

**IMMOVABLE PROPERTY MUST BE ‘USED EXCLUSIVELY’ TO FALL UNDER THE  
COMMERCIAL COURTS ACT: SUPREME COURT**

The Supreme Court vide its Order dated 4<sup>th</sup> October, 2019 in **Ambalal Sarabhai Enterprises Ltd. vs. K.S. Infraspace LLP & Anr.** [Civil Appeal No. 7843 Of 2019] has held that in order to fall within the purview of the Commercial Courts Act, the immovable property must be “used exclusively” or “being used exclusively” in trade or commerce.

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**FACTS:**

Ambalal Sarabhai Enterprises Ltd. (“**the Appellant**”) entered into an agreement to sell dated 14<sup>th</sup> February, 2012 (“**the said agreement**”) with Mr. Ketan Bhailalbhair Shah (“**Respondent No. 2**”) in respect of the Suit Land. The Respondent No. 2 transferred his rights under the said agreement in favour of one K. S. Infraspace LLP (“**Respondent No. 1**”) by executing an Assignment Deed dated 12<sup>th</sup> October, 2017.

The Appellant filed Commercial Civil Suit No. 41/2018 in the Commercial Court at Vadodara so as to enforce the execution of the Mortgage Deed. The Respondents contended that the Suit was not maintainable

since the dispute was not a commercial dispute within the meaning of Section 2(1)(c) of the Commercial Courts Act, 2015 (“**the Act**”) and filed an application under Order VII Rule 10 of the Civil Procedure Code seeking an order to return the Plaint to be presented in the Court in which the suit should have been instituted. The Commercial Court while rejecting the application through the Order dated 17<sup>th</sup> October, 2018 had referred to the Memorandum and Articles of Association of the Appellant company and had noted that the plaintiff seemed to be carrying on the business as an estate agent and in that circumstance had arrived at the conclusion

that it was a commercial dispute. The Respondents, aggrieved by the said order had approached the High Court of Gujarat in R/Special Civil Application No.17868/2018. The High Court vide Order dated 1<sup>st</sup> March, 2019 (“**the Impugned Order**”) allowed the Petition and set aside the Order dated 17<sup>th</sup> October, 2018 passed by the Commercial Court, Vadodara and on allowing the application filed under Order VII Rule 10 CPC directed that the plaint be returned to the Appellant herein to be presented in the Court in which the suit should have been instituted. The High Court had examined the matter in detail to come to a conclusion that the immovable property in the instant case was not being used for trade or commerce. Aggrieved by the Impugned Order, the Appellant approached the Apex Court.

### **ISSUE:**

The issue that arose for consideration before the Supreme Court was whether the immovable property involved could be considered as being used exclusively in trade or commerce, so as to enable the Commercial Court to entertain the Suit.

### **SUBMISSIONS:**

The learned senior advocate for the Appellant made detailed submissions referring to the documents to contend that the appellant was running an industry in the land concerned which was acquired for that purpose and the Respondent No. 1 had purchased the same for developing the said land and in that view the land is one which is used for trade and commerce.

The learned senior advocate for the Respondents, on the other hand contended to the contrary that the Appellant had ceased to function for the past several years and the company being defunct, the land involved was not being used for trade or commerce and even though the Respondent No. 1 has sought for change of land use and to develop the land, same would be subject to such change of land use that would be granted and the use to which it would be put in future. Hence, it is contended that as on the date of transaction, the land is not being used for trade or commerce and a suit at present would not be maintainable before the Commercial Court.

**JUDGEMENT:**

The Bench referred to the decision of a Division Bench of the Gujarat High Court in the case of **Vasu Healthcare Private Limited vs. Gujarat Akruvi TCG Biotech Limited**, AIR 2017 Gujarat 153 wherein it had been held that: *“Considering section 2(c)(vii), “commercial dispute” means a dispute arising out of the agreements relating to immovable property used exclusively in trade or commerce. If the intention of the legislature was to expand the scope, in that case the phraseology used would have been different as for example, “likely to be used” or “to be used”. The word “used” denotes “actually used” and it cannot be said to be either “ready for use” or “likely to be used”; or “to be used”.*”

The Apex Court further held that the very purpose for which the Act has been enacted would be defeated if every other suit merely because it is filed before the Commercial Court is entertained. This is for the reason that the suits which are not actually relating to commercial dispute but being filed merely

because of the high value and with the intention of seeking early disposal would only clog the system and block the way for the genuine commercial disputes which may have to be entertained by the Commercial Courts as intended by the law makers. He further observed that if the Act is given a strict interpretation, it is not as if those excluded will be non-suited without any remedy. The excluded class of litigators will in any event be entertained in the ordinary Civil Courts wherein the remedy has always existed. It is also necessary to carefully examine and entertain only disputes which actually answer the definition “commercial disputes” as provided under Section 2(1)(c) of the Act.

In the instant case, neither the agreement between the parties refers to the nature of the immovable property being exclusively used for trade or commerce as on the date of the agreement nor is there any pleading to that effect in the plaint.

The Commercial Court was thus directed to return the plaint indicating a date for its presentation before the Court having jurisdiction. R. Banumathi, J. while concurring with the Judgment of A.S. Bopanna, J. stated that, “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 such fast-tracking procedure.

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*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*