

## **Do the non-commercial disputes fall under the jurisdiction of commercial courts?**

Chaitanya Thakur<sup>1</sup>

---

### **Abstract**

*Do the non-commercial disputes fall under the jurisdiction of commercial courts? This paper attempts to answer the question by reviewing the performance of the commercial courts set up under the Commercial Courts Act, 2015 using quantitative and qualitative methods, The author intends to re-evaluate the utility of the commercial courts in terms of whether they have lived up to their expectations, using the Supreme Court of India and High Court as a live example and observations of the commercial court in various judgements , the author notes with concern that the objective of speedy and effective justice for commercial matters has not been achieved.*

### **Keywords**

*Commercial Courts Act, 2015 (CC Act); Code for Civil Procedure, 1908 (CPC)*

---

<sup>1</sup> 3<sup>rd</sup> Year, B.A.LL.B. (Hons.), West Bengal National University of Juridical Sciences,  
[chaitanyathakur10@gmail.com](mailto:chaitanyathakur10@gmail.com)

## Introduction

With India aspiring to be a model of a robust regulatory structure supporting growth in the economy with a significant rise in commercial activities, it is expected to see a surge in a range of commercial disputes, both domestically and internationally. Facilitate the settlement of these disputes, one of the government's objectives is the implementation of progressive legislation, namely The Commercial Courts Act, 2015.<sup>2</sup> The Commercial Court, Commercial Division, and Commercial Appellate Division of High Courts Act ("the CC Act") establishes a distinct commercial court at the district and high court levels. Thus, the Act was enacted to facilitate and expedite the resolution of commercial disputes.<sup>3</sup> Consequently, India vaulted to the 100th rank in the World Bank's Ease of Doing Business rankings in 2016.<sup>4</sup>

However, non-commercial suits are increasingly being brought in the commercial courts only due to their high value and the desire for an expedited resolution. Such suits, in effect, would obstruct the resolution of legitimate commercial disputes by the commercial courts. The Apex Court addressed this problem in the case of *Ambalal Sarabhai Enterprises Limited vs. K.S. Infraspace LLP & Anr.*,<sup>5</sup> wherein the court said that an immovable property must be "used exclusively" in trade or commerce to come under the ambit of the CC Act.

---

<sup>2</sup> The Commercial Courts Act, 2015.

<sup>3</sup> Galatea Ltd v. Diyora and Bhanderi Corporation, 2018 SCC Online Guj 1886.

<sup>4</sup> Tejas Sharoor & Asha Rajan, *India's Commercial Courts: An Examination Through Different Lenses*, 2018, available at <https://www.transnational-dispute-management.com/article.asp?key=2549> (Last visited on April 6, 2022).

<sup>5</sup> *Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP & Anr.*, 2019 SCC OnLine SC 1311.

The author of this paper will begin by analysing the interpretation of the term “commercial disputes.” Following that, the author will examine if commercial courts have jurisdiction overall disputes involving immovable property and how the judges have interpreted the Act’s clauses pertaining to disputes involving immovable property. In pursuance of this, the author will finally analyse the case of *Ambalal Sarabhai Enterprises Limited vs. K.S. Infraspace LLP* and propose a suitable conclusion.

## **The Commercial Courts Act**

The stated purpose of the Commercial Courts Act was to expedite the settlement of commercial disputes. As ruled in *Kandla Export Corporation v. Oci Corporation*,<sup>6</sup> the Act was enacted to accelerate the adjudication of commercial disputes involving large sums of money. The Act was amended in 2018, introducing several reforms to ensure the seamless operation of commercial courts. The Act modifies the applicability of some sections of the Code of Civil Procedure, 1908 (“CPC,1908”) to commercial disputes. **Section 6** discusses the commercial court’s jurisdiction.<sup>7</sup>

A commercial dispute must be resolved in accordance with the provisions of the **CPC Sections 16, 17, 18, 19, and 20**. In the case of *Samsung Leasing Ltd. v. Samsung Electronics Co. Ltd.*,<sup>8</sup> the court held that **Section 7** expressly states that the Commercial Division of the High Court has jurisdiction to entertain and determine all suits involving

---

<sup>6</sup> *Kandla Export Corporation v. Oci Corporation*, 2018 SCC OnLine SC 170.

<sup>7</sup> *Id.*, §6.

<sup>8</sup> *Samsung Leasing Ltd. v. Samsung Electronics Co. Ltd.*, 2017 SCC Online Del 9374.

commercial disputes of a specified value falling within the ambit of ordinary original civil jurisdiction.

## The 2018 Amendment

The Act was renamed “**Commercial Courts Act, 2015**” after the 2018 amendment. As of the 2018 amendment, it is mandated to engage in mediation prior to proceeding to the commercial court, except for lawsuits seeking immediate interim relief. Pre-institution Mediation and Settlement is covered in **Section 12A** of the Act.<sup>9</sup> This entails settling the issue outside of the commercial court with the assistance of specified authorities designated by the central government according to the Legal Services Authorities Act 1987. The pre-institution mediation procedure must be completed within 3 months, extended by 2 months with the parties’ approval. Additionally, the 2018 revision empowers state governments to create separate commercial courts subordinate to the High Court and appoint these judges without the approval of the high courts’ chief justice.<sup>10</sup> Moreover, the amendment repealed **Section 9** of the Act, which provided for transferring such proceedings to commercial courts if a counterclaim for the Specified Value is asserted. Also, **Section 2(2)(i)** was amended to reduce the specified value to 3 Lakhs INR.<sup>11</sup>

---

<sup>9</sup> *Id.*, § 12A.

<sup>10</sup> SHARATH CHANDRAN, COMMENTARY ON THE COMMERCIAL COURTS ACT, 2015 (2021).

<sup>11</sup> Mohammad Kamran & Ashish Kabra, *Amendments to The Commercial Courts Act*, May 18, 2018, available at <https://www.mondaq.com/india/contracts-and-commercial-law/702628/amendments-to-the-commercial-courts-act> (Last visited on April 6, 2022).

## Interpreting Commercial Dispute

To be litigated under the Commercial Court Act's provisions, a dispute must fall under the definition of a 'commercial dispute' as defined in **Section 2 (1) (c)**.<sup>12</sup> It enumerates the situations under which a commercial dispute may arise. Whilst its provisions apply to conventional transactions, and contractual enforcement disputes such as partnership agreements, mercantile documents, export and import of merchandise, admiralty, infrastructure, joint ventures; they also apply to a wide variety of many other commercial activities, notably shareholder agreements, insurance and reinsurance disputes, immovable property disputes, and disputes stemming from intellectual property infringement, franchising, distribution, etc.<sup>13</sup> The court remarked in the case of *Qatar Airways* that the Act did not aim to include all disputes originating out of commercial transactions but instead chose to select 22 transactions.<sup>14</sup>

In the case of *Havells India Ltd. v. Advertising Standards Council of India*,<sup>15</sup> the Delhi High Court observed that the usage of the term "means" in **Section 2(1)(c)** indicates that the groups specified in the definition are exhaustive rather than inclusive. Nonetheless, **Section 2(c)(xxii)** empowers the central government to add other commercial disputes to this list.<sup>16</sup> In conjunction

---

<sup>12</sup> The Commercial Courts Act, 2015 § 2(1)(c).

<sup>13</sup> Dr. Pradeep Kumar Das, *Role of Commercial Courts Act for Speedy Disposal of Commercial Disputes in India: A Critical Analysis*, 4 INTERNATIONAL JOURNAL OF LAW MANAGEMENT AND HUMANITIES 1931-1941 (2021).

<sup>14</sup> *Qatar Airways Q.C.S.C. v. Airports Authority of India*, 2017 SCC Online Del. 8088.

<sup>15</sup> *Havells India Ltd. v. Advertising Standards Council of India*, (2016) 227 DLT 719.

<sup>16</sup> The Commercial Courts Act, 2015 § 2(c)(xxii).

with being a commercial dispute, **Section 2 (1) (i)** of the Act mandates a minimum amount for the subject matter of the lawsuit.<sup>17</sup> Under the 2015 Act, the specified value was fixed at a minimum of INR 1 crore. This value requirement was decreased from INR 1 crore to INR 3 lakhs due to the 2018 amendment. Moreover, the Act states that a commercial dispute does not stop being a dispute only because the state or one of its instrumentalities is a contractual party.<sup>18</sup>

## **Non-Commercial Disputes governed by the unamended provisions of the Code of Civil Procedure**

In a notable case, *Desh Raj v. Balkishan (D) Through Proposed LR Ms. Rohini*,<sup>19</sup> the Supreme Court considered whether the necessary 120-day time limit for filing written statements outlined in the revised CPC provisions applies to non-commercial litigation. The court made it very apparent in the judgement that all non-commercial disputes are covered by the CPC's unamended provisions. Additionally, in another pivotal decision, *Axis Bank Ltd. v. Mira Gehnani*,<sup>20</sup> the Bombay High Court decided that the Commercial Courts Act's changes to the CPC apply only to commercial disputes of a specified value and not to Commercial Disputes which are not of a specified value.<sup>21</sup>

---

<sup>17</sup> *Id.*, § 2(1)(i).

<sup>18</sup> Shrieya Gosain & Pranav Gosain, *Commercial Courts Act, 2015: An Appraisal*, September 27, 2019, available at <https://thelawbrigade.com/company-law/commercial-courts-act-2015-an-appraisal/?noamp=available> (Last visited on April 6, 2022).

<sup>19</sup> *Desh Raj v. Balkishan (D) Through Proposed LR Ms. Rohini*, (2020) 2 SCC 708.

<sup>20</sup> *Axis Bank Ltd. v. Mira Gehnani*, 2019 SCC OnLine Bom 358.

<sup>21</sup> Sudhir Krishnaswamy & Varsha Mahadeva Aithala, *Commercial Courts In India: Three Puzzles For Legal System Reform*, 11 JOURNAL OF INDIAN LAW AND SOCIETY 21-46 (2020).

## **Are all disputed arising out of Immovable Property considered as Commercial Disputes?**

Commercial dispute, as defined in **Sub-clause (vii) of section 2(1)(c) of the CC Act**, is a “dispute arising out of agreements relating to immovable property used exclusively in trade or commerce”.<sup>22</sup> Thus, to bring the immovable property within the Commercial Court’s jurisdiction, it must be “used exclusively” for trade and commerce purposes.

In the case of *Jagmohan Behl v. State Bank of Indore*,<sup>23</sup> the Delhi High Court determined that the phrases “arising out of” and “in relation to immovable property” must not be allowed a limited and confined interpretation but should encompass all issues pertaining to agreements involving immovable property. Whilst analysing these phrases, the court referred to the case of *Doypack Systems (P) Ltd. vs. UOI*,<sup>24</sup> wherein the court held that the phrases “pertaining to”, “in relation to”, and “arising out of” are “used in the expansive sense... are very broad expressions which presupposes another subject matter... and are words of comprehensiveness which might have both a direct significance as well as an indirect significance depending on the context.” Likewise, in *Kanchanganga Realtors Pvt. Ltd. and Ors. vs. Monarch Infrastructure Pvt. Ltd.*,<sup>25</sup> the Bombay High Court affirmed the Delhi High Court’s ruling,

---

<sup>22</sup> The Commercial Courts Act, 2015 § 2(1)(vii).

<sup>23</sup> *Jagmohan Behl v. State Bank of Indore*, 2017 SCC OnLine Del 10706.

<sup>24</sup> *Doypack Systems (P) Ltd. v. UOI*, 1988 2 SCC 299.

<sup>25</sup> *Kanchanganga Realtors Pvt. Ltd. and Ors. v. Monarch Infrastructure Pvt. Ltd.*, AIR 2019 Bom 102.

# KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

---

Volume 02

KnowLaw

holding that interpreting the word “commercial dispute” under **Section 2(1)(c)(vii)** in a restricted meaning renders the provision inconsequential.

Nevertheless, in the case of *Vasu Healthcare Private Limited vs. Gujarat Akruiti TCG Biotech Limited*,<sup>26</sup> the High Court held that statutes must be interpreted literally and strictly, and thus that on a literal and proper interpretation of **Section 2(1)(c)(vii)**, it can be inferred the word “used” refers to “actually used” or “being used” rather than “likely to be used” or “to be used”. Likewise, in *Sanjeev Kumar v. Satish Mohan*,<sup>27</sup> the Delhi High Court advised against such a broad reading of the Act’s term of “commercial disputes.” Interestingly, in the *Dineshkumar Gulabchand Agrawal case*,<sup>28</sup> the Bombay High Court reached an analogous conclusion by noting that the term “used” refers to “actually used” instead of “ready for use.” Furthermore, the Delhi High Court has stated that immovable property must be used lawfully and not in unlawful manner in commerce and trade in *Soni Dave v. Trans Asian Industries Expositions*.<sup>29</sup>

Similarly, the Apex Court stated in *Federation of A.P. Chambers of Commerce and Industry, and Others v. State of A.P. and Others*<sup>30</sup> that the terms “land is used for any industrial purpose” and “land is used for any other non-agricultural purpose” require evidence that the said property

---

<sup>26</sup> Vasu Healthcare Private Limited v. Gujarat Akruiti TCG Biotech Limited, AIR 2017 Gujarat 153.

<sup>27</sup> Sanjeev Kumar Arora v. Satish Mohan Aggarwal, 2017(163) DRJ541.

<sup>28</sup> Dineshkumar Gulabchand Agrawal v. Commissioner of Income-Tax, 2004 267 ITR 768 Bom.

<sup>29</sup> Soni Dave v. Trans Asian Industries Expositions Pvt. Ltd., AIR 2016 Del 186.

<sup>30</sup> Federation of A.P. Chambers of Commerce and Industry, and Others v. State of A.P. and Others, AIR 2000 SC 2905.



# KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

---

Volume 02

KnowLaw

is currently utilised for a commercial/industrial/ non-agricultural task. Moreover, in *Realistic Realtors Pvt. Ltd. v. Karanpreet Singh Walia & Anr.*,<sup>31</sup> the court determined that the respondents' land was a property leased for a commercial purpose, and henceforth, the dispute would fall under the ambit of the CC Act. Identically, the court held in *Monika Arora v. Neeraj Kohli*<sup>32</sup> that a lawsuit for specific performance of a contract to sell land for commercial usage in a zone designated as a commercial area is regarded as a commercial dispute.

In addition to this, it was observed by the Delhi High Court that an action to cancel powers of attorney and sale deeds and to reclaim possession of the immovable property is not a commercial dispute arising out of an arrangement involving immovable property.<sup>33</sup> Analogously, in *Ujwala Raje Gaekwar v. Hemaben Achyut*,<sup>34</sup> the Gujarat High Court concluded that an action seeking to annul a sale deed on the grounds of a succession certificate was granted in the plaintiff's favour does not constitute a "commercial dispute".

---

<sup>31</sup> *Realistic Realtors Pvt. Ltd. v. Karanpreet Singh Walia & Anr.*, 2021 SCC Online Del 5333.

<sup>32</sup> *Monika Arora v. Neeraj Kohli*, 2016 SCC Online Del 5259.

<sup>33</sup> *Hindpal Singh Jabbal v. Jasbir Singh*, 2016 SCC Online Del 4901; *Sumer Singh v. Om Prakash Gupta*, 2017 SCC Online Del 6675.

<sup>34</sup> *Ujwala Raje Gaekwar v. Hemaben Achyut Shah*, 2017 SCC Online Guj 583.

## **Case Analysis - Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspce Llp & Anr.**

In *Ambalal Sarabhai Enterprises Limited versus K.S. Infraspce LLP and Other*,<sup>35</sup> the Supreme Court Bench of Justice R. Banumathi and Justice A.S. Bopanna settled the issue by asserting that simply because the property is likely to be used in connection with trade and commerce does not automatically entitle it to Commercial Court's jurisdiction.<sup>36</sup>

In this instance, the appellant Ambalal Sarabhai Enterprises agreed with Mr. Ketan Bhailalbhai Shah to sell the Suit Property, and Ketan assigned his rights to respondent K. S. Infraspce LLP through an Assignment Deed. As a result, the respondent bought the Said Land via a Conveyance Deed from the appellant. Additionally, a memorandum of understanding was signed between the appellant and the respondents, which provided the execution of a mortgagedeed in favour of the appellant. The appellant filed a Commercial Civil Suit at the CommercialCourt at Vadodara for the execution of the Mortgage Deed.<sup>37</sup>

The issue, in this case, was whether a dispute emerging from an agreement involving immovable property qualified as a 'commercial dispute' within the meaning of **Section 2(1)(c)**

---

<sup>35</sup> *supra* note 5.

<sup>36</sup> Parmod Kumar, *Don't hear all high value pleas: Supreme Court to CC*, October 11, 2019 available at <https://www.asianage.com/india/all-india/111019/dont-hear-all-high-value-pleas-supreme-court-to-cc.html> (Last visited on April 6,2022).

<sup>37</sup> Ashima Obhan & Shubhangi Agarwal, *Are Disputes arising out of Immovable Property considered as Commercial Disputes*, October 25,2019 available at <https://www.obhanandassociates.com/blog/are-disputes-arising-out-of-immovable-property-considered-as-commercial-disputes/> (Last visited on April 6,2022).

of the CC Act. The appellant maintained that he had been operating an industry on the property, which had been bought for that reason, and it had been purchased for developing the same land. On the other hand, the Respondents asserted that the appellant had discontinued operations for many months and that, as a result, the property in question was not used for commerce or trade.

### ***i.* Decision of The Supreme Court**

The Supreme Court has concluded that when the immovable property is likely to be used in connection with trade and commerce, this cannot constitute a basis for the Commercial Court's jurisdiction. The Supreme Court noted that the plaint filed in the Commercial Court included no indication of the land's nature or the purpose for which it was being used on the date of the Agreement, MOU, or Suit. Moreover, the court determined that just because the Respondents' office and the land are located in Vadodara does not necessarily bestow jurisdiction on the Commercial Court.<sup>38</sup>

In the words of the Apex Court, "*A dispute relating to immovable property... becomes a commercial dispute, if it falls under sub-clause (vii) of Section 2(1)(c) of the Act... The word "used" denotes "actually used" and it cannot be either "ready for use" or "likely to be used" or "to be used."*"<sup>39</sup> To assuage fears that rigid compliance to the CC Act's procedures for dealing with commercial disputes would result in the exclusion of many other high-value suits,

---

<sup>38</sup> Ashok Kini, *Disputes Arising Out of Immovable Property 'Actually Used' In Trade or Commerce Alone Are 'Commercial Disputes*, October 4,2019 available at <https://www.livelaw.in/top-stories/commercial-disputes-immovable-property--148735> (Last visited on April 6,2022).

<sup>39</sup> *supra* note 5.

the court asserted, “*The excluded class of litigation will in any event be entertained in the ordinary Civil Courts wherein the remedy has always existed.*”<sup>40</sup> The Supreme Court ultimately rejected the appeal, concluding that neither the agreement nor the plaint submitted before the Commercial Court stated that the immovable property was used exclusively for trade or commerce.

## Conclusion

The Commercial Courts Act, 2015 is unquestionably a positive move as well as a much-needed wake-up call for our judiciary, given its sluggish reputation in the eyes of the public. It is a brave endeavour to improve the efficiency of India’s economy and bring the judicial process up to international benchmarks. Additionally, the Act may accelerate the process of transforming venture investors’ perceptions of India as an investment centre. All the courts have concluded, all that is required to establish that a suit is a commercial suit is given under **Section 2(1)(c)(vii)** of the CC Act, that the agreement at question is an immovable property that is “actually used” or “being used exclusively” in trade or commerce.

The Apex Court’s judgement in the *Ambalal Sarabhai case* makes it abundantly clear that a plaint filed in a Commercial Court must have a certain amount of specificity. Establishing that a dispute involving immovable property falls within the territorial jurisdiction solely on the basis of location is quite different from proving how the dispute qualifies as a ‘commercial

---

<sup>40</sup> *Id.*

# KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

---

Volume 02

KnowLaw

dispute’ under the CC Act. There are many types of disputes for which regular Civil Courts have jurisdiction. Nevertheless, it is the character of the property’s existing use that lends it the legitimacy necessary to classify it as a ‘commercial dispute.’ Moreover, the decision established the real meaning of the term “used,” namely that the term refers to actual and present use, not to a speculative probability of trade or commercial utilisation.

Correspondingly, it is essential for the parties that commercial documents pertaining to immovable property are properly registered, and terms are skilfully drafted to highlight on record how such immovable property is actually used for commercial or trade activities. The disputes that may arise in connection with immovable property are not always commercial in nature simply due to their high value or even some implicit premise. This ruling undoubtedly offers prudent guidance to parties contemplating recourse to Commercial Courts. This would lead to the smooth functioning of the commercial courts.