# HIGH COURT OF JUDICATURE FOR RAJASTHAN
# BENCH AT JAIPUR

D.B. Civil Miscellaneous Appeal No. 2048/2026

CNR: RJHC020382932026 | URN: CMA / 3551U / 2026

Satya Narain Tak Son Of Late Mohan Lal Tak, Resident Of A-23, Malviya Nagar, Jaipur.

----Appellant

Versus

1. Optic Galaxy, Shop No. 43, Jai Ambe Nagar, Gopalpura, Tonk Road, Jaipur- 303006 Through Proprietor/ Owner Ms. Ankit Kumari Yadav. Other Address- Optic Galaxy, Shop No. A-4, Vishvesariya Nagar, Near J.k. Tyre Star, Triveni Nagar Chauraha, Opposite Government School, Gopalpura Bypass, Jaipur 302018.
2. Ms. Ankit Kumari Yadav Daughter Of Shri Ramchandra, Proprietor/ Owner Optic Galaxy, Resident Of Village Shimila, District Jhunjhunu, At Present Shyam Residency, Second Floor, Plot No. 8, Shrijee Nagar, Mansarovar, Jaipur-302020.

----Respondents

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| For Appellant(s) | : | Mr. Shashi Kant Saini with<br>Mr. Resham Bhargava &<br>Mr. Anshuman Singh Champawat |
| For Respondent(s) | : | - |

**HON'BLE MR. JUSTICE ARUN MONGA**
**HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

**Order(Oral)**

**Reportable**

**12/08/2026**

**Per: Arun Monga, J.**

1. This appeal is directed against the order dated 30.03.2026 passed by the learned Commercial Court No.3, Jaipur Metropolitan II, Jaipur. By

that order the application filed by the respondents was partly allowed and the plaint in Civil Suit No.80/2025 (CIS No.211/2024) was returned under Order VII Rule 10 CPC for presentation before the competent Court.

2. The appellant seeks setting aside of that order and dismissal of the application in its entirety.

3. The facts, in brief, are these. The appellant instituted a suit for recovery of Rs.11,95,705/- along with interest. The plaint states that Defendant No.2, a long standing friend of the appellant’s son, approached the appellant after the COVID-19 period and proposed an investment in an optical business to be carried on in partnership with the appellant’s son in equal shares. Acting on that proposal, the appellant remitted Rs.5,00,000/- by RTGS on 25.02.2022 to the bank account of Defendant No.1 firm. He thereafter paid a further sum of Rs.3,89,000/- in cash on different dates towards renovation, machinery, opening expenses and other requirements of the business. A draft partnership deed was later prepared by respondent, however, its terms differed materially from what had been agreed. The partnership deed was never finalised. The appellant called upon the respondents to refund Rs.8,89,000/-. The money was not returned. The suit came to be instituted on 19.06.2024.

4. In the suit proceedings, the respondents were served on 17.09.2024 and appeared on 19.09.2024. They did not file a written statement despite time being granted, and their right to do so was closed. Their application under Section 151 CPC to reopen that stage was dismissed by a reasoned order dated 26.09.2025, which was never challenged and has attained finality. Issues were framed on 10.12.2025. No objection to maintainability or jurisdiction was raised at that stage.

5. The appellant filed affidavits of evidence on 29.01.2026. On 07.02.2026, at the stage of the appellant's evidence, the respondents filed an application under Order VII Rule 11 read with Section 151 CPC contending that the dispute is not a commercial dispute under the Commercial Courts Act, 2015. The appellant filed a reply on 25.02.2026. By the impugned order the application was partly allowed and the plaint was returned. Hence the instant appeal.

6. Learned counsel for the appellant contends that the Court below travelled beyond the plaint, decided disputed questions of fact at a preliminary stage and overlooked Sections 6 and 12 of the Commercial Courts Act, 2015. He submits that the plaint expressly pleads payment of Rs.8,89,000/- towards a proposed partnership, refers to the draft partnership deed and sets out the cause of action in paragraph 26. The existence and terms of the arrangement, according to him, are matters for trial.

7. We heard learned counsel for the appellant. None appears for the respondents despite service.

8. All that is sought herein is that the suit be tried on merits. Given the deliberate absence of the respondents, it so seems that they have no objection to the appeal being allowed.

9. Be that as it may, having given our thoughtful consideration to the matter, we are unable to sustain the impugned order. Our reasons follow.

10. The first error goes to the very nature of the enquiry. An application under Order VII Rule 11 CPC, and equally an objection to jurisdiction which results in return of the plaint under Order VII Rule 10 CPC, is decided on demurrer. The plaint has to be read as a whole together with the documents filed with it, and its averments must be assumed to be true. Where an objection to jurisdiction is raised by way

of demurrer and not at trial, the objection must proceed on the footing that the facts pleaded by the plaintiff are true, and must demonstrate that even upon those facts the Court lacks jurisdiction as a matter of law.

11. Tested on that standard, the finding returned in the impugned order is misdirected. The absence of a written agreement, the absence of an executed partnership deed, the non production of any such deed and the fact that no family member in truth became a partner are all findings which the appellant has to prove in course of trial. There are no conclusions drawn from the plaint taken to be true. The learned Commercial Court did not ask whether the pleaded facts, if accepted, disclose a commercial dispute. Rather it asked whether the pleaded facts stood established. That is to be decided by the trial, and not at the threshold. Jurisdiction was declined by learned Commercial Court upon a *prima facie* view of the merits.

12. Moreover, Section 2(1)(c)(xv) of the Commercial Courts Act, 2015 speaks of a dispute arising out of partnership agreements. A claim for refund of money advanced towards a partnership which failed to fructify arises out of that very partnership arrangement. It is not an independent money claim divorced from the transaction.

13. Aside all of above, the stage at which the objection came to be raised is not irrelevant. Here the written statement stage stood closed, issues had been framed on 10.12.2025 without demur, and the appellant's evidence had already commenced. If the Court below entertained a real doubt about the nature of the dispute, the appropriate course was to try that question as an issue upon evidence. It was not to bring the suit to an end summarily upon a tentative view.

14. In the premise, the order dated 30.03.2026 is quashed and set aside. The application filed by the respondents under Order VII Rule 11

read with Section 151 CPC stands dismissed. Civil Suit No.80/2025 (CIS No.211/2024) is restored to its original number on the file of the learned Commercial Court No.3, Jaipur Metropolitan II, Jaipur. The learned Commercial Court shall proceed from the stage at which the suit stood on 07.02.2026 and decide the same on merits in accordance with law.

15. It is clarified that the findings recorded above are confined to the question of jurisdiction at the threshold. Nothing stated herein shall be construed as an expression of opinion on the merits of the claim. All contentions on merits, including those touching the true character of the transaction, remain open to be urged and decided at trial.

16. All pending applications, if any, stand disposed of.

**(ASHUTOSH KUMAR),J** **(ARUN MONGA),J**

26/Mohita/Parshant