

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya**

F.M.A. No. 854 of 2024

Ramen Roy

-Versus-

Sambriddhi Real Estate Private Limited and others

With

F.M.A. No. 859 of 2024

**Ashis Sarkar alias Ashis Kumar Seal alias Ashis Seal
and others**

-Versus-

Sambriddhi Real Estate Private Limited and others

For the appellants : Mr. Anindya Mitra, Ld. Sr. Adv.,
Mr. Soumya Roychowdhury,
Mr. Sharanya Chatterjee,
Mr. Satyam Mukherjee,
Mr. Awani Kumar Roy,
Mr. Surajit Biswas,
Ms. Ankita Roy,
Mr. Suhbhajit Barman,
Ms. Ojasvi Gupta,
Mr. Kaustav Misra,
Mr. Arijeet Bera, ... Advs.

For the respondents : Mr. Anirban Roy,
Mr. Debjit Basu, ... Advs.

Heard on : 22.06.2026

Reserved on : 22.06.2026

Judgment on : 30.06.2026

Sabyasachi Bhattacharyya, J.:-

1. The two appeals are taken up together for hearing, since the issues involved are similar.
2. The appellants (owners) in both the appeals entered into registered development agreements and powers of attorney, all dated February 10, 2016, with the respondents (developers) in respect of two properties, similar in nature for both the properties. The registered development agreements were numbered as 1039 and 1038, whereas the powers of attorney as 1072 and 1061 respectively.
3. Subsequently the appellants, alleging that the respondents were not completing the development work within time, filed two suits for cancellation of the said development agreements and powers of attorney. By the impugned judgments, applications filed by the defendants/respondents under Order VII Rule 10 of the Code of Civil Procedure (for short, “the Code”) were allowed, thereby returning the complaints to be presented before the concerned Commercial Court at Rajarhat, on the ground that the suits involved “commercial disputes” within the contemplation of the Commercial Courts Act, 2015 (hereinafter referred to as “the CC Act”) and, accordingly, were not maintainable before the ordinary Civil Court.

4. Learned senior counsel appearing for the plaintiffs/appellants argues that the development agreements are registered documents and, apart from construction, also contemplate transfer of ownership rights and title in respect of the subject-properties *in praesenti* in favour of the respondents. As such, those are not agreements for construction and infrastructure simpliciter; thus, Section 2(1)(c)(vi) of the CC Act is not applicable. Accordingly, as per the appellants, the dispute involved in the suits is not a “commercial dispute” within the contemplation of the CC Act.
5. In support of such contention, learned senior counsel takes the court through various clauses of the agreement and cites *Rameshwar and others v. State of Haryana and others*, reported at (2022) 17 SCC 1. In the said judgment, the Hon’ble Supreme Court was pleased to distinguish between pure construction contracts for carrying out the work of construction for monetary consideration and agreements which contemplate transfer of a complex of rights associated with ownership, which were construed to be rights *in rem*.
6. Learned senior counsel next argues that the “specified value” as defined in Section 2(1)(i), read with Section 12 of the CC Act, has to be read harmoniously with the Court Fees Act and is linked with the reliefs sought in the suit. Thus, it is contended that since the primary relief claimed in the suits is cancellation of the respective agreements and powers of attorney, the self-assessed valuation given in the plaint is to be the determinant of the specified value.

7. In support of such submission, learned senior counsel relies on *Mrs. Soni Dave v. M/s. Trans Asian Industries Expositions Pvt. Ltd.*, reported at 2016 SCC OnLine Del 4282, and *Hindustan Petroleum Corporation, represented by Chairman and Managing Director and Another v. Muhammed Illiyas and Others*, reported at 2022 SCC OnLine Ker 4594, where a learned Single Judge of the Delhi High Court and a Division Bench of the Kerala High Court respectively observed that Section 12 of the CC Act, providing for determination of specified value, is not intended to provide for a new mode of determining the valuation of the suit for the purpose of jurisdiction and court fees and it would be incongruous to hold that while for the purpose of payment of court fees, the deemed fiction provided in the Court Fees Act for determining the value of the property is to apply, but not for determining the specified value under the Commercial Courts Act.
8. It was further observed that the plaintiff, being the *dominus litis*, can choose the court definitely having jurisdiction and determine the valuation of the suit for the purpose of the reliefs prayed for.
9. It was held by the Delhi High Court that provisions such as Section 21 of the CC Act have to be read and interpreted by finding out the extent to which the Legislature intended to give it an overriding effect and the context in which such a provision is made and on a consideration of purpose and policy underlying the enactment. It was also held to be relevant to consider whether the conflicting enactment can be described as a special one, in which case the special one may prevail over the more general one, notwithstanding that the general one is later in time.

10. Thus, it is argued that the suit, as framed, does not come within the purview of the CC Act at all.
11. Learned senior counsel further argues that if the plaint is to be returned to be presented afresh, the reliefs might be barred by limitation due to no fault of the plaintiffs/appellants, since the application under Order VII Rule 10 of the Code was filed by the defendants/respondents after more than three years had elapsed from the filing of the suit. It is argued alternatively that in the event this Court holds in favour of the suit being of a commercial nature, the same may be transferred to the appropriate commercial court instead of the plaint being returned and refilled.
12. Learned senior counsel appearing for the plaintiffs/appellants next contends that in the event the plaint is presented as it is or afresh after being returned, the rigours of Section 12A of the CC Act would apply. In similar circumstances, it is argued, a Division Bench of this Court, in *Awam Marketing LLP v. M/s Orient Beverages Limited and Ors.* [APO/144/2023 with CS/85/2016], transferred the suit to the commercial court. In *Patil Automation Private Limited and others v. Rakheja Engineers Private Limited*, reported at (2022) 10 SCC 1, the Hon'ble Supreme Court had observed that if the suit was filed prior to the date of the said judgment, that is, August 20, 2022, the plaint would not be rejected for non-compliance of Section 12A of the CC Act, which was held to be mandatory in the said judgment. (In the present case, the suits were filed in the year 2020).
13. The same view was reiterated in *Dhanbad Fuels Private Limited v. Union of India and another*, reported at (2025) 9 SCC 424, where the Hon'ble

Supreme Court held that in cases which were pending before the said cut-off date, in the event Section 12A of the CC Act is not complied with, the court shall keep the suit in abeyance and refer the parties to time-bound mediation in accordance with the said Section if an objection is raised by the defendant by filing an application under Order VII Rule 11 of the Code.

14. Learned senior counsel relies on an unreported judgment of the Hon'ble Supreme Court in *Aase Ram v. Amit Kumar [Civil Appeal No. 9481/2025]*, where the Hon'ble Supreme Court, in a case where the suit was filed before an ordinary Civil Court but was commercial in nature, directed the plaint to be returned instead of rejecting it under Order VII Rule 11 of the Code.
15. Thus, it is argued that in no event can the plaint be rejected; the best course would be to transfer the suit to the commercial court having jurisdiction, as done by the co-ordinate Bench in *Awam Marketing LLP (supra)*¹.
16. Learned counsel appearing for the respondents, on the other hand, submits that the delay in filing the application under Order VII Rule 10 of the Code was not attributable to the defendants/respondents but to the plaintiffs/appellants themselves. The suit was filed as long back as in the year 2020, but the same was kept defective till January 20, 2022 due to non-payment of appropriate court fees. Despite repeated opportunities being given by the trial Court, the plaintiffs/appellants failed to comply with the trial Court's directions to put in the deficit court fees and the matter reached such a fix that the suit was on the verge of being dismissed due to

¹ *Awam Marketing LLP v. M/s Orient Beverages Limited and Ors. [APO/144/2023 with CS/85/2016]*

non-compliance of the Court's order. Only at this juncture, an application for amendment of the plaint was filed on January 20, 2022 to cure the defect, which was subsequently allowed and the amended plaint filed on February 23, 2022. It is contended by the respondents that during this entire period, summons of the suit was not served on the defendants/respondents but only near the end of the year 2022 did the defendants receive such summons. The application for return of plaint was filed thereafter on May 11, 2023. Hence, the argument of the appellants that the defendants/respondents were responsible for the delay ought not to be accepted.

- 17.** Learned counsel for the respondents cites a Division Bench judgment of this Court passed in *Ashok Saraf and others v. Asansol Durgapur Development Authority*, reported at 2025 SCC OnLine Cal 8829. In the said judgment, it is argued, the Court had considered *Rameshwar (supra)*² and had observed that the same was rendered in the context of land acquisition proceedings and the ratio therein was not applicable to the context of the CC Act. In the said judgment, it is argued, the Court observed that if an agreement was for construction and infrastructure and there were other components to the agreements as well, it would come within the ambit of Section 2(1)(c)(vi) of the CC Act.
- 18.** The judgments of the Kerala High Court and the Delhi High Court cited by the appellants, it is contended, did not take into account Section 21 of the

² *Rameshwar and others v. State of Haryana and others*, reported at (2022) 17 SCC 1

CC Act, which lends overriding effect to the CC Act over all other statutes, including the Court Fees Act.

- 19.** Learned counsel appearing for the respondents next argues that on a composite reading of Section 12(1)(c) and Section 2(1)(c)(vi) of the CC Act, it would be evident that the 'specified value' has to be determined in the context of the CC Act and not as per the Court Fees Act. as per the said provisions, if the reliefs sought in the suit arise out of an agreement for construction and infrastructure, including tender, and relates to immovable properties or rights therein, in whatever form, the market value of the property determines the specified value. Thus, the argument that a harmonious construction has to be arrived at between the Court Fees Act and the CC Act is not tenable in the eye of law.
- 20.** Learned counsel relies on a Division Bench judgment of the Telangana High Court in *Bhojraj Srinivas v. Bhojraj Divya*, reported at *2023 SCC OnLine TS 4488*, where the Court relied on a Larger Bench decision of the Allahabad High Court in *Ananti v. Channu*, reported at *1929 SCC OnLine All 47*, which was also approved by the Hon'ble Supreme Court, to arrive at the conclusion that if the objection as to jurisdiction is only one relating to territorial limits or pecuniary limits, the plaint will be ordered to be returned for presentation to the proper court, but if, on the other hand, it is found that, having regard to the nature of the suit, it is not cognizable by the class of courts to which the court belongs, the plaintiff's suit will have to be dismissed in its entirety. Hence, it is argued that the reliefs claimed in the instant suits, in their present form, relate to commercial disputes and the suits had to be filed

before the concerned commercial court under the trappings of the CC Act. Since those were filed before the ordinary civil court as a regular civil suit, those were not maintainable and, in fact, ought to have been dismissed or the plaints thereof rejected altogether.

21. Thus, it is argued that the present appeals ought to be dismissed.
22. Upon consideration of the arguments advanced by the respective parties, it transpires that the germane issues which fall for consideration are as follows:
 - (i) *Whether the disputes involved in the suits are “commercial disputes” coming within the ambit of the CC Act;*
 - (ii) *Whether the ‘specified value’ in respect of the suits is to be determined by the market value of the properties involved;*
 - (iii) *In the event the suits are found to be commercial in nature, what would be the appropriate course of action for the trial Court to adopt.*

23. The said issues are decided as follows:

- (i) **Whether the disputes involved in the suits are “commercial disputes” coming within the ambit of the CC Act**

24. In *Ashok Saraf (supra)*³, this Bench had taken into consideration *Rameshwar (supra)*⁴ and had observed that the consideration before the

³ *Ashok Saraf and others v. Asansol Durgapur Development Authority*, reported at 2025 SCC OnLine Cal 8829

⁴ *Rameshwar and others v. State of Haryana and others*, reported at (2022) 17 SCC 1

Hon'ble Supreme Court in *Rameshwar (supra)*⁵ was entirely different from the context of the CC Act. Certain land-owners challenged a land acquisition proceeding as fraudulent, inasmuch as the said machinery was used to further private ends by compelling the land-owners to transfer lands to colonisers/developers on the one hand and on the other by cancelling the land acquisition process. In such context, the Hon'ble Supreme Court entered into the question whether the agreements entered into by the land-owners effected transfer of title or were pure construction agreements in nature. The Hon'ble Supreme Court came to the conclusion that the agreements were not mere construction agreements but effected transfer of right, title and interest in the land and came to its conclusions in respect of compensation payable and other ancillary reliefs.

- 25.** This Bench went on to observe that *Blue Nile Developers Private Limited v. Movva Chandra Sekhar*, reported at 2021 SCC OnLine AP 3964, a Division Bench judgment of the Andhra Pradesh High Court, was apposite to the context, where the Division Bench came to the conclusion that the Legislature had included various types of commercial transactions within the fold of “commercial dispute” and either giving restrictive meaning or reading of a clause in isolation and expansion of one word only would hamper and frustrate the meaningful definition of the said clause. The Court went on to hold that sub-clause (vi) of Section 2(1)(c) of the CC Act would take within its fold not only construction contracts or infrastructure contracts simpliciter but also contracts which had components of both.

⁵ *Rameshwar and others v. State of Haryana and others*, reported at (2022) 17 SCC 1

26. In order to avoid the perception of the parties that this Bench seeks to blindly affirm its earlier decision in *Ashok Saraf (supra)*⁶, we choose to undertake an independent enquiry into the issue as well.

27. Section 2(1)(c)(vi) of the CC Act is set out hereinbelow:

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

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

(vi) construction and infrastructure contracts, including tenders;”

28. It is to be noted that the expression used in Clause (c) is “a dispute arising out of”, thereby lending expansive connotation to the term “commercial dispute”. Thus, any dispute arising out of construction and infrastructure contracts, including tenders, would come within the ambit of sub-clause (vi) thereof.

29. The question which arises is whether, to come under the purview of the CC Act, such a contract would have to be for construction and infrastructure simpliciter or may also come within the purview of the Act even if, apart from construction and infrastructure, there are other elements involved.

30. The thrust of the CC Act can be deciphered from the Statement of Objects and Reasons of the said statute, which highlights speedy disposal of high value commercial disputes which involve complex facts and questions of law and give rise to a need to provide for an independent mechanism for their

⁶ *Ashok Saraf and others v. Asansol Durgapur Development Authority*, reported at 2025 SCC OnLine Cal 8829

early resolution, with the object in mind that early resolution of commercial disputes shall create a positive image to the investors' world about the independent and responsive Indian legal system.

- 31.** Thus, the underlying refrain of the CC Act is that, in order for the trappings of the said statute to apply, a dispute has to be *commercial* in essence.
- 32.** Section 2(1)(c) has to be read in such context. The said provision encompasses all disputes arising out of various classes of transactions and agreements, including construction and infrastructure contracts. Thus, in order to come within the ambit of the Act, the contract from which the dispute emanates has to be for construction and infrastructure.
- 33.** It is to be noted that sub-clause (vi) of Section 2(1)(c) does not use the expression "only" to circumscribe the phrase "construction and infrastructure contracts". Thus, on a plain reading of the said Clause, any contract which has ingredients of construction and infrastructure comes within the definition of "commercial dispute" if the dispute arises out of such contract. The inclusion of other components, including transfer of a portion of the bundle of ownership rights associated with the subject-land, would only be superfluous in determining whether Section 2(1)(c)(vi) is attracted. Even if there are elements of transfer in the contract, if it is essentially for construction and infrastructure, disputes arising out of the same comes within the definition of commercial dispute in terms of the said provision. The determinant would be whether the contract giving rise to the dispute contemplates construction and infrastructure, irrespective of whether or not it has other ingredients.

- 34.** In *Rameshwar (supra)*⁷, as explained in *Ashok Saraf (supra)*⁸, the scope of consideration was different. The Hon'ble Supreme Court, in *Rameshwar (supra)*⁶, took into consideration an earlier synonymous judgment, reported at (2018) 6 SCC 215, where the Court found that the State machinery was used to further private ends and such a decision to withdraw from acquisition was fraud on the power under the Acquisition Act. In the said context, the Hon'ble Supreme Court embarked upon an enquiry into the nature of the transactions involved and held that collaboration agreements, which enable the colonizers/developers to retain a significant portion of the constructed area as consideration, are not in the nature of pure construction contracts, since an analysis of those agreements depicts the transfer of crucial rights and interests in the property, which otherwise are enjoyed only by the land-owner, falling short only in respect of the "title".
- 35.** The backdrop of the examination in *Rameshwar (supra)*⁹ was whether the transactions entered into by the land-owners after issuance of a notice under Section 4 of the Land Acquisition Act, 1894 were "transfers" or mere agreements for construction, since the Hon'ble Supreme Court invalidated transfers which took place after such notice. The said consideration, however, had nothing to do with whether a dispute is commercial in nature or not.

⁷ *Rameshwar and others v. State of Haryana and others*, reported at (2022) 17 SCC 1

⁸ *Ashok Saraf and others v. Asansol Durgapur Development Authority*, reported at 2025 SCC OnLine Cal 8829

⁹ *Rameshwar and others v. State of Haryana and others*, reported at (2022) 17 SCC 1

- 36.** The Hon'ble Supreme Court, in the said judgment, was not considering at all whether a contract loses its character as one for construction and infrastructure merely by including elements of transfer of a portion of the complex of rights associated with ownership.
- 37.** Thus, in the light of the above discussions, the essence of Section 2(1)(c)(vi) of the CC Act is whether a contract is for construction and infrastructure, irrespective of whether there are additional ingredients to it. Undisputedly, the agreements in the instant case are for construction and infrastructure, since a housing project, by its very nature, pertains to infrastructure.
- 38.** Thus, this issue is decided against the appellants. We come to the conclusion that a development agreement, essentially for construction and infrastructure, does not lose such character merely because in addition to such component, other rights are created in favour of the developer.

(ii) Whether the 'specified value' in respect of the suits is to be determined by the market value of the properties involved

- 39.** The appellants rely on the judgments of the Delhi High Court and Kerala High Court in this context. In *Mrs. Soni Dave (supra)*¹⁰, a learned Single Judge of the Delhi High Court sought to mitigate the rigour of Section 21 of the CC Act by importing the provisions of the Court Fees Act and linking the determination of 'specified value' with the reliefs claimed in the suit.

¹⁰ *Mrs. Soni Dave v. M/s. Trans Asian Industries Expositions Pvt. Ltd., reported at 2016 SCC OnLine Del 4282*

However, with respect, such a construction is alien to the CC Act itself.

Section 21 of the CC Act is set out below:

“21. Act to have overriding effect.—Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than this Act.”

- 40.** From the said provision, it is evident that it lends overriding effect to the CC Act in an unbridled manner over all other statutes in force and instruments having effect by virtue of any law other than the CC Act. Such a blanket provision does not leave scope for any mitigation of such rigour by importing provisions of other Acts, which are specifically sought to be overridden. Such a construction would be patently contrary to Section 21 itself.
- 41.** The Delhi High Court, in order to dilute the rigour of Section 21 of the CC Act, took into consideration the principles of interpretation of statute with regard to conflict between special and general statutes. Although the Court Fees Act is a special statute in respect of court fees, the distinction between a special and a general statute is a general principle, which must give way to the specific language of the statute, as incorporated in Section 21 of the CC Act. In view of the clear language of Section 21 itself, such general principles cannot be imported to dilute the overriding effect introduced by the said provision. The CC Act was enacted much subsequent to the Court Fees Act and the Legislature was well aware of the existing statutes at that point of time, which were specifically sought to be overridden by the provisions of the

CC Act in case of conflict. Hence, with utmost respect, we cannot but differ from the proposition enunciated in *Mrs. Soni Dave (supra)*¹¹. In *Hindustan Petroleum Corporation (supra)*¹², the Kerala High Court adopted the principle laid down in *Mrs. Soni Dave (supra)*⁹ and proceeded on the premise that the plaintiff, being the *dominus litis*, has the right to determine the valuation of the suit as per its choice. However, the specific language of Section 21 of the CC Act does not accommodate any such principle.

- 42.** Even otherwise, the matrices of valuation of a suit and determination of 'specified value' under the CC Act operate in separate fields and cannot be mixed up with each other.
- 43.** It may very well be that, for the purpose of valuation of the suit, the reliefs claimed have to be looked into. The Suits Valuation Act, 1887 enables the provisions of the Court Fees Act to apply in respect of valuation of suits, linking the same with the reliefs claimed. In the State of West Bengal, the West Bengal Court Fees Act, 1970, under Section 7, enumerates the manner in which suits are to be valued and court fees are to be paid. However, for the purpose of determining 'specified value' under the CC Act, the Court is to look at Section 12 of the CC Act. In the present case, Clause (c) of Section 12(1) of the CC Act applies, which reads as follows:

¹¹ *Mrs. Soni Dave v. M/s. Trans Asian Industries Expositions Pvt. Ltd.*, reported at 2016 SCC OnLine Del 4282

¹² *Hindustan Petroleum Corporation, represented by Chairman and Managing Director and Another v. Muhammed Illiyas and Others*, reported at 2022 SCC OnLine Ker 4594

“12. Determination of Specified Value.—(1) *The Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application shall be determined in the following manner—*

(c) where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining specified value;”

- 44.** Hence, the determinant of ‘specified value’ under the CC Act is the market value of the immovable property in respect of which, or a right wherein, relief has been sought in a suit. Thus, whatever relief is sought in a suit relating to an immovable property or to a right therein, the ‘specified value’ would be determined by the market value of the immovable property. Reading Section 12 (1) (c) in conjunction with Section 2(1)(c)(vi) of the CC Act, if a suit raises a commercial dispute arising out of a construction and infrastructure contract and the relief sought in the suit relates to immovable property or to a right therein, it is the market value of the immovable property alone which will be the yardstick of calculation of the ‘specified value’.
- 45.** It is well-settled that if the language of the statute is clear and unambiguous, no external or internal aid of interpretation can be imported to construe the same. Hence, a harmonious construction of Section 12 with the relevant provision of the West Bengal Court Fees Act is not only unnecessary, but entirely extraneous and superfluous.

46. Accordingly, it is the market value of the immovable property, in respect of which relief has been sought in the present suits, which is the sole determinant of the 'specified value'. It is found from the registered agreements, filed along with the plaint and relied on in the plaint in each of the suits, that the market value of the subject property in both the suits is above Rs. 30,00,000/-, which is the specified value for the court concerned. As per the certificates issued by the Registrar, which were filed along with the plaint by the appellants themselves, the market value of the property involved in FMA 854 of 2024 is Rs. 34,65,000/- and that in FMA 859 of 2024 is Rs. 5,28,49,097/-, both exceeding Rs. 30,00,000/-. Hence, the specified values of both the suits are above the pecuniary limit stipulated for the courts concerned, thus taking the suits within the domain of commercial suits, triable by a commercial court under the regime of the CC Act.
47. Hence, this issue is also decided against the appellants.

(iii) In the event the suits are found to be commercial in nature, what would be the appropriate course of action for the trial

Court to adopt

48. In *Patil Automation Private Limited (supra)*¹³, the Hon'ble Supreme Court was considering the mandatory nature of Section 12-A of the CC Act in a proceeding which had already been instituted as a commercial suit. In such context, it was observed that although the said provision was mandatory, if

¹³ *Patil Automation Private Limited and others v. Rakheja Engineers Private Limited*, reported at (2022) 10 SCC 1

the suit was filed prior to August 20, 2022, that is, the date of the said judgment, the court would not reject the plaint outright. The said proposition was further developed in *Dhanbad Fuels Private Limited (supra)*¹⁴, where the Hon'ble Supreme Court observed that if the suit was instituted without complying with Section 12-A prior to August 20, 2022 and was pending adjudication before the trial Court, the court shall keep the suit in abeyance and refer the parties to time-bound mediation in accordance with the said Section if an objection is raised by the defendant by filing an application under Order VII Rule 11 of the Code or in cases where the parties express an intent to resolve the dispute by mediation, instead of rejecting the plaint. There is no doubt that in the present case, both the suits were filed in the year 2020, that is, before the cut-off date. However, since the suits were filed as ordinary civil suits before the court of ordinary civil jurisdiction, the applicability of Section 12-A of the CC Act is a non-issue. Thus, the ratio laid down in the aforementioned judgment is not attracted at all.

49. In *Bhojraj Srinivas (supra)*¹⁵, a Division Bench of the Telangana High Court held that if the jurisdiction relates to territorial or pecuniary limits of the court, the plaint will be ordered to be returned, whereas if it is found that, having regard to the nature of the suit, it is not cognizable by the class of courts to which the court belongs, the suit has to be dismissed in its

¹⁴ *Dhanbad Fuels Private Limited v. Union of India and another*, reported at (2025) 9 SCC 424

¹⁵ *Bhojraj Srinivas v. Bhojraj Divya*, reported at 2023 SCC OnLine TS 4488

entirety. However, the said proposition is general in nature and may apply in cases where there is a complete bar to the institution of the suit.

- 50.** In cases where a commercial suit has been instituted before a regular civil court, however, the ratio laid down by the Hon'ble Supreme Court in *Aase Ram (supra)*¹⁶, is applicable. The Hon'ble Supreme Court was pleased to observe that if the civil court is of the view that the dispute, being commercial in nature, has to go also before the commercial court, then the plaint has to be returned under Order VII Rule 10 of the Code and the entire plaint cannot be rejected under Order VII Rule 11 of the Code.
- 51.** Insofar as the decision of the coordinate Bench of this Court in *Awam Marketing LLP (supra)*¹⁷ is concerned, in the particular facts of the said case, the coordinate Bench directed the suit to be transferred to the Commercial Division of this Court. However, the said question did not specifically fall for consideration and as such, the said direction did not form a part of the *ratio decidendi* of the judgment and, as such, is not a binding precedent.
- 52.** With utmost respect, Section 15 of the CC Act does not permit the court to transfer a suit, which has been instituted after the enactment of the CC Act before the ordinary civil court, to be transferred to a commercial court or the Commercial Division of this Court. The limited scope of operation of Section 15 vis-à-vis transfer is only in respect of suits and applications which were already pending at the juncture when the CC Act came into force. Since, at the time of institution of the said suits and applications, the CC Act was not

¹⁶ *Aase Ram v. Amit Kumar [Civil Appeal No. 9481/2025]*

¹⁷ *Awam Marketing LLP v. M/s Orient Beverages Limited and Ors. [APO/144/2023 with CS/85/2016]*

in operating, it was not possible for the plaintiffs/applicants to file the suit before the concerned commercial court or Commercial Division. As such, Section 15 of the CC Act permits the court to transfer such pending suits, after coming into force of the CC Act, to the appropriate commercial courts/Commercial Division having determination under the CC Act.

- 53.** The CC Act came into force with effect from December 31, 2015. Thus, when the instant suits were filed in the year 2020, the CC Act was already in force. Hence, there is no scope of transfer of the said suits under Section 15 of the CC Act. The matter here pertains to the lack of subject-matter jurisdiction of the ordinary civil courts, thus, hitting at the root of the inherent jurisdiction of such courts to entertain or adjudicate such the suits. Unlike dearth of territorial or pecuniary jurisdiction, where the objection in that regard has to be taken at the first instance (rendering such objection a waivable right) in case the court lacks inherent jurisdiction to adjudicate on the subject-matter involved, there is no recourse left before the court to proceed with the suit. Since the very institution of such a suit is without inherent jurisdiction *ab initio*, the said threshold defect cannot be cured merely by transferring the suit to the court having determination.
- 54.** This is not a case where the initial defect, hitting at the root, can be rectified later. The domain of operation of and paradigm contemplated under the CC Act is entirely different than the trappings of a regular civil suit under Section 9 of the Code. As opposed to an ordinary civil suit, in respect of commercial suits coming within the purview of the CC Act, there are several distinguishing features, even apart from the mandatory requirement of

Section 12-A of the CC Act, including but not limited to mandatory timelines for filing written statement and other statutory mechanisms and devices incorporated in the CC Act to ensure speedy disposal of commercial disputes.

- 55.** The hierarchy of courts envisaged under the CC Act is a self-sufficient regime of specifically designated courts, distinct and different from the civil courts having jurisdiction under the Code of Civil Procedure and/or the Bengal, Agra and Assam Civil Courts Act, 1887. Thus, the only recourse opened to the trial Court in the present case was to return the plaint for being presented before the appropriate commercial court having jurisdiction.
- 56.** The appellants vociferously allege that the suit, if presented afresh at this juncture after the plaint being returned, might be barred by limitation due to the fault of the defendants/respondents. However, we are unable to accept such contention. It is only the plaintiffs who are to blame, if anyone, for the delay in filing the application under Order VII Rule 10 of the Code. The suit was filed with initial defect of court fees and despite several directions by the trial Court, the plaintiffs chose not to put in the deficit court fees and ultimately, only on January 20, 2022, filed an application under Order VI Rule 17 of the Code to amend the plaint, such amendment being designed to rectify the defect as to deficit court fees by changing the reliefs sought. The amended plaint was filed only on February 23, 2022 and the summons was served on the defendants/respondents for the first time near the end of the year 2022. Therefore, the defendants/respondents had no option before the end of 2022 to appear in the suit or to have knowledge

thereof, let alone file any application for return of the plaint. Only after entering appearance in the suit, the application under Order VII Rule 10 was filed on May 11, 2023, for which the defendants/respondents cannot be blamed in any manner. Hence, if the rigours of limitation visit the plaintiffs/appellants while filing the suit afresh, it is for the plaintiffs to argue before the concerned court as to whether Section 14 of the Limitation Act will be attracted, in view of the plaintiffs having bona fide proceeded with the suits in their present form before the ordinary civil court. If such a plea is raised, it will be open for the court concerned, where the plaint is presented afresh after being returned, to consider in accordance with law the applicability of Section 14 of the Limitation Act.

57. However, such inconvenience of the plaintiffs/appellants cannot be a consideration in deciding the appropriate course of action in case a suit is filed before the ordinary civil court which inherently lacks jurisdiction to decide on the subject-matter of the dispute.
58. In such view of the matter, the appropriate course of action in the present case is precisely the one adopted by the learned trial Judge, that is, returning the plaint under Order VII Rule 10 of the Code for being presented before the Commercial Court having jurisdiction. It is also the appropriate course of action in terms of the dictum of the Hon'ble Supreme Court in *Aase Ram (supra)*¹⁸.
59. This issue, thus, is decided accordingly.

¹⁸ *Aase Ram v. Amit Kumar [Civil Appeal No. 9481/2025]*

CONCLUSION

60. In view of the above findings, the learned trial Judge is found to have been justified in returning the plaints of both the suits, to be presented before the Commercial Court having jurisdiction.
61. Thus, both the appeals fail.
62. Accordingly, FMA No. 854 of 2024 is dismissed on contest, thereby affirming the impugned judgment and order, bearing Order No. 22 dated May 17, 2024 passed by the learned Civil Judge (Senior Division), Third Court at Barasat, District-North 24 Parganas in Title Suit No. 58 of 2020.
63. Similarly, FMA No. 859 of 2024 is also dismissed on contest, thereby affirming the impugned judgement and order, bearing Order No. 22 dated May 17, 2024 passed by the learned Civil Judge (Senior Division), Third Court at Barasat, District-North 24 Parganas in Title Suit No. 57 of 2020.
64. Interim orders, if any, stand vacated.
65. There will be no order as to costs.
66. Urgent certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)