramdaspath, near Lendra Park, Nagpur.
- 3] Sudhanshu Mohan Degwekar,  
aged about Major, Occ.-Business,  
R/o.-4, Survi Gomati Apartments, Mata Mandir,  
Gokulpeth, Nagpur-10. .... Petitioners.

-Versus-

- 1] M/s Monarch Infrastructure Developers Pvt. Ltd.,  
a registered Company having its office at  
47-A Khare Town, Dharampeth, Nagpur  
through its Director Ashish Purushottam Rathi,  
aged about major, Occ.-Business,  
R/o.- Shubham, 47-A Khare Town, Dharampeth, Nagpur.
- 2] Dr. Mahesh Chandumal Fulwani, (Amended as per Court's  
Aged 47 years, R/o.- Plot No.8, Order dated 07-01-2019)  
House No.122, Abhyankar Road, Dhantoli, Nagpur.
- 3] Narendra Dharnidhar Gandhi,  
aged 55 years, R/o.-40, Balaji Nagar, Nagpur. .... Respondents.

Mr. A.G. Gharote, Counsel for petitioners.  
Mr. R.T. Anthony, Counsel for resp. no.1.  
Mr. R.R. Shrivastava, Counsel for resp. nos. 2 and 3.

Coram : Manish Pitale, J.

Date of reserving the judgment : 24-01-2019.

Date of pronouncing the judgment : 08-02-2019.

## **J U D G M E N T**

**Rule.** Rule made returnable forthwith. Heard finally by consent of the learned Counsel appearing for the parties.

2. The question that arises for consideration in this petition is, as to whether the impugned order passed by the Court of Joint Civil Judge Senior Division, Nagpur (trial Court), in refusing to transfer the suit filed by respondent no.1, under Section 15(2) of the Commercial Courts Act, 2015 (for short, 'the Act of 2015') to the Commercial Court, was justified in the facts and circumstances of the present case. It is the contention of the petitioners (original defendants) that although the suit filed by respondent no.1 pertains to a prayer for grant of decree of specific performance of agreement dated 04-04-2015, by applying definition of "commercial dispute" under Section 2(1)(c) of the Act of 2015, the suit filed by respondent no.1 pertains to a commercial dispute and that under Section 15(2) of the Act of 2015, the suit ought to have been transferred to the Commercial Court.

3. The respondent no.1 filed a suit for specific performance against the petitioners in respect of the aforesaid agreement dated 04-04-2015, whereby petitioner no.1 had agreed to sell immovable property specified in the suit to respondent no.1. After entering appearance before the trial Court, the petitioners moved an application under Section 15(2) of the Act of 2015, contending that since the immovable property in question

was intended to be used for commercial purpose, the dispute between the parties was a commercial dispute and that therefore, the suit was required to be transferred under Section 15(2) of the Act of 2015. This application filed by the petitioners was opposed by respondent no.1.

4. By the impugned order dated 26-04-2018, the trial Court found that the pleadings on record and the documents nowhere demonstrated that the property was intended to be used for trade and commerce. On this basis, it was held that the dispute between the parties could not be said to be a commercial dispute under Section 2(1)(c)(vii) of the Act of 2015 and on this basis, the application filed by the petitioners was rejected.

5. Mr. A.G. Gharote, learned Counsel appearing for the petitioners, submitted that the trial Court committed an error in rejecting the application of the petitioners in a cryptic manner, without appreciating the true scope of the definition of commercial dispute under section 2(1)(c)(vii) of the Act of 2015 read with Explanation (a) to the said provision. It was submitted that the words “relating to” used in the said provision ought to be interpreted in a wide sense and Explanation (a) to the said provision also further widened the scope of the expression “commercial dispute” as the words used therein “involves any other relief pertaining to immovable properties” were crucial, which was not appreciated by the trial Court, while passing the impugned order. It was submitted that reliance placed by respondent no.1 before the trial Court on the judgment of the Gujarat High Court in the case of **Vasu Healthcare Private Limited vs Gujarat Akruiti TCG Biotech Limited and another**, reported at **AIR 2017 Gujarat 153**, was erroneous because, firstly, the said judgment of the

Gujarat High Court had not interpreted the aforesaid provisions of Act of 2015, in the proper perspective and secondly, that in a Special Leave Petition filed against the said judgment of the Gujarat High Court, the Hon'ble Supreme Court had granted leave and directed the parties to maintain status quo. It was submitted that there were plethora of judgments of the Hon'ble Supreme Court and High Courts, wherein it had been held that the expression "relating to" had to be interpreted in a wide sense. It was also submitted that there were judgments of various Courts laying down that the word "used" included the expression "intended for use". Specific reliance was placed on the judgments of the Delhi High Court in the case of **Jagmohan Behi vs State Bank of Indore**, reported at **2017 SCC OnLine Del 10706** and **Monika Arora vs Neeraj Kohli and another**, reported at **2016 SCC OnLine Del 5259**, wherein the Delhi High Court had held that a suit for specific performance and a suit for recovery of mesne profits were required to be transferred under Section 15(2) of the Act of 2015, to the Commercial Court.

6. On the other hand, Mr. R.T. Anthony, learned Counsel appearing for respondent no.1, submitted that the impugned order was justified as the position of law laid down by judgment of Gujarat High Court in the case of **Vasu Healthcare Private Limited vs Gujarat Akruiti TCG Biotech Limited and another** (supra) was the correct position of law and that a simple suit for specific performance filed by respondent no.1 could not be given the colour of commercial dispute as defined under Section 2(1)(c) of the Act of 2015. It was submitted that the interpretation sought to be placed on the said provision of the Act of 2015, on behalf of the petitioners, amounted to adding words to the statute, which was

impermissible. On this basis, the learned Counsel submitted that the Writ Petition deserves to be dismissed.

7. Mr. R.R. Shrivastava, learned Counsel has appeared on behalf of respondent nos.2 and 3.

8. Heard Counsel for the parties and perused the record. In order to examine, as to whether the suit filed by respondent no.1 could be transferred under Section 15(2) of the Act of 2015 to the Commercial Court, it would have to be analyzed whether the dispute between the parties could be said to be a “commercial dispute” as defined under the provisions of the Act of 2015. In the present case, since the agreement in question pertains to an immovable property and respondent no.1 is seeking specific performance of the said agreement, the relevant provision is Section 2(1)(c)(vii) of the Act of 2015, which reads as follows :-

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

*(a) .....*

*(b) .....*

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

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

*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;*

9. Since Explanation (a) to the said provision, quoted above, is relevant for the present case, it would be necessary to refer to the same. A perusal of the above quoted provision shows that a commercial dispute would include dispute arising out of agreements relating to immovable property used exclusively in trade and commerce. The crucial words for placing a proper interpretation on the said provision are “relating to” and “used”. In the present case, there can be no doubt that the agreement in question dated 04-04-2015, relates to immovable property. Whether the said immovable property is being used exclusively in trade or commerce becomes an important question, particularly because the trial Court in the impugned order has held that it could not be said that the property which is the subject matter of said agreement dated 04-04-2015, is being used for trade and commerce. It has been held that merely because the value of the property which is subject matter of the said agreement is more than Rs.1 Crore, it cannot be said that a commercial dispute is involved in the present case. The learned Counsel appearing for respondent no.1 emphasized that the agreement dated 04-04-2015, was a pure and simple agreement of sale and purchase of the suit property, which is immovable property and that the consideration is of Rs. 7.5 Crores. It is submitted on behalf of respondent no.1 that even if the consideration amount for the said property is more than Rs.1 Crore, the dispute between the parties would not qualify to be a commercial dispute because there is nothing to show that the said property is being used exclusively in trade or

commerce. In this regard, the learned Counsel for the petitioners has invited the attention of this Court to a Memorandum of Understanding executed between the very same parties, that is the petitioners and respondent no.1, also dated 04-04-2015, wherein it has been agreed between the said parties that the parties would remove encroachments on the said immovable property and that they would undertake a joint venture for the development of the said property and further that if the parties decided to retain the same, it would be developed by construction of residential or commercial complex. In this context, the learned Counsel appearing for the petitioners also pointed out that the terms of payment mentioned in the said Memorandum of Understanding dated 04-04-2015, were the same as reflected in the Agreement to Sell also dated 04-04-2015, in respect of which respondent no.1 had filed the suit for specific performance.

10. The learned Counsel appearing for the petitioners also referred to the Memorandum and Articles of Association of the petitioner no.1 as well as respondent no.1. By referring to the same, it was pointed out that the main object of both these parties was to carry out development of properties, to commercially exploit the same and to undertake construction of various commercial complexes. On this basis, it was contended that the very purpose of Agreement to Sell dated 04-04-2015, in respect of which respondent no.1 had filed the suit for specific performance, was to commercially develop the immovable property and this was specifically agreed between the parties as per the aforesaid Memorandum of Understanding, also dated 04-04-2015, executed between the parties. On this basis, it was submitted that the words

“relating to” and “used exclusively in trade or commerce” in Section 2(1)(c) (vii) of the Act of 2015, completely covered the nature of dispute that had arisen between the parties in the present case and that therefore, the application filed by the petitioners under Section 15(2) of the Act of 2015, ought not to have been rejected by the trial Court.

11. Although the learned Counsel for the petitioners has referred to a number of judgments while supporting his contention that the expression “relating to”, is of wide import, the judgment of the Hon'ble Supreme Court in the case of **Mansukhlal Dhanraj Jain and others vs Eknath Vithal Ogale**, reported at **(1995) 2 SCC 665**, would be sufficient to support the said contention. In the said judgment, while interpreting the aforesaid expression, the Hon'ble Supreme Court held as follows :-

*“14. So far as the first condition is concerned, a comprehensive reading of the relevant averments in the plaints in both these cases leaves no room for doubt that the plaintiffs claim relief on the basis that they are licensees on monetary consideration and the defendants are the licensor. The first condition is clearly satisfied. Then remains the question whether the third condition, namely that the suits must relate to the recovery of possession of immovable property situated in Greater Bombay is satisfied or not, It is not in dispute that the suit properties are immovable properties situated in Greater Bombay but the controversy is around the question whether these suits relate to recovery of possession of such immovable properties. The appellants contended that these are suits for injunction simpliciter for protecting their possession from the illegal threatened acts of respondents-defendants. Relying on a series of decision of this*



*Court and the Bombay High Court, Guttal, J., Pendse, J. and Daud, J. had taken the view that such injunction suits can be said to be relating to the possession of the immovable property. Sawant, J. has taken a contrary view. We shall deal with these relevant decisions at a later stage of this judgment. However, on the clear language of the section in our view it cannot be said that these suits are not relating to the possession of the immovable property. It is pertinent to note that [Section 41\(1\)](#) does not employ words "suits and proceedings for recovery of possession of immovable property". There is a good deal of difference between the words "relating to the recovery of possession" on the one hand and the terminology "for recovery of possession of any immovable property". The words "relating to" are of wide import and can take in their sweep any suit in which the grievance is made that the defendant is threatening to illegally recover possession from the plain-tiff-licensee. Suits for protecting such possession of immovable property against the alleged illegal attempts on the part of the defendant to forcibly recover such possession from the plaintiff, can clearly get covered by the wide sweep of the words "relating to recovery of possession" as employed by [Section 41\(1\)](#). In this connection, we may refer to Blacks' Law Dictionary Super Deluxe 5th Edition. At page 1158 of the said Dictionary, the term "relate" is defined as under:*

*"to stand in some relation, to have bearing or concern, to pertain, refer, to bring into association with or connection with."*

*It cannot be seriously disputed that when a plaintiff-licensee seeks permanent injunction against the defendant- licensor restraining the defendant from recovering the possession of the suit property by forcible means from the plaintiff, such a suit does*

have a bearing on or a concern with the recovery of possession of such property. In the case of Renusagar Power Company Ltd. v. General Electric Company & Anr., [1985] 1 S.C.R. 432, a Division Bench of this Court had to consider the connotation of the term "relating to", Tulzapukar, J. at Page 471 of the report has culled out propositions emerging from the consideration of the relevant authorities. At page 471 proposition No. 2 has been mentioned as under ;

"Expressions such as "arising out of" or "in respect of" or "in connection with" or "in relation to" or "in consequence of" or "concerning" or "relating to" the contract are of the widest amplitude and content and include even questions as to the existence, validity and effect (scope) of the arbitration agreement."

15. In Doypack Systems Pvt. Ltd. v. Union India & Ors., [1988] 2 S.C.C. 299, another Division Bench of this Court consisting of Sabyaschi Mukherji (as he then was) and G.L. Oza, JJ., had an occasion to consider this very question in connection with the provisions of Sections 3 and 4 of the Swadeshi Cotton Mills Co. Ltd. (Acquisition and Transfer of Undertaking) Act, 1986. Sabyaschi Mukherji, J. speaking for the Court, has made the following pertinent observations in paragraphs 49 and 50 of the report:

"The words "arising out of" have been used in the sense that it comprises purchase of shares and lands From income arising out of the Kanpur undertaking. We are of the opinion that the words "pertaining to" and "in relation to" have the same wide meaning and have been used

*interchangeably for among other reasons, which may include avoidance of repetition of the same phrase in the same clause or sentence, a method followed in good drafting. The word "pertain" is synonymous with the word "relate" , see Corpus Juris Secundum, Volume 17, Page 693. The expression "in relation to" (so also "pertaining to"), is a very broad expression which presupposes another subject matter. These are words of comprehensiveness which might have both a direct significance as well as an indirect significance depending on the context, see [State Wakf Board v. Abdul Azeez](#), following and ap-proving [Nitai Charan Bagchi v. Suresh Chandra Paul](#), [Shyam Lal v. M. Shyamlal](#) and 76 Corpus Juris Secundum 621. Assuming that the investments in shares and in lands do not form part of the undertakings but are different subject matters, even then these would be brought within the purview of the vesting by reason of the above expressions. In this connection reference may be made to 76 Corpus Juris Secundum at pages 620 and 621 where it is Stated that the terms "relate" is also defined as meaning to bring into association or connection with. It has been clearly mentioned that "relating to" has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". The expression "pertaining to" is an expression of expansion and not of contraction."*

12. Similarly, for the contention that the word "used" would include the expression "capable of being used", the learned Counsel for the petitioners has relied upon number of judgments. The ratio of the said judgments is that the word 'used' also has to be seen in a wider perspective and it would include the expressions like capable of being

used or for the purpose of being used. Applying the said position of law to the definition of “commercial dispute” under Section 2(1)(c)(vii) of the Act of 2015, it becomes abundantly clear that the expression “agreements relating to immovable property used exclusively in trade and commerce”, has to be applied to the facts of a particular case in a wide and inclusive manner. There should be material on record to show that the immovable property, in respect of which the agreement has been executed, is being used or is intended to be used for trade and commerce.

13. This is the approach that has been adopted by the Delhi High Court in the aforesaid two judgments in the case of **Jagmohan Behi vs State Bank of Indore** (supra) and **Monika Arora vs Neeraj Kohli and another** (supra). This Court respectfully agrees with the said judgments rendered by the Division Bench and learned Single of Delhi High Court. In the judgment of the Division Bench of the Delhi High Court in the case of **Jagmohan Behi vs State Bank of Indore** (supra), specific reference has been also made to Explanation (a) to Section 2(1)(c)(vii) of the Act of 2015 and it has been held that the words “any other relief pertaining to immovable property” has to be given broad interpretation. This Court also finds that if the definition of the term “commercial dispute” under Section 2(1)(c)(vii) read with Explanation (a) thereto is interpreted in a narrow sense, as contended by respondent no.1 herein, it would render the same nugatory and the Explanation would be rendered redundant.

14. In this context, reliance placed on the judgment of the Gujarat High Court in the case of **Vasu Healthcare Private Limited vs Gujarat Akruti TCG Biotech Limited and another** (supra) on behalf of

respondent no.1, would not take its case any further. A perusal of the said judgment of the Gujarat High Court and another judgment of the said High Court in the case of **Ujwala Raje Gaekwar vs Hemaben Achyut Shah**, reported at **2017 SC OnLine Guj 583**, would show that the Gujarat High Court has placed a narrow interpretation on the definition of commercial dispute under Section 2(1)(c)(vii) of the Act of 2015 and there is no reference made to Explanation (a) to the said provision. As noted earlier, this Court is of the opinion that the expressions used in Section 2(1)(c)(vii) read with Explanation (a) of the Act of 2015 have to be given wide interpretation. Therefore, this Court respectfully disagrees with the aforesaid judgment of the Gujarat High Court. It is also pointed out by the learned Counsel appearing for the petitioners that in a Special Leave Petition filed against the aforesaid judgment of the Gujarat High Court in the case of **Vasu Healthcare Private Limited vs Gujarat Akruiti TCG Biotech Limited and another** (supra), the Hon'ble Supreme Court has granted leave and directed the parties therein to maintain status quo.

15. In view of the above, it becomes clear that the dispute raised by respondent no.1 in the suit for specific performance against the petitioners is covered under the definition of commercial dispute under Section 2(1)(c)(vii) read with Explanation (a) of the Act of 2015. This is particularly so, when the said agreement is read with the Memorandum of Understanding, also of the same date, executed between the parties showing beyond any doubt that the agreement relates to immovable property, which is to be used exclusively in trade or commerce. The respondent no.1 has not denied and, in fact, it has accepted before this Court about the existence of the said Memorandum of Understanding

executed between the parties. It is evident that the parties entered into the agreement to develop the property in question by undertaking construction activity or to further sell the same for commercial gains, in terms of the very objects of the two parties i.e. petitioner no.1 and respondent no.1. There is no dispute about the fact that the “commercial dispute” between the parties is beyond the amount of Rs. 1 Crore.

16. In the light of the above, it is found that the impugned order passed by the trial Court is unsustainable. Accordingly, the Writ Petition is allowed. The impugned order dated 26-04-2018, passed by the trial Court is quashed and set aside and the application (Exhibit-35) filed by the petitioners is allowed in terms of the prayer made therein.

17. Rule is made absolute in above terms. No costs.

JUDGE

Deshmukh