Case Citation: (2026) ibclaw.in 6174 HC

2026:KER:75740

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2026 / 8TH ASWINA, 1948

FAO NO. 45 OF 2025

AGAINST THE ORDER DATED 14.02.2025 IN IA 5/2024 IN OS NO.209 OF 2023 OF I ADDITIONAL SUB COURT, THRISSUR

APPELLANTS/RESPONDENTS 1& 2/DEFENDANTS 1 & 2:

1 ROY PORUTHOOKKARAN
AGED 57 YEARS
S/O. LATE THIMOTHY, VAKAYIL LANE,
KIZHAKKUMPATTUKARA, EAST FORT, THRISSUR DISTRICT,
PIN - 680005

2 RESSY
AGED 47 YEARS
W/O. ROY PORUTHOOKKARAN, VAKAYIL LANE,
KIZHAKKUMPATTUKARA, EAST FORT,
THRISSUR DISTRICT, PIN - 680005

BY ADVS.
SRI.N.M.MADHU
SMT.C.S.RAJANI
SRI.PREM NATH P.

RESPONDENTS/PETITIONER, RESPONDENT Nos.3 & 4/ PLAINTIFF, DEFENDANT Nos.3 & 4:

1 ELIZABATH @ THANKA
W/O. LATE THIMOTHY, ARIMBOOR VEEDU, KALATHODE,
OLLUKKARA, THRISSUR DISTRICT, PIN - 680655

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2 RAHUL
S/O. ROY PORUTHOOKKARAN, VAKAYIL LANE,
KIZHAKKUMPATTUKARA, EAST FORT,
THRISSUR DISTRICT, PIN - 680005

3 THE REGISTRAR OF FIRMS
OFFICE OF THE I.G. OF REGISTRATION, VANCHIYOOR
P.O., THIRUVANANTHAPURAM DISTRICT, PIN - 695035

BY ADVS.
SRI.ANIL S.RAJ
SMT.RADHIKA RAJASEKHARAN P.
SMT.K.N.RAJANI
SMT.ANILA PETER
SMT.SIMI S. ALI
SMT.SARITHA K.S.
SMT.MEENAKSHI KRISHNA S.M.
SMT.ATHIRA GIRISH
SMT.DEVIKA S CHANDRAN

SR.GOVT.PLEADER SRI.M.A.ABDUL SHUKOOR

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 22.09.2026, THE COURT ON 30.09.2026 DELIVERED THE FOLLOWING:

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[CR]

S.MANU, J.

F.A.O.No.45 of 2025

Dated this the 30th day of September, 2026

JUDGMENT

Defendants 1 and 2 in O.S.No.209/2023, pending before the first Additional Sub Court, Thrissur, have preferred this appeal challenging the order passed by the learned Sub Judge in I.A.No.5/2024. Plaintiff, the 1st respondent herein, filed the I.A. under Order VII Rule 10A, averring that the suit was for dissolution of a partnership and it was required to be taken into file as a commercial suit. It was prayed that the plaint be returned or may be taken on file as a commercial suit. Appellants opposed the prayer. They contended that the dispute involved in the suit would fall within the definition of a commercial dispute under Section 2(1)(c)(xv) of the Commercial Courts Act, 2015. However, according to them, the court

had no power to renumber the suit as a commercial suit or to return the plaint. They asserted that a plaint can be returned only when the court is lacking territorial or pecuniary jurisdiction and if there is lack of subject matter jurisdiction, proper course is to reject the plaint.

2. Learned Sub Judge, by the impugned order, held that the case at hand is one in which another court is having jurisdiction over the matter. Learned Judge also held that as per Order VII Rule 10 CPC, a plaint can be returned at any stage of the suit to facilitate its institution in the proper court. Suit filed by the 1st respondent is not barred by any provision of law and therefore the plaint need not be rejected. Only issue is that the plaintiff did not choose the correct forum. Holding so, learned Sub Judge directed to return the plaint to enable the 1st respondent herein to file it before the proper court.

3. Appellants assail the order passed by the learned Sub Judge contending that a plaint can be returned under Order VII Rule

10 CPC only for lack of pecuniary or territorial jurisdiction. Relying on a judgment of a Division Bench of this Court in **Rimi Albi v. Kerala State Co operative Bank** [2013 (3) KLT 769] learned counsel for the appellant submitted that the dispute is of commercial nature and a commercial suit can be filed only in a Commercial Court. He submitted that Commercial Courts Act, 2015 is a special legislation creating a special category of suits and hence no civil courts other than Commercial Courts can entertain commercial suits. He accordingly contended that the plaint was liable to be rejected under Order VII Rule 11(d). Learned counsel relied on a judgment of a Division Bench of Chattisgarh High Court in **Radha Singh v. Madhusudan Tulsyan and Others** [2019 SCC OnLine Chh 143] and another judgment of a Division Bench of Telangana High Court in **Bhojraj Srinivas v. Bhojraj Divya** [2023 KHC 4496] also in support of his submissions.

4. Learned counsel for the 1st respondent submitted per contra that a commercial suit is also a civil suit and therefore there is no bar as contemplated under Order VII Rule 11(d) of CPC. He argued that none of the situations mentioned under Rule 11 are involved in the case at hand and hence the learned Sub Judge is impeccably correct in rejecting the contentions of the appellants and opting to return the plaint under Order VII Rule 10. Learned counsel contended that the issue is no longer res integra and cited the decision of this Court in **C.K.Surendran v. Kunhimoosa** [2021 SCC OnLine Ker 9808]. He submitted that a learned Single Judge of this Court held in the decision cited that, having accepted the plaint and numbered the suit, which actually was a commercial suit, the learned Munsiff could have only returned the plaint under Order VII Rule 10 of the CPC. He therefore argued that there is no substance in the contentions of the appellants.

5. It is beyond any row that the dispute involved in the suit is a commercial dispute. Neither the appellants nor the 1st respondent contends that the suit is maintainable before the Sub Court. Variance solely concerns about the proper course to be followed, once it is found that right remedy was to lodge it as a commercial suit before the Commercial Court.

6. Learned counsel for the appellant, as already mentioned, asserted that the suit was liable to be rejected under Order VII Rule 11(d). The relevant provision reads as under:-

> "**11. Rejection of plaint.** - The plaint shall be rejected in the following cases:-
> .....
> (d) where the suit appears from the statement in the plaint to be barred by any law :
> ....."

7. Learned counsel for the appellant argued that return of a plaint under Order VII Rule 10 can be resorted to only on the grounds of pecuniary and territorial jurisdiction. He would contend that the situation in the instant case is not of lack of pecuniary or

territorial jurisdiction. But it is a case of lack of subject matter jurisdiction. Learned counsel referred to the following paragraph of the judgment of a Division Bench of this Court in **Rimi Albi** (Supra):-

> "3. The grounds recognised for returning of plaint in terms of O.VII R.10 of CPC are pecuniary jurisdiction and territorial jurisdiction. The clear terms thereof provide only for the plaint being returned to be presented to the court in which the suit should have been instituted. A suit of civil nature under S.9 of C.P.C., can be instituted only in a civil court. The words 'courts', 'suits', and 'plaint' in O.VII R.10 of C.P.C. do not provide any room to devise a mechanism to return of plaint for its presentation before any other Forum, after holding that the suit is barred by any provision of law. Therefore, the impugned order returning the plaint is not sustainable."

8. Though the factual matrix of the case considered by the Division Bench is not plainly discernible from a reading of the judgment, it appears that the plaint was returned for presentation before appropriate forum after holding that the suit is barred by a provision of law. The Division Bench noted that return of plaint under Rule 10 can be only for presenting it to the court in which the

suit should have been instituted. In other words, if a suit is barred, plaint cannot be returned for presentation to a forum other than a court under Order VII Rule 10. Nevertheless, pertinent point to be deliberated in the instant case is as to whether there is any bar pertaining to commercial suits as mentioned under Order VII Rule 11(d). In the case at hand, even according to the learned counsel for the appellants, no clause under Order VII other than Rule 11(d) can have any application.

9. Learned counsel for the 1st respondent placed substantial reliance on the decision in **C.K.Surendran** (Supra)**.** It is true that this Court observed in the said order that having accepted the plaint and numbered the suit, the learned Munsiff could have returned the plaint under Order VII Rule 10 of the CPC. However, the issue that arose for consideration in the said case was regarding correctness of the order passed by the learned Munsiff, transferring the suit to the Commercial Court under Section 15(2) of the Act. The revision

petitioner/plaintiff contended that the dispute raised in the suit was not a commercial dispute. This Court found that the dispute involved was a commercial dispute. It was also found that learned Munsiff could not have transferred the suit invoking Section 15(5) of the Commercial Courts Act. Whether rejection of the plaint or its return is the proper course when a suit pertaining to a commercial dispute is filed before an ordinary civil court was not a matter that arose for consideration in the CRP decided by this Court. No arguments were addressed on the said issue. It is to be kept in mind that a decision is an authority only for the issue that was heard and decided in the case. Nevertheless, I agree with the observation in the judgment, relied on by the learned counsel for the respondent, for the reasons given hereafter.

10. Commercial Courts Act of 2015 introduced a new classification within civil litigation. The Act puts in place a more robust adjudicatory regime aiming at the swift resolution of

commercial disputes. The Act provides designated forums for adjudication of causes related to commercial disputes as outlined in Section 2(1)(c). However, the Act does not impose any prohibition regarding initiation of any categories of suits. Under the terms of the Act, commercial litigation shall be dealt with in accordance with the provisions of the Code of Civil Procedure, as modified in the manner outlined in the schedule to the Act. Nevertheless, the divergences from the standard procedure set forth in the Code of Civil Procedure aim to facilitate the expedited resolution of commercial disputes. A commercial suit is therefore not envisioned as a lawsuit shorn of all attributes of a civil suit. Hence when a suit involving a commercial dispute is filed in a civil court, the situation is not comparable to institution of a suit in a court that inherently lacks jurisdiction or lodging of a suit that is barred under any laws. As Commercial Courts Act, 2015 does not impose any bar in the matter of filing of suits, I hold that the argument advanced by the learned counsel for the

appellant that the suit should have been rejected according to Order VII Rule 11(d) is untenable. The aforementioned provision would apply only if there exists an embargo under any legislation.

11. It is interesting to note that the same contention was considered by a learned Single Judge of the High Court of Bombay in **J P Realities Pvt. Ltd. v. Mahesh and others** [2024 SCC OnLine Bom 883]. The learned Judge held as under:-

> "3. At the outset it is to be mentioned that essentially, the applications of the applicants appear to have been filed relying on Order VII Rule 11(d) of CPC which mandates that if the suit appears to be barred by law from the averments made in the plaint, the plaint shall be rejected. Thus, for exercising power under Order VII Rule 11(d) of CPC the suit must be barred by express or implied provisions of law. The applications have been filed for rejection of the plaints on the premise that the disputes between the parties in both the suits are commercial disputes and triable by the Commercial Court established under the Act of 2015. The cognizance of the suits by the Civil Court is barred.
>
> 4. This takes me to Section 6 of the Act of 2015. It states that the Commercial Court shall have

> jurisdiction to try all suits and applications relating to a commercial dispute of specified value. Section 15 of the Act of 2015 provides for transfer of commercial disputes of specified value to Commercial Court. Thus, the provisions of the Act of 2015 do not bar the suit but provide that the suit relating to a commercial dispute of a specified value shall be tried by a commercial court. A commercial court is a specie of civil court having jurisdiction to try a commercial dispute of specified value. Therefore, if a commercial dispute of specified value is filed in ordinary civil court, the remedy is to transfer the civil suit to the commercial court and not rejection of the plaint under Order VII Rule-11(d) of CPC. At the most, a plaint can be returned under Order VII Rule 10 of the CPC."
>
> [Emphasis added]

12. In **Virender Kumar v. Rekha Bhayana** [(2022) SCC OnLine Del 2678] a learned Single Judge of the Delhi High Court also considered an analogous matter. It was held by the learned Judge as follows:-

> "11. There is a clear difference in protocol between commercial suits and non-commercial suits. Commercial suits follow their own distinct procedure, and are subjected to much greater rigour than noncommercial suits. A commercial suit has its own distinct format, which involves,

inter alia, the requirement of filing a Statement of Truth both with the plaint as well as with the written statement.

.....

14. Commercial Courts are different from non-Commercial Courts. If a commercial suit is instituted before a Civil Court, it is, clearly, instituted before a Court other than the Court before which it should have been instituted. Order VII Rule 10 (1), in such circumstances, directly comes into play and requires the suit to be returned to the plaintiff to be instituted before the appropriate Court, i.e., the Commercial Court.

15. In this regard, I am unable to subscribe to the interpretation placed by the learned Commercial Court on the decision of the Supreme Court in Ambalal Sarabhai Enterprises Limited v. K.S.Infraspace LLP and another [(2020)15 SCC 585].

16. No doubt, that Ambalal Sarabhai Enterprises involved an instance where a non-commercial suit had been filed before the Commercial Court. The High Court of Gujarat returned the suit to the plaintiff, under Order VII Rule 10, to be presented before the Civil Court. The Supreme Court affirmed and approved this course of action. Once such a course of action stands approved by the Supreme Court, it amounts to a declaration of the law under Article 141 of the Constitution of India, to the effect that, in similar cases, a similar course of action is required to be adopted.

> 17. It is trite that, where an action is required to be performed in a particular manner, it has to be performed in that manner alone and all other modes of performing the action ipso facto stand foreclosed.
>
> 18. Ambalal Sarabhai Enterprises Ltd., in my view, cannot be distinguished merely on the ground that the said case involved an instance in which a non-commercial suit had been filed before the Commercial Court. The principle that, in such a case, the plaint is required to be returned to the plaintiff to be re-presented before a competent forum, in my view, would apply equally, where a commercial suit is instituted before a Civil Court.
>
> .....
>
> 22. However, I deem it appropriate not to reject the plaint filed by the respondent under Order VII Rule 11 of the CPC, but to direct that the plaint be returned to the respondent so that it could be instituted before the appropriate forum."
>
> [Emphasis added]

13. Another learned Single Judge of Delhi High Court in **Mrs Kanti Singh & Ors. v. Lords Mark Industries Pvt. Ltd & Anr** [CM(M) 1455/2023, CM APPL. 46265/2023] relied on the judgment in **Virender Kumar** (Supra) and held further as under:-

"26. Further in two subsequent cases reported as Sanjay Aggarwal &Anr vs Hemant Sharma (supra) and Shri Sali Sales vs Shri Shyam Collection (supra), it is observed as under:-

> "Following the judgment of the Supreme Court in Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP, I have already taken a view in more than one case that, if a commercial suit is filed on the non-commercial side, the court has necessarily to return the plaint for being filed as a commercial suit."

27. It is further relevant to refer to the case of Narender Kumar vs. M/s Om Daily Needs Retailing Pvt. Ltd. & Anr.; FAO (Comm) 92/2023 whereby the learned Division Bench of this court considered the similar issue of returning the plaint of a suit which, though originally filed before the Court of learned ADJ was transferred by learned Principal District and Sessions Judge to a commercial court. The learned Division Bench upheld the order returning the plant rather than transferring the suit to District Judge, Commercial Court.

28. The Hon'ble Supreme Court in Ambalal Sarabhai Enterprises Ltd. [(2020) 15 SCC 585], upheld the recourse to Order VII Rule 10 of the CPC directing return of the plaint.

29. In sum and substance, the aforesaid judgments highlight the principle of law that once a suit though instituted as non-commercial suit is found to be of commercial in nature, the plaint must be returned in exercise of power under Order VII Rule 10 CPC. Also, on return of the plaint, the plaintiff may, after making necessary corrections in the

pleadings, present the plaint before the court of competent jurisdiction."

[Emphasis added]

14. Judgment of a Division Bench of Chattisgarh High Court in **Radha Singh** (supra) and the judgment of a Division Bench of Telangana High Court in **Bhojraj Srinivas** (supra) relied on by the learned counsel for the appellants do not deal with the issue arising for consideration in this appeal.

15. I conclude that Order VII Rule 11(d) is inapplicable to this case, as there exists no statutory prohibition under the Commercial Courts Act. I concur with the views of the High Courts of Bombay and Delhi as articulated in their aforementioned rulings. Consequently, I perceive no illegality or error in the learned Sub Judge's decision to return the plaint under Order VII Rule 10 of the CPC, having found that the suit constitutes a commercial dispute as defined under the Commercial Courts Act. The learned Judge has taken the appropriate action; the plaint has to be returned for

presentation to the proper court. The order under challenge is hence upheld.

The appeal is rejected; however, without costs.

Sd/-

S.MANU
JUDGE

skj