

HIGH COURT FOR THE STATE OF TELANGANA

CIVIL REVISION PETITION NO.3018 OF 2022

Between:

P. Siva Mohan Reddy, s/o. late P.Venkata Reddy,
Aged about 53 years, occu: Business,
r/o. Pent House, Block No.1, Alpine Heights,
Somajiguda, Hyderabad.

.... Petitioner/
petitioner

And

Dr. K.R.K.Reddy, s/o. late K.Veera Reddy,
Aged 55 years, occu: Business, r/o.Plot No.24,
Maruthinagar, Yousufguda, Hyderabad.

....Respondent/
Respondent

DATE OF JUDGMENT PRONOUNCED : 24.03.2023

HON'BLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE J.SREENIVAS RAO

1. Whether Reporters of Local Newspapers : **Yes**
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

*** HON'BLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE J.SREENIVAS RAO**

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Vs.

\$ Dr. K.R.K.Reddy, s/o. late K.Veera Reddy,
Aged 55 years, occu: Business, r/o.Plot No.24,
Maruthinagar, Yousufguda, Hyderabad.

....Respondent/
Respondent

!Counsel for the petitioner : Sri Peri Prabhakar

Counsel for the Respondent: Sri M.V.Pratap Kumar

<Gist :

>Head Note:

(2008) 4 SCC 451
(2016) 8 SCC 429
(2020) 15 SCC 585
(208) 10 SCC 345
MANU/HY/0288/2018
2022 SCC OnLine TS 1266= (2022) 5 ALD 101
(2016) 8 SCC 429
(2020) 15 SCC 585 =MANU/SC/1378/2019
MANU/HY/0288/2018

HON'BLE SRI JUSTICE P. NAVEEN RAO
&
HON'BLE SRI JUSTICE J. SREENIVAS RAO
CIVIL REVISION PETITION NO.3018 of 2022

ORDER: *(Per Hon'ble Sri Justice P Naveen Rao)*

Heard learned counsel for petitioner Sri Peri Prabhakar and learned counsel for respondent Sri M.V.Pratap Kumar.

2. Parties are referred to as arrayed in the suit.
3. Briefly noted to the extent relevant to decide the controversy the plaint averments are as under:
4. According to plaintiff, defendant approached him by saying that he is intending to develop Acs.5.00 land belonging to Mrs Ghousia Begum situated in Survey No.129/103, Road No.1, Banjara Hills, Hyderabad as a joint venture and requested plaintiff to invest. Plaintiff agreed to invest ₹ 2 crores and offered to be a sleeping partner. He was assured that project would be completed in three years. Plaintiff was requested to take the responsibility to sell the property. On 2.4.2009 Joint Venture Agreement was entered into between plaintiff and defendant. With fond hope of securing good returns, plaintiff invested ₹ 2 crores. There was no progress in the joint venture in spite of several requests made. Disturbed by this attitude, plaintiff requested to refund his ₹ 2 crores along with Internal Rate of Return (IRR). Plaintiff alleges that the defendant has diverted his money to another venture. Legal notice issued to pay the money due,

were not responded. Plaintiff instituted O.S.No.432 of 2012 in the Court of III Additional Chief Judge, City Civil Court at Hyderabad. On establishing Commercial Court, it was transferred to Commercial Court, where renumbered as C.O.S No.135 of 2017. Plaintiff prayed to grant decree directing the defendant to pay a sum of ₹ 3,08,00,000/- together with interest on principal amount and 18% IRR with effect from 9.4.2009 till the date of filing of suit and future interest @ 18 % IRR per annum.

5. In the said suit, defendant filed I. A.No.205 of 2022 under Order VII Rule 10 read with Section 151 of CPC to return the suit.

6. According to the defendant, the dispute raised in the suit is not a commercial dispute and therefore the Commercial Court has no jurisdiction to adjudicate the dispute.

7. On appreciating the respective submissions, the Court below held that the dispute raised in the suit is commercial dispute and therefore the Commercial Court has jurisdiction to adjudicate the dispute. Aggrieved thereby, this revision is preferred.

8. While learned counsel for defendant vehemently contended that there was no land, what was agreed upon was at initial stage before starting a venture and land was not put to use and the transaction cannot be called as commercial dispute, learned counsel appearing for plaintiff has taken us through the terms of joint venture agreement

document to buttress his point that the dispute involved is a commercial dispute and the defendant is perusing vexatious litigation only to drag on the litigation.

9. Both learned counsel have taken us through the relevant provisions of the Commercial Courts Act, 2015 and relied on precedent decisions.

10. Following decisions are cited by learned counsel for defendant:

B.K.Muniraju Vs State of Karnataka and others¹; Bunga Daniel Babu Vs Sri Vasudeva Constructions and others²; Ambalal Sarabhai Enterprises Ltd Vs K.S Infraspace LLP and others³; Faqir Chand Gulati Vs Uppal Agencies Private Limited and another⁴; and Sandhya Hotels Pvt ltd and Others Vs Amritha Mishra⁵.

11. Following decision is cited by learned counsel for plaintiff:

Telangana State Tourism Development Corporation Limited Vs. A.A. Avocations Pvt Ltd⁶.

12. To appreciate respective contentions, it is necessary to dwell into relevant provisions of the Act. They are Section 2(1)(c)(xi)⁷ and Section 6⁸ of the Commercial Courts Act, 2015 (for short the Act. 2015) .

¹ (2008) 4 SCC 451

² (2016) 8 SCC 429

³ (2020) 15 SCC 585

⁴ (208) 10 SCC 345

⁵ MANU/HY/0288/2018

⁶ 2022 SCC OnLine TS 1266= (2022) 5 ALD 101

⁷ **S.2. Definitions.- (1)** In this Act, unless the context otherwise requires,- (a) and (b) xxx

(c) "commercial dispute" means a dispute arising out of- xxxx

(ix) Joint Venture agreements;

13. According to Section 2(1)(c)(xi) of the Act, 2015, a dispute arising out of a '**joint venture agreement**' is a commercial dispute. If there is a dispute flowing out of Section 2(1)(c)(xi) of the Act, 2015, the Commercial Court alone has jurisdiction to adjudicate. The definition is exhaustive and includes all '*Joint Venture Agreements*' without any exception.

14. '**Joint Venture**' literally means '*a contractual agreement whereby two or more parties undertake an economic activity*'; '**a joint venture**' is '*an association of two or more persons to carry out a single business enterprise for profit*' [Advanced Law Lexicon 3rd Edition by Ramnathan Iyer]. '**A Joint Venture**' means '*a business undertaking by two or more persons engaged in a single defined project. The necessary elements are: (1) an express or implied agreement; (2) a common purpose that the group intends to carry out; (3) Shared profits and losses; and (4) Each member's equal voice in controlling the project*'. [Blacks Law Dictionary-ninth edition].

15. In **Faqir Chand Gulati** (supra), Hon'ble Supreme Court considered definition of term '**Joint Venture**' in various dictionaries. The

⁸ **6. Jurisdiction of Commercial Court.**—The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction. Explanation.—For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of sections 16 to 20 of the Code of Civil Procedure, 1908 (5 of 1908).

appellant is the owner of land in New Delhi. He entered into an agreement with the respondents to develop his land and construct apartments on it. Owing to several unauthorized deviations made by the respondent, the appellant filed a complaint before the District Consumer Disputes Redressal Forum seeking reliefs against the respondent, which was dismissed. On appeal to the State Forum, the appeal was dismissed again on the ground that the agreement between the appellant and respondents was in the nature of a joint venture. This was upheld by the National Commission as well. While considering the question of law before the Hon'ble Supreme Court whether a landowner entering into agreement with a builder for construction of apartment building and for sharing of the constructed area is a 'consumer' entitled to maintain complaint against builder as service provider Hon'ble Supreme Court noted the definition of 'joint venture' as defined in few journals. Paras 22 and 23 read as under:

“22. The following definition of “joint venture” occurring in *American Jurisprudence* (2nd Edn., Vol. 46, pp. 19, 22 and 23) is relevant:

“A joint venture is frequently defined as an association of two or more persons formed to carry out a single business enterprise for profit. More specifically, it is in association of persons with intent, by way of contract, express or implied, to engage in and carry out a single business venture for joint profit, for which purpose such persons combine their property, money, effects, skill, and knowledge, without creating a partnership, a corporation or other business entity, pursuant to an agreement that there shall be a community of interest among the parties as to the purpose of the undertaking, and that each joint venturer must stand in the relation of principal, as well as agent, as to each of the other coventurers within the general scope of the enterprise.

Joint ventures are, in general, governed by the same rules as partnerships. The relations of the parties to a joint venture and the nature of their association are so similar and closely akin to a partnership that their rights, duties, and liabilities are generally tested by rules which are closely analogous to and substantially the same, if not exactly the same as those which govern partnerships. Since the legal consequences of a joint venture are equivalent to those of a partnership, the courts freely apply partnership law to joint ventures

when appropriate. In fact, it has been said that the trend in the law has been to blur the distinctions between a partnership and a joint venture, very little law being found applicable to one that does not apply to the other. Thus, the liability for torts of parties to a joint venture agreement is governed by the law applicable to partnerships.

A joint venture is to be distinguished from a relationship of independent contractor, the latter being one who, exercising an independent employment, contracts to do work according to his own methods and without being subject to the control of his employer except as to the result of the work, while a joint venture is a special combination of two or more persons where, in some specific venture, a profit is jointly sought without any actual partnership or corporate designation.”

23. To the same effect is the definition in *Corpus Juris Secundum* (Vol. 48-A, pp. 314-15):

“ Joint venture’, a term used interchangeably and synonymous with ‘joint adventure’, or coventure, has been defined as a special combination of two or more persons wherein some specific venture for profit is jointly sought without any actual partnership or corporate designation, or as an association of two or more persons to carry out a single business enterprise for profit or a special combination of persons undertaking jointly some specific adventure for profit, for which purpose they combine their property, money, effects, skill, and knowledge... Among the acts or conduct which are indicative of a joint venture, no single one of which is controlling in determining whether a joint venture exists, are : (1) joint ownership and control of property; (2) sharing of expenses, profits and losses, and having and exercising some voice in determining division of net earnings; (3) community of control over, and active participation in, management and direction of business enterprise; (4) intention of parties, express or implied; and (5) fixing of salaries by joint agreement.”

(emphasis supplied)

16. Learned counsel for defendant asserted that in order to know the real nature of the document, one has to look into the recitals and not the title of the document. Learned counsel relied on **B.K.Muniraju**. In the said decision, Hon’ble supreme Court held as under:

“18. The document in question which is filed as Annexure P-3, has been styled or titled as “certificate of grant”. In order to know the real nature of the document, one has to look into the recitals of the document and not the title of the document. The intention is to be gathered from the recitals in the deed, the conduct of the parties and the evidence on record. It is settled law that the question of construction of a document is to be decided by finding out the intention of the executant, firstly, from a comprehensive reading of the terms of the document itself, and then, by looking into—to the extent permissible—the prevailing circumstances which persuaded the author of the document to execute it. With a view to ascertain the nature of a transaction, the document has to be read as a whole. A sentence or term used may not be determinative of the real nature of transaction. Reference in this regard can be made to the following cases

i.e. *Vidhyadhar v. Manikrao* [(1999) 3 SCC 573], *Subbegowda v. Thimmegowda* [(2004) 9 SCC 734] and *Bishwanath Prasad Singh v. Rajendra Prasad* [(2006) 4 SCC 432] .

19. The above principles make it clear that we have to see terms and conditions and recitals in the document and not the title alone. Though the document, according to the appellant, “certificate of grant”, perusal of the clauses therein, clearly shows that the land was sold on 4-3-1948 in a public auction and Motappa purchased the same for a price of Rs 408.12. In addition to the recitals, the “darkhast register extract” produced as Annexure ‘C’ before the High Court also shows that the land in question was sold for a “price”. Form I also indicates that the land in question was purchased and what was paid by the purchaser under the said document was the purchase price.” (emphasis supplied)

17. In **Bunga Daniel Babu v Sri Vasudeva Constructions and others**⁹, the appellant is the owner of 1347 sq yards of land in Visakhapatnam. He entered into an MoU with the respondents for development of his land by constructing a multi-storeyed apartment, which were to be shared between them in a proportion of 40:60. However, the work was completed and flats handed over to the appellants with a lot of delay. The appellant also had grievance pertaining to deviations from sanction plans and non-completion of various other works. His claim for compensation was rejected by the respondents. He approached the District Consumer Disputes Redressal Forum. The District Forum held that the project could not be considered to be a joint venture and thus excluded from the purview of the Act, and awarded compensation to the appellant. The State Commission and National Commission did not agree with the District Forum on the ground that the flats were built for commercial purposes, and not personal use. The issue for consideration was whether the

⁹ (2016) 8 SCC 429

appellant falls within the definition of ‘consumer’ in the Consumer Protection Act?

17.1. The Hon’ble Supreme Court held:

“14. In *Kalpavruksha Charitable Trust v. Toshniwal Brothers (Bombay) Pvt. Ltd.*, reiterating the principles stated in *Laxmi Engineering Works* (supra), the Court ruled **whether a person would fall within the definition of “consumer” or not would be a question of fact in every case.....**

.....

“21. On a studied scrutiny of the aforesaid clauses, it is clear as day that the appellant is neither a partner nor a co-adventurer. He has no say or control over the construction. He does not participate in the business. He is only entitled to, as per the MOU, a certain constructed area. The extent of area, as has been held in *Faqir Chand Gulati* (supra) does not make a difference. Therefore, the irresistible conclusion is that the appellant is a consumer under the Act.”

18. In **Ambalal Sarabhai Enterprises Ltd v KS Infraspac LLP and Ors**¹⁰ the Appellant filed the Commercial Civil Suit so as to enforce the execution of a Mortgage Deed. Consequently, the relief of permanent injunction and other related reliefs were sought. The defendant filed application under Order VII Rule 10 of Code of Civil Procedure, 1908 contending that the dispute involved in the case is not a commercial dispute. The Commercial Court while rejecting the application had referred to the Memorandum of Articles of Association of the Appellant company and taking note of the business that they were entitled to undertake had arrived at the conclusion that the Plaintiff seems to be carrying on the business as an estate agent and in that circumstance has further arrived at its conclusion that it was a commercial dispute. The High Court on the other hand had found fault with the manner in

¹⁰ (2020) 15 SCC 585 =MANU/SC/1378/2019

which the Commercial Court had rested its consideration on the Memorandum and Articles of Association and had examined the matter in detail to come to a conclusion that the immovable property in the instant case was not being used for trade or commerce. The High Court had accordingly directed the return of the plaint to be presented in an appropriate Court. In the said case, Hon'ble Supreme Court was considering the scope of Section 2(1)(c)(vii) – agreements relating to immovable property used exclusively in trade or commerce.

18.1. The Hon'ble Supreme Court held:

“10. At the outset, it is noticed that the consideration required in the instant case is as to whether the transaction between the parties herein which is the subject matter of the suit could be considered as a "commercial dispute" so as to enable the Commercial Court to entertain the suit. In that regard, it is necessary to take note of Section 2(1)(c)(vii) of the CC Act, 2015. The said provision to the extent relevant is extracted here below for reference.

Section 2(1) In this Act, unless the context otherwise requires,-
(c) "commercial dispute" means a dispute arising out of -

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

From a perusal, of the provision relied upon by the learned senior advocates it is noticed that the disputes arising out of agreements relating to immovable property used exclusively in trade or commerce will qualify to be a commercial dispute to be tried by Commercial Courts. The question therefore would be that, **in the instant case though the parties have entered into a sale transaction of the immovable property and presently in the suit the registration of a Mortgage Deed pertaining to the immovable property is sought, whether the immovable property involved could be considered as being used exclusively in trade or commerce.**

13. [...] 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."

19. In **Sandhya Hotels Pvt Ltd v Amritha Sharma**¹¹ also Hon'ble Supreme Court was considering the word '*used*' in Section 2(1)(c)(vii). In the said case, the second applicant, the Managing Director of Sandhya Hotels Pvt Ltd, approached the respondent/plaintiff asking her to purchase a house situated within the approved layout of the Jubilee Hills Cooperative House Building Society Limited, claiming that his company had entered into an agreement with Smt. M. Jayasree, and that the amount towards sale consideration has to be paid to the vendor and he will get the sale deed directly conveyed from Smt. M. Jayasree to the plaintiff. Believing this, the plaintiff entered into an agreement with the second defendant and paid the amounts through cheques and RTGS to the second defendant and to its company, amounting to ₹ 14.00 Crores. Though the second defendant has put the plaintiff in possession of the schedule property, in which the plaintiff setup a

¹¹ MANU/HY/0288/2018

boutique, the property was still not registered in the name of the plaintiff. The plaintiff found out that the defendant had executed a sale deed in the name of the first defendant. The second defendant promised to register a sale deed in favour of the plaintiff, but did not even turn up for registration. Referring to certain incidents where the defendants cheated the plaintiff and others, the plaintiff filed a suit for specific performance in the Civil Court. Later on, the defendants filed a memo before the Civil Court to transfer the case to the Commercial Court since the value involved is more than rupees One Crore and that the said court has become *functus officio*. Rejection of this request led to filing of the present appeal under Section 9 of the Act.

19.1. The Hon'ble Supreme Court held:

“5. The question that arises for consideration is "Whether in the given set of facts, the dispute between the parties can be termed as a commercial dispute?”

8. Explanation (a) to Section 2(1)(c) states that 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 realization of monies out of immovable property given as security or involves any other relief pertaining to immovable property;

11. Merely because, there was a transaction involving immovable property worth more than One Crore and merely because an amount of Rs. 14 Crores was paid, the dispute would not become a commercial dispute, it requires to be qualified with other conditions.

12. The word "used" in Section 2(1)(c)(vii) would mean "actually used" or "being used" as held by the Gujarat High Court in Vasu Healthcare Private Limited v. Gujarat Akruti TCG Biotech Limited and others (2012) 4 SCC 327 and Bombay High Court in DineshkumarGulabchand Agrawal v. Commissioner of Income Tax and another (2001) 6 SCC 407 The Court held that if the intention of the latter was to expand, the scope of the phraseology used, would have been different. The word "used" denotes "actually used" and it cannot be said to be either "ready for use" or likely to be used"; or "to be used". It was also held that the word "used" denotes "actually used" and not merely "ready for use".

13. It has been brought to our notice that the S.L.P. filed against the judgment of Nagpur Bench of the Bombay High Court and also against the judgment of the Gujarat High Court, were also dismissed by the Apex Court. Therefore, the word "used" therein must be such property which is being "actually used" or "being used" and not likely to be used or to be used at a later point of time."

20. From the above decisions, it is noticed that Hon'ble Supreme Court was dealing with specific aspects of what constitutes a commercial dispute in the peculiar facts of those cases. In none of these cases, scope of Section 2(1)(c)(xi) was considered.

21. It is beyond pale of doubt that a '**Joint Venture**' presupposes an association by two or more persons to join together to undertake an economic activity. Further, the Clause (xi) of Section 2(1)(c) of the Act, 2015 only uses the term '**Joint Venture**', plain and simple, it is very exhaustive and does not give scope to any other interpretation. Therefore, whenever a dispute arises in pursuance to a '**Joint Venture**' it is a Commercial dispute.

22. To test the validity of the submissions of learned counsel for the defendant we have also looked into the clauses of the agreement.

23. On 2.4.2009 plaintiff and defendant have entered into Joint Venture Agreement which was filed along with the plaint. The title assigned to the agreement is '*Joint Venture Agreement*'.

24. The terms of agreement disclose that the defendant has identified a land for development for commercial use and estimated investment required to execute the project at ₹ 35 crores. Plaintiff agreed to invest

□ 2 crores. He has also undertaken to sell flats constructed as per the terms of agreement. The maximum period of completion of the project was three years. The clauses also talk of sharing of profits. Default clause also envisages payment of IRR @ 18 % per annum to plaintiff. Thus, it is not a simple agreement to buy land and put the land to use, but to develop a land identified for the purpose to earn profits.

25. The further contention of learned counsel for defendant that the land was '**not put to use**', and that in fact there was no land, therefore the dispute is not a Commercial dispute is stated to be rejected as it has no application to the facts of this case. Putting the land for commercial use is relevant, if Section 2(1)(c)(vii) clause is attracted. Clause (xi) of Section 2(1)(c) governs the case, which does not envisage land being put to use as pre-requisite to make the dispute as commercial dispute. On the contrary, as noticed in the earlier paragraphs, Joint Venture Agreement binds the commercial relationship. At any rate definition clause is open ended and does not impose any restraint or application to specified instances of joint ventures.

26. Further, Court is not venturing into merits of respective claims on scope of their joint venture and obligations flowing there from. These aspects require consideration by the trial Court. Court has only considered whether the dispute raised in the suit is a commercial dispute and whether the Commercial Court has jurisdiction to decide the dispute in the instant suit.

27. On thorough analysis of statutory scheme and precedent decisions, we hold that the Commercial Court has jurisdiction to adjudicate the dispute flowing out of '*joint venture agreement*' in the instant suit. We uphold the decision of Commercial Court. Civil Revision Petition fails. It is accordingly dismissed. Miscellaneous applications, if any pending stand closed.

P.NAVEEN RAO,J

J.SREENIVAS RAO,J

Date: 24.03.2023
TVK/KKM
Note: LR Copy to be marked: Yes

HON'BLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE J.SREENIVAS RAO

CIVIL REVISION PETITION NO.3018 OF 2022

Date: 24.03.2023

Tvk/kkm