

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 2986/2024

(Arising out of impugned judgment and order dated 04-12-2018 in CS No. 169/2018 06-11-2023 in OSA No. 74/2020 passed by the High Court of Judicature at Madras)

S.P. VELAYUTHAM & ANR.

Petitioner(s)

VERSUS

M/S EMAAR MGF LAND LIMITED

Respondent(s)

(IA No.37901/2024-CONDONATION OF DELAY IN FILING and IA No.37903/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 26-02-2024 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Mr. P S Patwalia, Sr. Adv.
Ms. Mary Mitzy, Adv.
Mr. Vivek Singh, AOR
Mr. Ritik Dwivedi, Adv.
Mr. Vishal Sundaramughan, Adv.
Mr. Rajeev K Panday, Adv.
Mr. K K Sinha, Adv.

For Respondent(s) Mr. Gopal Shankarnarayan, Sr. Adv.
Ms. Preetika Dwivedi, AOR
Mr. Abhisek Mohanty, Adv.
Ms. Jhanvi Dubay, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Delay stand condoned as there have been several litigation including in this Court in pursuant to the impugned order that was passed by the learned Single Judge of the High Court on 04.12.2018.

2. Heard Mr. P.S. Patwalia, learned senior counsel appearing for the petitioners (defendants in the C.S. No. 169 of 2018). Also

heard Mr. Gopal Sankaranarayanan learned senior counsel appearing for the respondent (plaintiff in the C.S. No. 169 of 2018).

3. The primary challenge in these Special Leave Petitions is to the order dated 04.12.2018 whereunder, the learned Judge of the High Court held that the C.S. No. 169 of 2018 filed by the respondent-plaintiff is a commercial suit, within the meaning of Section 2(1)(c) of the Commercial Courts Act, 2015. The Court justified its decision, *inter alia*, by citing the ratio in *Jagmohan Belal v. State Bank of Indore* (decided on 22.09.2017), *Monika Arora v. Neeraj Kohli* in CM(M) No. 850 of 2016 (decided on 01.09.2016) and *Soni Dave v. Trans Asian Industries Expositions Pvt. Ltd.* reported in AIR 2016 Del 186.

4. On the other hand, to argue that this was a simple money recovery suit and cannot therefore be treated as a commercial suit, the defendants relied on the Gujarat High Court decision in *Vasu Healthcare Private Limited v. Gujarat Akruti TCG Biotech Limited* reported in (2017) AIR (Gujarat) 153.

5. It is argued with some emphasis by the defendants that it is only a Suit for recovery of money and if the view in the impugned judgment is accepted as correct, all money recovery suits will travel towards the commercial division and it will defeat the very purpose of creating the commercial divisions, to fast track commercial category suits. In support of such contention, the counsel would rely on sub-clause (vii) of Section 2(1)(c) to say that the concerned agreements must pertain to immovable property used exclusively in trade or commerce. According to Mr. Patwalia,

the agreements relate to properties which were not used exclusively for trade or commerce but there could possibly be use of such property in future, for commercial purpose.

6. *Per contra*, Mr. Gopal Sankaranarayanan, learned senior counsel would refer to the explanation in Section 2(1)(c)(vii) in the above context to say that a commercial dispute shall not cease to be a commercial dispute merely because the suit pertains to realisation of money.

7. The above issue was considered in *Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP & Anr.* reported in (2020) 15 SCC 585 where the implication of Section 2(1)(c)(vii) was construed. In the concurring judgment, the following was expressed by Justice Banumathi:

“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.”

8. As is seen, the above judgment in *Ambalal* was pronounced only on 04.10.2019 and well before that, the impugned judgment was rendered by the learned Single Judge on 04.12.2018.

9. The counsel for the rival parties therefore submit that the learned Single Judge of the High Court should be permitted to re-

decide on whether the Suit should be treated as a commercial dispute, within the meaning of Section 2(1)(c).

10. Accepting the above submission particularly in light of ratio in *Ambalal*, we deem it appropriate to set aside the impugned judgment of the learned Judge of the High Court rendered on 04.12.2018 in the CS No. 169 of 2018. The matter is remitted back to the High Court to re-decide on whether the Suit for recovery of money would fall within the category of cases covered under Section 2(1)(c)(vii) of the Commercial Courts Act, 2015. With this order, the Special Leave Petitions stand disposed of.

11. Pending application(s), if any, shall stand closed.

(NITIN TALREJA)
ASTT. REGISTRAR-cum-PS

(KAMLESH RAWAT)
ASSISTANT REGISTRAR