

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8129 OF 2026

1. Jayshree Jagdish Thakker
Age: 65 Years, Occ.: Business,
An Adult Indian Inhabitant
of Mumbai, residing at: - 208/29,
Meena Sadan, Sion (East),
Mumbai – 400 022.
Email:- thahbro2003@gmail.com

2. Jagdish L Thakker
Age: 67 Years, Occ.: - Business,
An Adult Indian Inhabitant of Mumbai,
residing at: - 208/29,
Meena Sadan, Sion (East),
Mumbai – 400 022.
Email:- thahbro2003@gmail.com
Phone : 9819393111

...Petitioners

Versus

ARUN
RAMCHANDRA
SANKPAL

Digitally signed by
ARUN
RAMCHANDRA
SANKPAL
Date: 2026.07.07
21:27:01 +0530

Pragati Infra Interiors Pvt Ltd
Through Its Authorized Signatory
A company registered under the Companies
Act 2013, having its registered office at: -
A-Wing, Neelkanth Business Park, 706,
7th Floor, Vidyavihar (W),
Maharashtra – 400 086,
Email: info@pragatiinfrainteriors.com
Phone: +917666901000/9167775537.

...Respondent

Mr. Shaunak Bhatt, with Nazreen Manchekar, i/b Jayesh Bhatt, for the
Petitioner.

Mr. Mehul Rathod, i/b KVT Legal, for the Respondent.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 25th JUNE 2026

PRONOUNCED ON : 7th JULY 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.

2. By this Petition, the Petitioners-original Defendants assail legality, propriety and correctness of an order dated 9th December 2024 passed by the Commercial Court at Mazgaon, Greater Mumbai, in Notice of Motion No. 101534 of 2024 in Commercial Suit No. 100360 of 2023, whereby the Notice of Motion taken out by the Petitioners for the rejection of the Plaint on the ground that the underlying dispute is not a commercial dispute and, thus, the Commercial Court has no jurisdiction to entertain, try and decide the suit, came to be rejected.

3. The background facts leading to this Petition can be stated in brief as under:

3.1 The Respondent-Plaintiff is a Private Limited Company. The Plaintiff is engaged in architectural and interior designing business. Defendant Nos. 1 and 2, the husband-wife duo, are the joint owners of the office premises bearing No. D-714, Neelkanth Business Park, Vidyavihar (West), Mumbai (“the subject premises”).

3.2 In February 2020, the Plaintiff was in need of a commercial premises on Leave and License basis. The Defendants offered to give the subject premises on licence to the Plaintiff. Pursuant to negotiations, on 4th March 2020 a Leave and License Agreement came to be executed by and between the parties for a term of 36 months, commencing from 1st April 2020 to 31st Mach 2023. Under the terms of the said registered Leave and License Agreement, the Plaintiff had to pay Rs.5,00,000/- by way of security deposit. For the first 12 months the licence fee was fixed at Rs.95,000/- per month, for the next 12 months the licence fee was to be paid @ Rs.99,500/-, and for the remaining 12 months the liecnce fee was to be paid @ Rs.1,05,000/-, per month.

3.3 The subject premises was to be used as an office by the Plaintiff to carry on its business and allied lawful activities.

3.4 The Plaintiff claimed the Defendants failed to deliver the possession of the subject premises to the Plaintiff despite repeated demands. On one or the other pretext the Defendants delayed the delivery of possession of subject premises.

3.5 In the month of June 2020, the Defendants sought further time to vacate the subject premises. On account of the delay on the part of the Defendants to deliver the possession of the subject premises, the Plaintiff was required to suffer losses and get the term of licence in respect of another premises, which was then in the occupation of the

Plaintiff, extended. Therefore, vide a communication dated 10th June 2020, the Plaintiff terminated the Leave and License Agreement and demanded the refund of the security deposit.

3.6 The Defendants instead of acknowledging the defaults on their part, addressed a communication to the Plaintiff on 19th June 2020, raising false and fabricated defences and tried to put blame on the Plaintiff. Hence the Plaintiff was constrained to issue a legal notice and, eventually, institute the suit for refund of the security deposit of Rs.5,00,000/- alongwith interest thereon @ 15% per annum and future interest.

3.7 The Defendants appeared and filed Written Statement and also took out the Notice of Motion for the rejection of the Plaint on the ground that the dispute, not being a commercial dispute within the meaning of the Commercial Courts Act, 2015 (“the Commercial Courts Act”), the suit was not entertainable by the Commercial Court.

3.8 The Plaintiff resisted the prayers in the Notice of Motion by filing an Affidavit in Reply.

3.9 By the impugned order, the learned Judge, Commercial Court, was persuaded to reject the Notice of Motion opining *inter alia* that the Plaintiff appeared to be a commercial entity and the parties had agreed that the suit premises was to be used as an office in a complex which was known as, “ Neelkanth Business Park” and as the Plaintiff intended

to use the said office for its business of interior designing, the dispute would fall within the definition of a commercial dispute under Section 2(1)(c), clause (vii), of the Commercial Courts Act.

3.10. Being aggrieved the Defendants have preferred this Petition.

4. I have heard Mr. Shaunak Bhatt, the learned Counsel for the Petitioners-Defendants, and Mr. Mehul Rathod, the learned Counsel for the Respondent-Plaintiff, at some length. With the assistance of the learned Counsel for the parties, I have perused the pleadings in the suit and material on record.

5. Mr. Shaunak Bhatt, the learned Counsel for the Petitioners submitted that, the learned Judge, Commercial Court, completely misconstrued the provision contained in Section 2(1)(c) of the Commercial Courts Act, which defines a commercial dispute. The learned Judge was swayed by the fact that the Plaintiff appeared to be a commercial entity and the Plaintiff intended to use the subject premises to run an office in connection with its business of interior designing. The intended purpose of the premises does not bring a dispute within the ambit of the commercial dispute. It was submitted that to bring a dispute within the ambit of commercial dispute under Clause (vii) of Section 2((1)(c), the property in question must be used exclusively in trade or commerce. That was not the case at hand. The learned Judge,

Commercial Court thus applied an incorrect test and misdirected himself in drawing a wrong conclusion.

6. Mr. Bhatt further submitted that, in the case at hand, the aspect of intended user of the subject premises is of no consequence as the Plaintiff never occupied the subject premises and thereby caused huge financial loss to the Defendants. Resultantly, the Defendants were justified in forfeiting the amount of security deposit. These hard facts were completely ignored by the learned Judge, Commercial Court, urged Mr. Bhatt.

7. In opposition to this, Mr. Mehul Rathod, the leaned Counsel for the Respondents, stoutly supported the impugned order. It was urged that the subject premises was expressly agreed to be given on licence for running a business therefrom. Taking the Court through the various clauses of the Leave and License Agreement, Mr. Rathod would urge, it becomes unmistakably clear that the parties had agreed that the subject premises would be used for business purpose.

8. Moreover, it is incontrovertible that subject premises was being used as an office and it was situated in a commercial complex. In such circumstances, the claim for refund of security deposit on account of failure of the Defendants to deliver the possession of the subject premises and the consequent termination of Agreement squarely

constitute a commercial dispute as contemplated by Section 2(1)(c), clause (vii), read with Explanation thereto.

9. To buttress this submission, Mr. Rathod placed a very strong reliance on a judgment of the Delhi High Court in the case of **TCNS Clothing Company Limited Vs Sunil Kumar & Anr.**¹ In the said case after extensively advertng to the clauses of the Lease Agreement under which the lessor had agreed to lease out an immovable property for the purpose of a opening of showroom and using the said property for carrying out the business of retail showroom, the Division Bench of the Delhi High Court held that, merely because permission had not been granted or perhaps not sought for, (for running the showroom), the same would not amount to the dispute being disqualified from being termed as a “commercial dispute”. The Division Bench was of the view that, if the actual agreement as between the parties relates to the carrying out of some trade or commerce from an immovable property which activity of trade or commerce itself, is *per se*, neither illegal nor prohibited, the mere fact that the agreement for such an activity pertains to the carrying out the same from an immovable property, where such activity may not be permitted to be carried out, would not, by itself, remove such disputes from the ambit of the Commercial Courts Act.

¹ FAO (Comm) 2/2025 decided on 17th November 2025.

10. Mr. Rathod would urge that the facts in the case of **TCNS Clothing Company Limited (Supra)**, have a striking resemblance to the facts of the case at hand. Multiple clauses of the Agreement for Leave and License in explicit terms record the purpose for which the subject premises was to be used.

11. Mr. Rathod further submitted that the fact that the Plaintiff was not put in possession of the subject premises does not bear upon the determination of the nature of the dispute between the parties. In fact, the parties are at issue as to who committed the breach of the contract and that is a matter for adjudication. In view of the Explanation to Section 2(1)(c) of the Commercial Courts Act, the claim for refund of security deposit upon the termination of Agreement for Leave and License would clearly be a commercial dispute. Thus, no interference is warranted with the impugned order in exercise of extremely limited jurisdiction against an order passed by the Commercial Court, where the legislature has specifically excluded the remedy of revision against an interlocutory order, urged Mr. Rathod.

CONSIDERATION:

12. The Commercial Courts Act was initially enacted for speedy disposal of high value commercial disputes as often such disputes involve complex facts and question of law. The Parliament felt a need to provide for a independent mechanism for early resolution of such

commercial disputes. The statement of objects and reasons indicates that the Parliament considered that the early resolution of commercial disputes would create a positive image to the investor world about the independent and responsive Indian legal system.

13. The Statement of Objects and Reasons to Act 28 of 2018 by which the Commercial Courts Act 2015 came to be amended, records that early resolution of commercial disputes of even lesser value creates a positive image amongst the investors about the strong and responsive Indian legal system. Therefore, the Commercial Courts Act, 2015, was amended to reduce the specified value of the commercial disputes, and to enable the parties to approach the lowest level of the Courts for speedy resolution of the commercial disputes, to enable the State Government to specify such pecuniary value of a commercial dispute which shall not be less than Rs.3,00,000/- or such higher value, for whole or part of the State and to provide for compulsory mediation before the institution of a suit.

14. The Commercial Courts Act 2015 provides special procedure for resolution of the commercial disputes and a stricter time-frame. The legislative intent is thus clear that only those disputes which fall within the ambit of commercial dispute as defined in Section 2(1)(c) of the Commercial Courts Act, 2015 shall be governed by the special procedure, and decided by the designated Commercial Courts. It implies

that the dispensation extended to a class of commercial disputes cannot be made applicable to the ordinary suits, which do not fall within the said class.

15. Under Section 2(1)(c) of the Commercial Courts Act, a commercial dispute has been defined to mean, a dispute arising out of the categories specified in Clauses (i) to (xxii) thereof. In the case at hand the controversy between the parties revolves around the question as to whether the dispute falls within the ambit of the commercial dispute as defined under Section 2(1)(c), Clause (vii). The definition of a ‘commercial dispute’ applicable to the facts of the case at hand, would thus read as under:

“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;

... ..

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 an of its agencies or instrumentalities, or a private body carrying out public functions;

... ..

16. A plain reading of the aforesaid provision would indicate that any dispute arising out of Agreements relating to immovable properties used exclusively in trade or commerce would amount to a commercial dispute. The Explanation (a) to Section 2(1)(c) clarifies that the commercial dispute shall not cease to be commercial dispute merely because 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.

17. The controversy thus essentially hinges upon the import of the expression, “immovable property used exclusively in trade or commerce”. Whether in the facts of the case at hand the Leave and License Agreement pertains to the property used exclusively in trade or commerce, is the moot question.

18. In the case of **Ambalal Sarabhai Enterprises Limited Vs K.S. Infraspace LLP and Anr**,² the Supreme Court had an occasion to delineate the approach to be adopted in interpreting the expression, “commercial dispute”. The Supreme Court enunciated that it is necessary to carefully examine and entertain only disputes which actually answer the definition, “commercial dispute” as provided under the Act. The Supreme Court expounded the import of the expression used exclusively in trader or commerce” and observed as under:

² (2020) 15 SCC 585.

“37. A dispute relating to immovable property per se may not be a commercial dispute. But it becomes a commercial dispute, if it falls under sub-clause (vii) of Section 2(1)(c) of the Act viz. “the agreements relating to immovable property used exclusively in trade or commerce”. The words “used exclusively in trade or commerce” are to be interpreted purposefully. The word “used” denotes “actually used” and it cannot be either “ready for use” or “likely to be used” or “to be used”. It should be “actually used”. Such a wide interpretation would defeat the objects of the Act and the fast tracking procedure discussed above.

38. On 03.11.2017, a Memorandum of Understanding was executed between the appellant-plaintiff, respondent-defendant and Ketan Bhailalbhai Shah-second respondent. As per the terms of MOU, parties executed a Deed of Conveyance of the land. A mortgage deed was executed simultaneously along with the MOU with respect to the part of the land admeasuring 15,000 sq.ft. in favour of the plaintiff. It was understood between the parties that respondent No.1 would apply for change of land use permission for the land in question on signing of the MOU. Mortgage deed was executed by respondent No.1 in favour of the appellant in order to ensure performance of obligations under the MOU. But the said mortgage deed was not presented for registration.

39. It appears that the trial court has proceeded under the footing that the parties to the suit more particularly, the appellant-plaintiff seems to be carrying on business as Estate Agent and to manage land, building, etc. and the very object as enumerated in Memorandum and Articles of Association of the appellant-plaintiff company established that the property in

question are being used exclusively in trade or commerce rather in the business of the plaintiff. As rightly pointed out by the High Court, there is nothing on record to show that at the time when agreement to sell came to be executed in 2012, the property was being exclusively used in trade and commerce so as to bring dispute within the ambit of sub-clause (vii) of Section 2(1)(c) of the Act. Merely because, the property is likely to be used in relation to trade and commerce, the same cannot be the ground to attract the jurisdiction of the Commercial Court.”

(emphasis supplied)

19. The Supreme Court has emphasised that the expression “used exclusively in trade or commerce” is to be interpreted in a purposive manner. The word “used” denotes “actually used” and it cannot be either “ready for use” or “likely to be used” or “to be used”. It should be “actually used”. Lest, the wide interpretation would defeat the objects of the Commercial Courts Act and the fast track procedure enshrined therein.

20. On the aforesaid touchstone, reverting to the facts of the case at hand, it becomes abundantly clear that the learned Judge, City Civil Court has proceeded on the premise that the Leave and License Agreement indicates that the subject premises was agreed to be used as an office for the purpose of carrying on the interior designing business. The learned Judge thus gave primacy to the intended user of the subject premises rather than its actual user at the time of the execution of the

Agreement. In substance, what was required to be considered by the learned Judge was the use of the subject premises in praesenti (at the time of execution of the Agreement for Leave and License) and not its proposed or intended user. Having not considered this aspect of the matter, the learned Judge, City Civil Court fell in error in holding that since the Plaintiff was a commercial entity and the Plaintiff proposed to use the subject premises for its business purpose, the dispute was a commercial dispute.

21. Reliance by Mr. Rathod on the judgment of the Delhi High Court in the case of **TCNS Clothing Company Limited (Supra)**, in the considered view of this Court, does not assist the Plaintiff. In the said case, the Delhi High Court has extracted the clauses in the Lease Agreement which indicated that the lessor had agreed to grant lease to the lessee for the purpose of running a ready made garment retail showroom/out let under the brands of TCNS and for no other purpose whatsoever. It is in that context, the Division Bench observed that the fact that the permission was not obtained from the Regulatory Authorities to run the ready made garment retail showroom/out let did not detract materially from the nature of the dispute.

22. I am afraid, the aforesaid judgment advances the cause of the Respondent-Plaintiff. It is pertinent to note that, in the case at hand, the description of the subject premises in the Leave and License Agreement

clearly indicates that the premises was an office premises. The Leave and License Agreement nowhere indicates that the subject premises was being used exclusively for the purpose of trade or commerce. The actual user of the subject premises at the time of the execution of the Agreement for Leave and License was as an office premises. It was not even remotely indicated that the Defendants were using the subject premises exclusively for carrying on trade or commerce. Indeed, the Commercial Courts Act, 2015 does not define the expression “trade” or “commerce”. However, words “trade” and “commerce” have definite connotations. The mere fact that a premises used as an office premises does not necessarily imply that the said premises is being used for trade or commerce. Thus, the test of actual user of the subject premises was not satisfied. Conversely, the intended user of the subject premises (though there is no qualm over the fact that the subject premises was never occupied and used by the Plaintiff) would not bring the suit within the sweep of Clause (vii) of Section 2(1)(c) of the Commercial Courts Act.

23. Thus the crucial distinction between the actual and intended user of the subject premises at the time of the execution of the Agreement for licence was lost sight of by the learned Judge, City Civil Court. At this juncture, it is necessary to revisit the observations of the Supreme Court in the case of **Ambalal Sarabhai Enterprises Limited (Supra)**. The

supreme Court observed that if the term ‘commercial dispute’ under Section 2(1)(c) 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. On the contrary, if the ordinary suit are entertained as the commercial suits by unduly expanding the definition of, “commercial dispute” such suits would 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.

24. Applying these principles to the facts of the case at hand, in the considered view of this Court, the learned Judge, City Civil Court was in error in reckoning the dispute in question as a commercial dispute primary on the basis of the recitals in the Leave and License Agreement which indicated the intended purpose of the subject premises.

25. At the same time, it is necessary to note that the Plaint in the commercial suit cannot be rejected on the ground that the dispute does not fall within the four-corners of the commercial dispute. The proper course would be to return the Plaint to the Plaintiff for presentation to the proper Court by invoking the provisions contained in Order 7 Rule 10 of the Code of Civil Procedure, 1908, as the Commercial Court would have then no jurisdiction to entertain, try and decide the suit.

26. For the forgoing reasons the Petition deserves to be partly allowed.

27. Hence, the following order:

: O R D E R :

- (i) The Petition stands partly allowed.
- (ii) The impugned order of rejection of the Notice of Motion stands set aside.
- (iii) The Notice of Motion No. 101534 of 2024 stands partly allowed.
- (iv) The Plaint in Commercial Suit No. 100360 of 2023 is directed to be returned to the Plaintiff for presentation to the ordinary City Civil Court.
- (iv) The Plaint be returned to the Plaintiff on 28th July 2026.
- (ii) Rule is made absolute to the aforesaid extent.
- (iii) No costs.

[N. J. JAMADAR, J.]