

Aneeta Leekha vs Kotak Mahindra Bank Ltd on 27 March, 2025

Author: Dharmesh Sharma

Bench: Dharmesh Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 27th March,

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FAO 75/2025 & CM APPL. 18015/2025

ANEETA LEEKHA

.....A

Through:

Mr. Raman Gandhi, Ad

versus

KOTAK MAHINDRA BANK LTD

.....R

Through: None

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 18016/2025- (EXMP).

1. Allowed, subject to all just exceptions.

2. Application is disposed of.

FAO 75/2025 & CM APPL. 18015/2025

3. The appellant is preferring this appeal under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 ["CPC"], thereby assailing the impugned order dated 28.02.2025 whereby the learned District Judge- 02 & Wakf Tribunal, New Delhi District, Patiala House Courts, New Delhi ["learned DJ"] has held that the dispute raised by the appellant is of a commercial nature and covered by Section 2(1)(c)(vii) read with Rule 2(1)(c)(xxii) of the Commercial Courts Act, 2015 ["CC Act"].

4. No one is present for the respondent despite sending advance notice.

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5. Having heard the learned counsel for the appellant, this Court has no hesitation in finding that the present appeal is bereft of any merits.

6. In a nutshell, the appellant/plaintiff filed a suit seeking recovery of Rs. 32,24,803.96 Paisa from the respondent/bank and her case was that the respondent/bank was in occupation of basement and ground floor of the subject property belonging to her as well as her siblings pursuant to registered

lease deed dated 18.03.2008, which stipulated payment of monthly rent of Rs.5,60,000/- to all the five lessors i.e. herself, her mother and three siblings and at the time of execution of lease deed a security deposit of Rs. 33,60,000/- was made by the respondent/bank, in the sum of Rs. 6,72,000/- in each of their favour. It was stated that monthly rent of Rs. 7,73,925/- was being paid by the respondent/bank and the appellant/plaintiff's share of Rs. 1,54,785/- was being remitted to her account, which included component of service tax as well as TDS 1. It was the case of the appellant/plaintiff that although possession of the subject property had to be delivered by the respondent/bank by 30.06.2017, however, lease was extended and possession of the subject property was delivered on 30.09.2017. It was stated that the mother of the appellant/plaintiff died on 06.08.2011, and thereafter, she filed another suit for partition of the subject property which is subjudice. Her grievance in the instant suit/appeal is that despite the determination of lease deed on 30.09.2017, rent for the period from 06.08.2011 to 30.09.2017 has been withheld by the respondent/defendant-bank. The said suit came 1 Tax Deducted at Source KUMAR VATS Signing Date:28.03.2025 16:15:42 up for hearing before the learned DJ and the following order was passed, which is assailed in the present appeal:

"3. At the time of arguments, it came to the notice of this court that the property is commercial property and this dispute is covered within the meaning of "commercial dispute" as defined U/s 2 (1)

(c) and by relying upon section 2 (1)(c)(vii) R/w explanation U/s 2(1)(c)(xxii) of The Commercial Courts Act, 2015. The observation of the court is further supported by the judgment of Hon'ble Delhi High Court in the matter of Jagmohan Behl vs. State Bank of Indore PAP (OS) No. 166/2016, wherein the facts of the present case is in para materia to the decided case by Hon'ble High Court of Delhi, where such disputes are defined as commercial dispute.

4. Since the dispute is a commercial dispute and as per Section 6 of The Commercial Courts Act, categorically bars the jurisdiction of Civil Courts, whereby this case can only be adjudicated by the Commercial Courts.

5. Since commercial dispute is to be adjudicated by Commercial Court. The present suit is returned to the plaintiff to file it before competent court relying upon the judgment of Hon'ble High Court of Delhi in case titled as Rajeew Mittal Vs. Commissioner, North Delhi Municipal Corporation 2024 SCC OnLine DEL 4832.

6. The only power vests in this court to deal with such cases is to return the plaint. Accordingly, plaint is returned."

7. Learned counsel for the appellant/plaintiff submitted that the suit is not covered by the CC Act for which he relied on the decision in Jagmohan Behl v. State Bank of Indore². I am afraid the cited case is of no help to the appellant. It was a case where the plaintiff filed a suit seeking possession/ejectment against the respondent/bank on 27.10.2001, which was decreed under Order XII Rule 6 of the CPC vide order dated 01.05.2002. However, on a Regular First Appeal being filed

by the defendant/bank, the execution proceedings were 2 2017 SCC OnLine Del 10706 KUMAR VATS Signing Date:28.03.2025 16:15:42 stayed. The plaintiff inter alia had also sought a decree for mandatory injunction and mesne profits w.e.f. 01.09.2010 till the date of decree @ Rs.18,000/- per day. In the appeal proceedings before this Court, an undertaking of the respondent/bank was taken on record and the lease was extended for a period of six months, subject to the respondent/bank making payment of Rs. 2,75,000/- towards rent/mesne profits and continue to pay consumption charges towards water and electricity till occupation. Suffice it to state that the learned Single Judge of this Court vide order dated 01.03.2016 held that the suit was not of a commercial nature as no right under an agreement relating to immovable property was sought to be enforced, inasmuch as the suit only sought recovery of rent and mesne profits. On an appeal being filed by the plaintiff/appellant therein, the decision of the learned Single Judge was set-aside and the following observations were made:

"12. The explanation stipulates that a commercial dispute shall not cease to be a commercial dispute merely because it involves recovery of immoveable property, or is for realisation of money out of immoveable property given as security or involves any other relief pertaining to immoveable property, and would be a commercial dispute as defined in sub-clause (vii) to clause (c). The expression "shall not cease", it could be asserted, has been used so as to not unnecessarily expand the ambit and scope of sub-clause

(vii) to clause (c), albeit it is a clarificatory in nature. The expression seeks to clarify that the immoveable property should be exclusively used in trade or commerce, and when the said condition is satisfied, disputes arising out of agreements relating to immoveable property involving action for recovery of immoveable property, realization of money out of immoveable property given as security or any other relief pertaining to immoveable property would be a commercial dispute. The expression "any other relief pertaining to immoveable property" is significant and wide. The contours are broad and should not be made otiose while reading the explanation and sub-clause (vii) to clause (c) which defines the KUMAR VATS Signing Date:28.03.2025 16:15:42 expression "commercial dispute". Any other interpretation would make the expression "any other relief pertaining to immoveable property" exclusively used in trade or commerce as nugatory and redundant.

13. Harmonious reading of the explanation with sub-clause (vii) to clause (c) would include all disputes arising out of agreements relating to immoveable property when used exclusively for trade and commerce, be it an action for recovery of immoveable property or realization of money given in the form of security or any other relief pertaining to immoveable property.

14. In the context of the present case, it is not disputed that the immoveable property was being used exclusively in trade and commerce. The said issue does not arise for consideration."

8. Faced with the aforesaid situation, learned counsel for the appellant then referred to the decision of the Supreme Court in the case of Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP³. This decision is also distinguishable because it pertains to a suit for execution of a mortgage deed which was in the nature of specific performance of the terms and conditions of the Memorandum of Understanding without reference to the nature of use of the immovable property in trade or commerce as on the date of the suit.

9. In the instant matter, the subject property has evidently been put to use exclusively for running of trade and commerce and the suit is referable to Section 2(1)(c)(vii)⁴ of the CC Act read with the Explanation Clause.

10. In view of the foregoing discussion, the present appeal fails and same is hereby dismissed.

(2020) 15 SCC 585

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

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11. The pending application also stands disposed of.

12. A copy of this order be sent to the Court of learned District Judge-02 & Wakf Tribunal, New Delhi District, Patiala House Courts, New Delhi for information and record.

DHARMESH SHARMA, J.

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