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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/137/2026
WITH CS/39/2026
IA No.GA/1/2026

ALOKE SATNALIWALA

-VERSUS-

NIRMALA DEVI FATEHPURIA AND ORS.

BEFORE:
HON'BLE JUSTICE DEBANGSU BASAK
-A N D-
HON'BLE JUSTICE ARYAK DUTT

For the Appellant	:	*Mr. Chayan Gupta, Adv.* *Mr. Satyaki Mukherjee, Adv.* *Ms. Mini Agarwal, Adv.* *Mr. Sagnik Shaw, Adv.*
For the Respondent	:	*Mr. Pranit Bag, Adv.* *Mr. Ratul Das, Adv.* *Mr. Rahul Poddar, Adv.* *Mr. Souvik Banerjee, Adv.* *Mr. Ayush Singhania, Adv.*
HEARD ON	:	28.08.2026
DELIVERED ON	:	28.08.2026

DEBANGSU BASAK, J.:-

1. Appeal is directed against order dated July 20, 2026 passed in IA No.GA/1/2026 CS/39/2026.

2. By the impugned order, learned Single Judge refused to grant ad interim relief to the appellant as the plaintiff.

3. Learned advocate appearing for the appellant submits that, the appellant as plaintiff was seeking relief with regard to a Memorandum of Understanding (MoU) entered into between the parties. He refers to the plaint and the prayers in the plaint. He submits that, there are money claims made by the appellant. He refers to the nature of the cause of action of the appellant in the suit. He refers to the balance confirmation issued by the respondent as also the cheques of the respondent which were dishonoured on presentation. Under such circumstances, he submits that, the appellant as plaintiff made out a case for grant of ad interim relief. He submits that, the learned Judge erred in not doing so.

4. Learned advocate appearing for the respondent submits that, the suit is not maintainable. On the issue of maintainability he raises two grounds; one ground is that, the disputes between the parties involve commercial dispute within the meaning of the Commercial Courts Act, 2015. The other is that, the suit is a suit for land.

5. On the issue of commercial dispute, learned advocate appearing for the respondent refers to the pleadings in the plaint. He submits that, the cause of action of the plaint is based on a Memorandum of Understanding which is a commercial document and it relates to an immovable property. Essentially, the Memorandum of Understanding is a development agreement and a joint venture agreement. He

contends that, a development agreement involving an immovable property by itself and by its nature is a commercial user of the immovable property concerned. Consequently, the cause of action and the basis of the plaint relates to a commercial dispute within the meaning of Section 2(1)(c)(vii) and (xi) of the Act of 2015.

6. In response, learned advocate appearing for the appellant submits that, the appellant is not claiming any relief with regard to an immovable property lying and situate outside the ordinary original civil jurisdiction of this Hon'ble Court. In support of such contention he refers to the prayers made in the plaint. He submits, therefore, the suit cannot be construed to be a suit for land.

7. On the issue of commercial dispute, learned advocate for the appellant contends that, the suit is not a commercial dispute within the meaning of the Act of 2015. In any event, he submits that, should the Court hold that the disputes *inter se* between the parties are a commercial dispute within the meaning of Section 2(1)(c) of the Act of 2015, the appellant should be allowed to withdraw the plaint under Order VII Rule 10 of the Code of Civil Procedure, 1908 and present the same before the appropriate forum. In support of such contention he relies upon **AIR 2021 Cal 190** ***(Laxmi Polyfab Pvt. Ltd. vs. Eden Realty Ventures Pvt. Ltd. & Anr.);*** **2025 SCC OnLine SC 3712** ***(Aase Ram vs. Amit Kumar)*** and the Rule 9(2) of the High Court at Calcutta Commercial Courts Practice Direction, 2021.

8. Learned advocate appearing for the respondent submits that, the co-ordinate Bench in **2026 SCC Online Cal 11905** ***(Pradeep Kumar Jain & Sons HUF vs. Sri Sri Iswar Mahadeb & Ors.)*** transferred the suit from the non-commercial division to the Commercial Division. He submits that, the co-ordinate Bench went on to hold that, a suit filed subsequent to the cut off date cannot be transferred.

9. Since, the issue of jurisdiction is raised on two grounds namely, suit for land and commercial dispute, we propose to deal with the issue of jurisdiction firstly on the ground of commercial dispute. According to us, if we hold that the suit involves a commercial dispute then, we need not address the issue of suit for land at this stage since we would be losing jurisdiction once we hold that the suit involves a commercial dispute.

10. The plaint of the appellant refers to an immovable property and the dealing with regard thereto. Appellant as the plaintiff asserts in the plaint that the respondent approached the plaintiff for financial assistance with regard to development of immovable property concerned. The respondent made certain representations to the appellant on the basis of which the appellant agreed to pay the respondent a sum of Rs.2 crores as advance. An informal document styled as a Memorandum of Understanding was executed. Assertion in the plaint is that the Memorandum of Understanding was executed after negotiations being held in October, 2020. Assertion in the plaint is that the appellant paid a sum of Rs. 2 crores by way of nine several

cheques between the period November 5, 2020 till November 9, 2020. Various discussions took place between the appellant and the respondent nos.1 to 9 from time to time. The respondent nos.1 to 9 failed and neglected to discharge their part of the obligations under the Memorandum of Understanding. Ultimately, the respondent nos.1 to 9 agreed to repay the amount of Rs.2 crores to the appellant along with interest at the rate of 15% per annum compounded yearly to compensate the appellant for the period when the money of the appellant was lying with the respondents.

11. Appellant in the plaint asserted that, a sum of Rs.50 lakhs was repaid by the respondent nos.1 to 9 between the period June 1, 2023 till June 30, 2023, through several cheques.

12. Appellant in the plaint also asserted that, in January, 2026 the respondent nos.1 to 9 executed a balance confirmation of accounts. Despite requests, the respondents failed and neglected to pay the balance amount. Consequently, the appellant filed the suit for recovery of the aggregated sum along with interest.

13. All disputes of commercial nature are not commercial disputes within the meaning of the Act of 2015. What constitutes a commercial dispute within the meaning of the Act of 2015 is defined in Section 2(1)(c) of the Act of 2015. According to the contesting respondents, the subject-matter of the suit falls under Section 2(1)(c)(vii) and (xi) of the Act of 2015. Section 2(1)(c)(vii) and (xi) of the Act of 2015 are as follows:

"2. Definitions. – *(1) In this Act, unless the context otherwise requires,-*

*(a) * * **

*(b) * * **

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

* * * * * * * * *

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

* * * * * * * * *

(xi) joint venture agreements;"

14. In the facts and circumstances of the present case, there is a Memorandum of Understanding, in writing, entered into between the parties to the suit sometimes in October, 2020. This Memorandum of Understanding relates to an immovable property. The Memorandum of Understanding contemplates development of an immovable property.

15. Section 2(1)(c)(vii) requires an agreement relating to an immovable property used exclusively in trade or commerce to qualify as a commercial dispute within the meaning of the Act of 2015.

16. In the facts and circumstances of the present case, Memorandum of Understanding of October, 2020 relates to an immovable property. From the nature of the Memorandum of Understanding which is a development agreement makes the agreement relating to the immovable property used exclusively in trade or commerce. A development agreement in respect of an immovable property by its sheer nature

encompasses trade or commerce in relation to the immovable property concerned. Development Agreement per se involves commercial exploitation of an immovable property. Therefore, the concerned immovable property is used for trade or commerce within the meaning of Section 2(1)(c) of the Act of 2015. Therefore, in our view, the suit involves a commercial dispute within the meaning of Section 2(1)(c)(vii) of the Act of 2015.

17. Since we are of the view that the subject matter of the suit involves a commercial dispute within the meaning of the Act of 2015, we are now required to consider the prayer of return of the plaint under Order VII Rule 10 of the Code of Civil Procedure, 1908 as opposed to transfer of the suit from the non-commercial division to the commercial division under Section 15 of the Act of 2015.

18. ***Laxmi Polyfab Pvt. Ltd. (supra)*** is of the view that:

> ***"73.*** *Despite the absence of power under Section 15(1) of the Act of 2015 to transfer a suit relating to a commercial dispute of a Specified Value filed in the Ordinary Original Civil Jurisdiction of the High Court, having a Commercial Division, to the Commercial Division of such High Court, after such suit being filed subsequently to the specification of the Specified Value, the Court has powers under Order VII Rule 10 of the Code of Civil Procedure, 1908 to deal with the same. Power under Order VII Rule 10 of the Code of Civil Procedure 1908 stands regulated by Section 15(1) of the Act of 2015 so far as pending suits relating to a commercial dispute of the Specified Value in the Ordinary Original Civil Jurisdiction of the High Court. Once the suit has been filed beyond date of the*

notification of the Specified Value, Order VII Rule 10 of the Code of Civil Procedure, 1908, governs the field.

74. *In exercise of powers under Order VII Rule 10 of the Code of Civil Procedure, 1908, the Court has to return the plaint to be filed before the Court having jurisdiction. In the case of a suit relating to a commercial dispute of the Specified Value filed in the Ordinary Original Civil Jurisdiction of the High Court having a Commercial Division, filed beyond the date of notification of the Specified Value, the plaint of such a suit must be returned to the plaintiffs for presentation before the appropriate Court, in exercise of powers under Order VII Rule 10 of the Code of Civil Procedure, 1908. Once the same is done, the plaintiff in such a suit has to file the plaint of such suit in the same High Court but in the Commercial Division of such High Court. Once the same is done, the question of operation of Section 12A of the Act of 2015 will arise."*

19. This Hon'ble Court issued practice directions called – The High Court at Calcutta Commercial Courts Practice Directions, 2021 which came into effect on and from October 13, 2023. Rule 9(2) of such Practice Directions is as follows:

"9. Suits, applications and other proceedings, improperly filed

2) In the event any suit or other proceeding involving a commercial dispute of and above the specified value is filed in its Ordinary Original Civil Jurisdiction subsequent to the date of issuance of appropriate Notification of the pecuniary value in terms of Section 3(1A) of the Act, the High Court or the District Court, as the case may be, shall on an application of either party, return the plaint or the

application to the plaintiff on principles pari materia with Order VII Rule 10 of the Code."

20. ***Laxmi Polyfab Pvt. Ltd. (Supra)*** was noted in ***Patil Automation Pvt. Ltd. & Ors. –VS- Rakheja Engineers Pvt. Ltd.*** reported in ***2022 SCC OnLine SC 1028.***

21. Practice Directions allow invocation of Order VII Rule 10 of the Code of Civil Procedure, 1908 for return of plaint with such plaint to be presented before the appropriate forum in case a Court in seisin of such suit is of the view that the subject matter of the suit involves a commercial dispute.

22. The instant suit was filed subsequent to the issuance of the notification of specified value. As held by us, the disputes between the parties involve a commercial dispute within the meaning of the Act of 2015.

23. Consequently, the prayer of the appellant for return of the plaint to be presented before the appropriate forum under Order VII Rule 10 of the Code of Civil Procedure, 1908 is granted.

24. In ***Pradeep Kumar Jain and Sons (supra***), the Co-ordinate Bench dealt with a suit of 2016 which was filed prior to the notification of specified value. There, the suit was transferred under Section 15 of the Act of 2015 after holding that, Section 15 of the Act of 2015 was not available for a suit filed subsequent to the date of issuance of the notification of specified value. In the facts of the present case, the appellant is not seeking an order under Section 15 of the Act of 2015.

Rather the appellant is invoking Order VII Rule 10 of the Code of Civil Procedure, 1908 for return of the plaint.

25. In view of the discussions above, APOT/137/2026 is disposed of by permitting the appellant to take return of the plaint to be presented before the appropriate forum.

26. We clarify that we do not enter into the merits of the rival contention of the parties, save and except on the issue of whether the suit involves a commercial dispute within the meaning of the Act of 2015 or not. All other issues raised by the parties are kept open.

(DEBANGSU BASAK, J.)

27. I agree.

(ARYAK DUTT, J.)

A/s.