



2024:DHC:4384



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 15 April 2024**
Judgment pronounced on : 28 May 2024

+ C.R.P. 31/2024 & CM APPL. 4805/2024

M/s EKANEK NETWORKS PRIVATE LIMITED

..... Petitioner

Through: Mr. Vinayak Mehrotra, Ms.
Mansi Sood, Mr. Saurav
Rajurkar and Ms. Varsha
Bhattacharya, Advs.

versus

ADITYA MERTIA Respondent

Through: Mr. Prateek Sharma, Mr.
Rajnish Kumar Jha, Mr. Vijay
Shanker Tiwari, Ms. Aditi
Yaduvanshi, Mr. Rohan Sharma
and Md. Faiyazal Haque, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA
J U D G M E N T

1. This judgment shall decide the present civil revision petition filed under Section 115 of the Code of Civil Procedure, 1908¹ by the petitioner-revisionist, who is the defendant in the suit instituted by the respondent/plaintiff. By way of the present revision, the petitioner/defendant has challenged the legality of the impugned order dated 21.12.2023 passed by the learned Additional District Judge (East),

¹ CPC



Karkardooma Court, Delhi² whereby the learned Trial Court dismissed the petitioner/defendant's application under Order VII Rule 11 of the CPC filed in CS No. 143/2023 titled as "*Aditya Mertia v. M/s Ekanek Networks Pvt. Ltd.*", upon holding that the suit instituted by the respondent/plaintiff is not a "commercial dispute" within the scope and meaning of section 2(1)(c)(xviii) of the Commercial Courts Act, 2015³.

FACTUAL BACKGROUND:

2. Briefly stated, the present revision petition arises out of a civil suit filed by the respondent/plaintiff Mr. Aditya Mertia in 2023 against the petitioner/defendant company seeking recovery of arrears of salary and damages to the tune of Rs. 93,05,617/- along with interest @18% per annum plus the income tax liability on the recoverable amount.

3. Upon perusal of the plaint, the following facts and circumstances have come up for consideration before this court:

- a) Respondent/plaintiff was employed as VP-Engineering of the petitioner/defendant company vide Appointment Letter cum Employment Agreement dated 13.08.2021 at a salary of USD 1,50,000/- per annum as well as Employees Stock Options (ESOP) worth INR 24,00,000/- The respondent/plaintiff's place of joining was supposed to be Abu Dhabi, UAE but due to logistical issues, the respondent/plaintiff joined the petitioner/defendant company on 21.09.2021 at New Delhi, contrary to the terms of the Employment Agreement dated 13.08.2021.
- b) Eventually, the respondent/plaintiff and his family were sent to Abu Dhabi on 05.02.2022 by the petitioner/defendant company on a tourist visa valid for 90 days, but the petitioner/defendant company could not secure a work permit for the respondent/plaintiff resulting which he was constrained to return to

² Trial Court

³ CC Act



India on 16.03.2022 thereby causing the respondent/plaintiff huge financial losses.

- c) Thereafter, on 28.04.2022, the respondent/ plaintiff requested the petitioner/defendant company for a sabbatical period in order to recover from the traumatic experiences of Abu Dhabi in as much as he was forced to work on a tourist visa. Such request was allegedly approved by the petitioner/defendant company without any prior conditions.
- d) It is claimed that on 29.05.2022, the petitioner/defendant company called upon the respondent/ plaintiff to discontinue the sabbatical and join back work in Abu Dhabi on an allegedly illegal work permit. It is the case of the respondent/ plaintiff that such action on behalf of the petitioner/defendant company amounted to a “constructive dismissal” of the respondent/ plaintiff so as to evade payment of salary due in favour of the respondent/ plaintiff and to prevent the vesting of his ESOPs (Employees Stock Options).
- e) It is claimed that the respondent/ plaintiff thus had no other option but to resign from the petitioner/defendant company without two months’ notice or two months of salary in lieu of the Notice Period.
- f) Thus, the present civil suit seeking payment of arrears of salary for the months of September 2021 till April 2022 as well as the salary payable for the two-month notice period besides damages for other losses incurred by the respondent/ plaintiff due to the actions of the petitioner/defendant company.

4. It is the case of the petitioner/defendant company that the dispute raised by the respondent/plaintiff is a ‘commercial dispute’ under the Commercial Courts Act, 2015⁴ in as much as the employer-employee relationship between the defendant company and petitioner constituted an *‘agreement for sale of goods or provision of services’* thus falling within the scope of Section 2(1)(c)(xviii) of the CC Act.

5. Accordingly, the petitioner/defendant company filed an application under Order VII Rule 11 of the CPC before the learned trial court for dismissal of suit, firstly on the ground that the trial in a

⁴ CC Act



regular civil court is barred by the CC Act and secondly on the ground of lack of territorial jurisdiction.

IMPUGNED ORDER DATED 21.12.2023:

6. Based on the pleadings and oral arguments advanced by the rival parties, the learned Trial Court dismissed the application under Order VII Rule 11 of the CPC filed by the petitioner/defendant. The grounds for dismissal of suit raised by the petitioner/defendant were rejected by the learned Trial Court on the basis of the following reasoning:

- a) As regards the issue of lack of territorial jurisdiction, on the basis of the registered office address of the petitioner/defendant company as found in its foundational documents (MoA and AoA) as well as in the official government record (MCA master data), it was held that the present suit falls under the territorial jurisdiction of the Id. Trial court and thus, not liable to be dismissed on such ground.
- b) As regards the issue of lack of subject-matter jurisdiction, relying upon the decision of the Karnataka High Court in *Sanjay Kumar vs. Elio India Food Services LLP*⁵, the Id. Trial court held that since the petitioner/defendant/employer company had full and extensive control over the working of the respondent/plaintiff/employee and since no other incentive was being given to the respondent/plaintiff except the fixed salary provided in Annexure-A attached with the Appointment Letter cum Employment Agreement dated 13.08.2021, the Employment Agreement and the dispute between the parties arising out of such agreement does not come under the purview of Section 2(1)(c)(xviii) of CC Act. Hence, the suit has been rightly instituted as a 'civil suit' rather than a 'commercial suit'.

GROUND OF APPEAL:

7. The main ground of challenge to impugned order is upon the second issue decided by the learned Trial Court *inter alia* on the

⁵ Judgment dated 02.06.2023 in W.P. No. 2584 of 2023



ground that the Id. Trial Court did not appreciate that an employer-employee relationship has been consistently held by the higher courts to be a ‘contract *of* service’ which phrase is analogous to the language of Section 2(1)(c)(xviii) of the CC Act i.e., “*agreements for sale of goods or provision of services*”; and that the Id. Trial court erred in relying upon the judgment of the Karnataka High Court in *Sanjay Kumar v. Elixir India Food Services LLP* (supra) since the distinction between a ‘contract *for* service’ and a ‘contract *of* service’ was not raised or considered therein; and that the the Id. Trial court erroneously held that since long term plans were set between the parties at the time of the appointment of the respondent/plaintiff, the plea of the petitioner/defendant that their relationship is commercial in nature is not tenable. Lastly, it has been reiterated that the respondent/plaintiff cannot be not permitted to bypass the rigours of the CC Act by attempting to agitate a ‘commercial dispute’ before a regular civil court, and thus, the impugned order needs to be set aside.

ARGUMENTS ADVANCED AT THE BAR

8. Ld. Counsel for the petitioner/defendant company has placed reliance on the decisions of the Supreme Court in **Ahmad G.H. Ariff v. Commissioner of Wealth Tax**⁶, **Chintaman Rao v. State of Madhya Pradesh**⁷ and **Shankar Balaji Waje v. State of Maharashtra**⁸ to submit that an employment contract constitutes a ‘contract *of* service’ between the employer and the employee, and it is vehemently urged that the expression “agreement for provision of

⁶ AIR 1971 SC 1691

⁷ AIR 1958 SC 388



service” under Section 2(1)(c)(xviii) of CC Act shall cover a case of ‘contract *of* service’ as well. Per contra, Learned Counsel for the respondent/plaintiff has vehemently opposed the plea taken by the learned counsel for the petitioner/defendant and has submitted that a pure “contract of service” between an employer and employee cannot be governed by Section 2(1)(c)(xviii) of CC Act.

9. Ld. Counsel for the petitioner/defendant further argued that the relationship between the parties was commercial and contractual in nature insofar as the respondent/plaintiff was also making profits out of it as much as the defendant company. However, this contention was challenged by the Learned Counsel for the respondent/plaintiff who submitted that the alleged “profits” that the respondent/plaintiff was entitled to under the Employment Contract were strictly in the nature of “salary” payable for the work done in the defendant company and related employment benefits that cannot be held to be in *pari passu* with commercial profit-making.

10. Ld. Counsel for the petitioner/defendant has further relied upon the decisions in **Arvind Processing Park Pvt. Ltd v. Mayursinh Bhupathsinh Vaghela**⁹; **Narendra Kumar v. Om Daily Needs Retailing Pvt. Ltd.**¹⁰, **Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.**¹¹; **Frost International Ltd. v. Milan Developers & Builders Pvt. Ltd.**¹²; **Ambalal Sarabhai Enterprises**

⁸ AIR 1962 SC 517

⁹ 2019 SCC OnLine Guj 4100

¹⁰ 2023 SCC OnLine Del 5618

¹¹ (2022) 10 SCC 1

¹² (2022) 8 SCC 633



**Ltd. v. K.S. Infraspace LLP¹³ and Gurudevdatla VKSSS
Maryadit v. State of Maharashtra¹⁴**

11. Lastly, the Learned Counsel for the petitioner further submitted that the decision of the Karnataka High Court in *Sanjay Kumar v. Elior India Food Services LLP (supra)* ought not to be treated as precedent in the present case since the argument regarding the settled interpretation of the distinction between the words ‘contract of service’ and ‘contract for service’ was never raised before or considered by the Hon’ble Karnataka High Court.

ANALYSIS & DECISION:

12. I have given my anxious consideration to the submissions advanced at the Bar by the learned counsels for the rival parties. I have perused the relevant record of the case.

13. In order to decipher as to whether the expression “provision of services” as appearing in Section 2(1)(c)(xviii) of the CC Act should be interpreted as akin to the expression “contract of service”, it would be apposite to first make note of certain terms and conditions of the employment as contained in the Appointment Letter cum Employment Agreement dated 13.08.2021. The same read as under:

“2. EMOLUMENTS AND TAXES:

a. Your remuneration will be as per the details provided in Annexure – 1 annexed hereto.

b. You shall be solely responsible for paying any taxes, direct or indirect, state or local, whether payable in India or elsewhere which may result from the remuneration pursuant to your employment hereunder. The Company is entitled to deduct from your remuneration, income tax, other taxes and levies which it is liable to deduct at source as applicable.

¹³ (2020) 15 SCC 585

¹⁴ (2001) 4 SCC 534



c. All information regarding your remuneration and terms of employment are confidential and you shall not divulge the contents to any other employee of the Company.

3. **NON-COMPETE, NON SOLICIT AND NON-DISPARAGEMENT AGREEMENT:**

a. **Non-Compete:** You agree that during the term of your employment and for a further period of 12 calendar months after separation from the Company, for whatever reasons, you shall not carry on or engage in directly or indirectly in any business which competes directly or indirectly with any or all the business pursued by the Company in any territory, whether in India or overseas, at the relevant point of time or proposed to be pursued by the Company in the immediate future, in respect of which proposal you were aware of or likely to be aware of considering the nature of your duties ("Restricted Business"), other than through the Company.

b. **Non-Solicitation of Customers:** You agree that during the term of your employment and for a further period of 24 (twenty four) calendar months after separation from the Company, for whatever reasons, you shall not directly or indirectly, Irrespective of whether the relationship between the Company and a customer was originally established in whole or in part through your efforts; (i) solicit any Restricted Business from any customer; (ii) persuade any existing or prospective customer to cease doing Restricted Business with the Company; (iii) reduce the amount of Restricted Business which any customer has customarily done or might propose doing with the Company.

c. **Non - Solicitation and Non Hire of Company Employees:** You agree that during the term of your employment and a further period of 24 (twenty four) calendar months after separation from the Company, for whatever reasons, you shall not either directly or indirectly solicit or entice away or endeavor to solicit or to entice away or assist any other Person to solicit or hire or entice away from the Company, any Company employee

d. **Non-Disparagement:** You shall not at any time, during or after your employment, disparage, defame or denigrate the reputation, character, image, products or services of the Company, or of any of its affiliates, investors, or any of their directors, officers, stockholders, members, employees or agents.

e. By signing this offer letter you acknowledge and agree that each of the covenants contained in this Clause 3 shall be a separate covenant and shall be enforceable separately and independently of any of the other covenants and the above restrictions are considered reasonable for the legitimate protection of the business and goodwill of the Company.



However, in the event that any restriction shall be found to be void, but would be valid if some part thereof was deleted or the scope, period or area of application were reduced, the said restriction shall apply with the deletion of such words or such reduction of scope, period or area of application as may be required to make it valid and effective and it shall not in any event impact the other covenants. Notwithstanding the limitation of this provision by any Applicable Law for the time being in force, the you undertake to at all times observe and be bound by the spirit of this Clause, provided however that on the revocation, removal or diminution of law or provisions, as the case may be, by virtue of which the restrictions contained in this Clause were limited as provided hereinabove, the original restrictions would stand renewed and be effective to their original extent, as if they had not been limited by the law or provisions revoked.

4. TERMINATION:

- a. Either the Company or you may terminate your employment at any time, without assigning any reasons, by providing two (2) months written notice or two (2) months' basic salary in lieu thereof. However, considering that during the course of your employment with the Company, you shall be privy to or shall otherwise have access to sensitive and confidential information of the Company, which may include products' related information for existing or conceived products, business plans, information related to existing and planned projects, vendors and partners' related information and other valuable information of the Company or you may be or needed to be engaged in a project that needs to be completed or for the needs of other business reasons/requirements, **in the event you choose to terminate your employment with the Company, the Company shall have the right to refuse acceptance of two (2) months' basic salary in lieu of notice period and (i) require you to continue to serve the Company during the notice period or any part thereof, OR (ii) for the duration of the notice period or any part thereof, require that you do not perform any official duties or attend office and return all assets provided by the Company, provided however that during such notice period or part thereof, you shall not take up employment or any other engagement (including as a consultant or advisor), whether on a full time or part time basis, with any other person or entity.***
- b. Your employment shall stand terminated forthwith without any notice in the event of the following*
- i. if you do not join within the stipulated date, unless extended in writing.*
 - ii. if you are held guilty of any offence involving moral turpitude or any breach of the code of conduct of the Company.*



c. Upon termination of your employment, you (or your legal heirs as the case may be) will complete the exit formalities and shall immediately return to the Company, any and all documents, manuals, documented confidential information (without making any copies thereof and/ or extracts therefrom), kits and other property belonging to the Company that may be entrusted to and/ or placed in your possession by virtue of and/ or during the course of your employment with the Company. You (or your legal heirs as the case may be) shall also deliver to the Company immediately all notes, analyses, summaries and working papers relating thereto. Prior to leaving the Company, you will also ensure that all your outgoing/ pending activities are successfully completed and properly handed over to the satisfaction of your reporting manager.

5. INITIAL POSTING AND TRANSFER:

a. Your initial place of posting shall be at Abu Dhabi, UAE.

b. **However, at the sole discretion of the Management, you will be liable to be transferred /deputed from one place to another anywhere in India or abroad and/or from one department to another or from one establishment to another and/or to any other concern including to any of Company's affiliates, associates group companies and/or entities in which the Company may be having any interest whether existing or which may be set up in future.**

c. Consequent upon your transfer, all the existing terms and conditions of your employment shall remain the same.

d. As per the exigency of business, you may be required to carry out additional work for the Company s affiliates/associates/group companies.

6. GENERAL EMPLOYMENT OBLIGATIONS:

a. During your employment with us, **you shall not be engaged, concerned or interested directly or indirectly in any other occupation, business or employment whatsoever (either for remuneration or on a honorary basis) and shall devote your whole time, attention and abilities exclusively to the performance of your duties and shall faithfully serve the Company and use your best endeavor to promote the interest and business thereof.** In the event of above, the company shall be entitled to take appropriate action.

b. You shall be governed by the service rules and regulations of the Company, as amended by the Management, from time to time including the code of conduct, the terms of which are hereby incorporated by reference. You shall sincerely abide by and carry out operational instructions/procedures as contained in the



Company's guidelines and other administrative instructions as may be issued by the Management from time to time

*c. **The work product generated by you while performing the services during the term of your employment, including all electronic data, papers, worksheets, logs, records, reports, documents, training material and other materials developed or prepared by you, shall be the sole and exclusive property of the Company, and you shall be deemed to have generated such work product as 'work for hire'.** Without limiting the generality of the foregoing, the Company will own all intellectual property rights in any work, work product invention, discovery, improvement or design, which you make or conceive (collectively "Intellectual Property Rights"):*

- i. while employed by the Company and in connection with the business of the Company or a related body corporate; or*
- ii. by using the resources, facilities, or confidential information of the Company or its affiliates/associates/group companies.*

For the purposes of this clause, Intellectual Property Rights include, but are not limited to, rights in relation to or arising from patents, design registrations, trademarks and copyright. You undertake to execute necessary documents and do all such acts, at the request of the Company that may be required to give effect to this provision. You shall return to the Company such materials upon the termination of your employment or at the request of the Company at any time during the term of your employment.

You agree and understand that the Company will be considered the first owner of such Intellectual Property. To the extent that the Company is not considered the first owner of the Intellectual Property Rights created by you, the copyright and all related rights, title and interest in all such Intellectual Property Rights is irrevocably assigned by you to the Company for valid and adequate consideration by signing this offer letter.

To the extent that any Intellectual Property Rights are not vesting with the Company as mentioned above, by signing this offer letter you irrevocably assign in perpetuity for worldwide use to the Company, all your rights, title and interest with respect to the Intellectual Property Rights, and to sign all such agreements deeds and documents as may be required under law to evidence the assignment of the Intellectual Property Rights to the Company.

By signing this offer letter you waive any right to raise any objection or claims to the Indian Copyright Board with respect to the ownership of the Intellectual Property Rights, under the provisions of Section 19A of India's Copyright Act, 1957, and that notwithstanding the provisions of Section 19(4) of the Copyright Act 1957, the assignment under this Agreement shall not lapse nor



the rights transferred therein revert to you even if the Company does not exercise the rights under this Agreement within a period of one (1) year from the date the assignment becomes effective.

d. You will be responsible for the safe custody of all documents, manuals and kits and other property belonging to the Company that may be entrusted to and/ or placed in your possession by virtue of and/ or during the course of your employment with the Company.

e. **Being a managerial cadre employee you will be responsible for the overall smooth and effective functioning of the department / establishment / office / staff / employees under your charge** and will be directly responsible for the successful and timely completion of any job / work assigned to you or any person working under your control and supervision and/or within the department / establishment/office of which you are for the time being holding the charge. **You would adhere to the norms of office discipline You would also be responsible to ensure proper and effective adherence to the norms of office discipline including working hours, systems and procedures by the staff / employees working under your supervision and/or in the department/ office / establishment under your charge. Reporting time will be 9 30 am at office premises which you are expected to comply with daily. Late arrivals will be treated as per the prevalent code of conduct of the Company. This is subject to change as per office policies and other exigencies**

f. **You shall keep the Management informed of your latest postal address at all times and intimate in writing in case of change of address.** Any communication sent to you by the management on your last known address (as intimated by you) shall be deemed to have been duly served notwithstanding the fact that you have changed your address.

7. CONFIDENTIALITY:

a. You shall not, except as authorized or required by your obligations in terms hereof, reveal to any person or entity any of the trade secrets, secret or confidential information, information contained in any manuals or dealings or any information concerning the organization, business, finances, transactions or affairs of the Company and/or its affiliates/associates/group companies (confidential information), which may come to your knowledge and/ or be imparted to you by the Company during his employment hereunder. You shall hold in strict confidence all such confidential information. This restriction shall survive termination of your employment with the Company without limit in point of



time but shall cease to apply to information or knowledge which may come into the public domain without any fault on your part.

b. You shall not during the term of your employment or at any time thereafter, use or permit to be used, any information, notes or memoranda relating to the business and/ or transactions of the Company and/or its affiliates/associates/group companies which may come to your knowledge and/ or possession by virtue of nis employment with the Company for any purpose other than for the benefit of the Company.

c. You acknowledge that the breach of any of the provisions of Clause 6 hereof will cause irreparable loss and harm to the Company which cannot be reasonably or adequately compensated by damages in an action at law, and accordingly, the Company will be entitled, to injunctive and other equitable relief to prevent or cure any breach or threatened breach thereof, but no action for any such relief shall be deemed to waive the right of the Company to an action for damages.

8. LEAVES AND OTHER SERVICE BENEFITS:

a. **You will be entitled to leave, holidays and other service benefits as per the rules of the management as framed from time to time and applicable to the managerial cadre employees in the office/establishment/department in which you are for the time being posted**

9. RETIREMENT:

a. **You shall retire on the attainment of 58 years unless specially required by the Company in writing to continue in service beyond this age.** Your employment shall stand terminated on the last working day of the month of your retirement for which no notice shall be required.

10. CONTINUATION OF EMPLOYMENT:

a. It is understood that this employment is being offered to you on the basis of the particulars submitted by you with the Company at the time of recruitment process. However, if at any time it should emerge that the particulars furnished by you are false/incorrect or if any material or relevant information has been suppressed or concealed this appointment will be considered ineffective and irregular and would be liable to be terminated by the management



forthwith without notice. This will be without prejudice to the right of the management to take disciplinary action against you for the same.

b. Your appointment and its continuation is subject to your being medically fit and the Management reserves its right to ask you to undergo medical examination, as and when deemed necessary.

14. In the case of ***Chintaman Rao (supra)*** cited by the learned counsel for the petitioner/defendant, it was held that the concept of employment involves three ingredients; (1) employer; (2) employee and (3) the contract of employment. It was held that an employer is the one who employs i.e., one who engages the services of other persons. The employee is the one who works for another for hire or reward. The employment is the contract of service between the employer and the employee whereunder the employee agrees to serve the employer subject to the employer's control and supervision. From the aforesaid point of view, there could be no denying the fact that the contract between the parties in the instant matter was one where the respondent/plaintiff was appointed at a high post being that of the Vice President, who was not only involved in policy decisions of the defendant company but also at the same time, his entire nature of duties and services were such which were under the control and supervision of the company exercising its powers, obviously through its Board of Directors and ultimately being answerable to the share holders.

15. In a recent decision of the Supreme Court in the matter of **Bar of Indian Lawyers through its President v. D.K. Gandhi PS**



National Institute of Communicable Diseases¹⁵ in considering whether the professional services rendered by Advocates could fall within the meaning of term ‘service’ contained in Section 2(1) (o) of the Consumer Protection Act, 1986 and in Section 2(42) of the same Act, it was held as under:

“15. There was not a whisper in the statement of objects and reasons either of the CP Act, 1986 or 2019 to include the Professions or the Services provided by the Professionals like Advocates, Doctors etc. within the purview of the Act. It is very well accepted proposition of the fact that Professionals could not be called Businessmen or Traders, nor Clients or Patients be called Consumers. It is also required to be borne in mind that the terms ‘business’ or ‘trade’ having a commercial aspect involved, could not be used interchangeably with the term ‘Profession’ which normally would involve some branch of learning or science. Profession as such would require knowledge of an advanced type in a given field of learning or science, or learning gained by a prolonged course of specialized study. As per Black’s Law Dictionary, 11th Edition, “Profession” means “a vocation requiring advanced education and training; especially one of the three traditional Professions- Law, Medicine and the Ministry.” “Professional” means “someone who belongs to a learned profession or whose occupation requires a high level of training and proficiency.”

X X X

18. In view of the above, a “Profession” would require advanced education and training in some branch of learning or science. The nature of work is also skilled and specialised one, substantial part of which would be mental rather than manual. Therefore, having regard to the nature of work of a professional, which requires high level of education, training and proficiency and which involves skilled and specialized kind of mental work, operating in the specialized spheres, where achieving success would depend upon many other factors beyond a man’s control, a Professional cannot be treated equally or at par with a Businessman or a Trader or a Service provider of products or goods as contemplated in the CP Act. Similarly, the services rendered by a Businessman or a Trader to the consumers with regard to his goods or products cannot be equated with the Services

¹⁵ Civil Appeal No. 2646 of 2009 decided on May 14, 2024



provided by a Professional to his clients with regard to his specialized branch of profession. The legislative draftsmen are presumed to know the law and there is no good reason to assume that the legislature intended to include the Professions or the Professionals or the services provided by the professionals within the ambit of the CP Act. Any interpretation of the Preamble or the scheme of the Act for construing ‘Profession’ as ‘Business’ or ‘Trade’; or ‘Professional’ as ‘service provider’ would be extending the scope of the Act which was not intended, rather would have a counter productive effect. We are therefore of the considered opinion that the very purpose and object of the CP Act 1986 as re-enacted in 2019 was to provide protection to the consumers from the unfair trade practices and unethical business practices only. There is nothing on record to suggest that the Legislature ever intended to include the Professions or the Professionals within the purview of the Act.

X X X

25. This takes us to the next question. Even if, it is held that the CP Act applies to the “Professions” and the “Professionals,” the next question that falls for our consideration is whether the Legal Profession is *sui generis* or is different from the other Profession, particularly from the Medical Profession because the NCDRC in the impugned order has relied upon the decision in case of ***Indian Medical Association vs. V.P Shantha*** (supra) for bringing the Advocates within the purview of the CP Act.

X X X

31. The next question that falls for our consideration is whether a service hired or availed of an Advocate could be said to be the service under a “contract of personal service?”

X X X

38. The question as to whether a given relationship should be classified as a contract ‘for services’ as opposed to a contract ‘of service’ [i.e. contract ‘of personal service’] is a vexed question of law and is incapable of being answered with exactitude without reference to the underlying facts in any given case. This Court ***in Dharangadhra Chemical Works Ltd. vs. State of Saurashtra and Others***¹⁰, recognized this position of law and held that “the correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer”. In the words of Fletcher Moulton,



L.J. at P.549 in *Simmons v. Heath Laundry Company* [(1924) 1 KB 762] which were cited with approval in *Dharangadhra Chemcial Works Ltd.* (supra):

“In my opinion it is impossible to lay down any rule of law distinguishing the one from the other. It is a question of fact to be decided by all the circumstances of the case. The greater the amount of direct control exercised over the person rendering the services by the person contracting for them the stronger the grounds for holding it to be a contract of service, and similarly the greater the degree of independence of such control the greater the probability that the services rendered are of the nature of professional services and that the contract is not one of service.”

(Underlined portion emphasized)

16. It was thus held that the services rendered by professionals such as lawyers do not fall within the scope and ambit of the Consumer Protection Act, 1986.

17. Reverting back to the instant matter, there is no gainsaying that Section 2(1)(c) of the CC Act enumerates different kinds of commercial contracts and transactions, which have to be construed in a plain grammatical manner in order to ascertain whether the same are commercial disputes. The word ‘provision’ as per the **dictionary.com** means; a clause in a legal instrument, a law, etc., providing for a particular matter; stipulation; proviso.

Synonyms: condition; the providing or supplying of something, especially of food or other necessities.

arrangement or preparation beforehand, as for the doing of something, the meeting of needs, the supplying of means, etc.

something provided; a measure or other means for meeting a need. a supply or stock of something provided.



provisions, supplies of food. **Synonyms:** stock, provender, store-
Ecclesiastical.

An appointment to an ecclesiastical office

Appointment by the pope to a see or benefice not yet vacant.

18. On the other hand, the **Online Cambridge Dictionary** defines the word ‘provision’ used as a noun (supply) as the act of providing something and in plural sense, it is supply of food and other necessary things. The word ‘provision’ used as a noun in law means a statement within an agreement or a law that a particular thing must happen or be done, specially before another can happen or be done. The word ‘provision’ used as a noun in finance means in a company’s accounts i.e. financial records, an amount of money that is kept in case of a possible future loss. The word ‘provision’ also means something that is needed or wanted or the act of considering the need for something and arranging for it. It also means the act of selling goods or services or making them available to be used. The expression “unless and until the context otherwise provides” under Section 2 of the CC Act read with the purpose and objectives for which the CC Act has been promulgated would require the word ‘provision’ to be interpreted in commercial sense.

19. The word ‘service’ on the other hand as per **dictionary.com** means a system or organization that provides the public with something that it needs; the job that an organization does; a business whose work involves something for customers but not producing goods; the work that such a service does. Used as a verb, it means to examine and, if necessary, repair a car machine etc. As per the



Online Cambridge Dictionary the word ‘service’, used as a noun in case of dealing with customers means the act of dealing with customers in a shop, restaurant or a hotel by taking their orders, showing or selling them goods etc.; and used as a noun in case of a work, the act that someone does or time someone spends working for an organization. It also means the particular skills that someone has and can offer to others. The word ‘service’ is also used in case of Armed Forces so as to connote working in such organization and in context of a religious ceremony it is providing service to the almighty or to the devotees.

20. The crux of the matter is that the expression “provision of services” in Section 2(1)(c)(xviii) of the CC Act is used disjunctively from the expression “sale of goods” but the overall theme and its purport is that it would mean to be a ‘provision of services’ when used in the commercial sense. At this juncture it would be apposite to refer to the decision by the Gujarat High Court in the case of *Arvind Processing Park Pvt. Ltd (supra)* wherein the plaintiff had sued the defendant for recovery of brokerage amount @ 2% in respect of parcels of land purchased by the defendant directly from the Farmer, although the plaintiff had been engaged as the prime negotiator with the Farmers for the purchase and sale of such land. When a dispute arose as to whether or not the said recovery suit was in the nature of commercial dispute, the same was answered in affirmative observing as under:

“26. The primary aim and object of the Commercial Courts Act, as can be discerned from its Statement of Objects and Reasons, was to provide speedy disposal of high value commercial disputes in order



to reduce the pendency of cases. The relevant portion of the Statement of Objects and Reasons reads:

“The proposal to provide for speedy disposal of high value commercial disputes has been under consideration of the Government for quite some time. The high value commercial disputes involve complex facts and questions of law. Therefore, there is a need to provide for an independent mechanism for their early resolution. Early resolution of commercial disputes shall create a positive image to the investor world about the independent and responsive Indian legal system.”

33. From a perusal of the provision relied upon by the learned counsel appearing for the plaintiff, it is noticed that the dispute arising out of an agreement for sale of goods or provision of services will qualify to be a commercial dispute to be tried by the Commercial Courts. The question, therefore, would be that in the instant case, though the parties have entered into a Memorandum of Understanding reduced into writing duly signed whether such agreement in writing could be termed as one relating to provision of services falling within clause referred to above so as to confer the jurisdiction upon the Commercial Court to adjudicate the suit.

34. At this stage, we may refer to a decision of the Supreme Court in the case of *Ambalal Sarabhai Enterprises Ltd. v. K S Infraspace LLP* [Civil Appeal No. 7843 of 2019 decided on 4th October 2019], wherein His Lordship Justice A.S. Bopanna has observed in paras 13 and 14 as under:

“13. The learned senior advocate for the appellant would however, contend that a strict interpretation as in the case of taxing statutes would not be appropriate in the instant case where the issue relates to jurisdiction. In that regard, the learned senior advocate has referred to the statement of objects and reasons with which the Commercial Courts Act, 2015 is enacted so as to provide speedy disposal of high value commercial disputes so as to create the positive image to the investors world about the independent and responsive Indian Legal System. Hence, he contends that a purposive interpretation be made. It is contended that a wider purport and meaning is to be assigned while entertaining the suit and considering the dispute to be a commercial dispute. Having taken note of the submission we feel that the very purpose for which the CC Act of 2015 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. In commercial disputes as defined a special procedure is provided for a class of litigation and a strict procedure will have to be followed to entertain only that class of litigation in that jurisdiction. If the same is strictly interpreted it is not as if those excluded will be non-suited without any remedy. The excluded class of litigation will in any event be entertained in the ordinary Civil Courts wherein the remedy has always existed.

14. In that view it is also necessary to carefully examine and entertain only disputes which actually answers the definition “commercial disputes” as provided under the Act. In the instant case, as already taken note 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. Further the very relief sought in the suit is for execution of the Mortgage Deed which is in the nature of specific performance of the terms of Memorandum of Understanding without reference to nature of the use of the immovable property in trade or commerce as on the date of the suit. Therefore, if all these aspects are kept in view, we are of the opinion that in the present facts the High Court was justified in its conclusion arrived through the order dated 01.03.2019 impugned herein. The Commercial Court shall therefore return the plaint indicating a date for its presentation before the Court having jurisdiction.”

Her Ladyship R. Banumathi, J. in her separate judgement, though concurring with Justice Bopanna, has observed as under:

“20. Various provisions of the Act namely Case Management Hearing and other provisions makes the court to adopt a pro-active approach in resolving the commercial dispute. A new approach for carrying out case management and strict guidelines for completion of the process has been introduced so that the adjudicatory process is not delayed. I have referred to the various provisions of the Act and the Schedule bringing in



“27. The object and purpose of the establishment of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of the High Court is to ensure that the cases involved in commercial disputes are disposed of expeditiously, fairly and at reasonable cost to the litigants. Keeping in view the object and purpose of the establishment of the Commercial Courts and fast tracking procedure provided under the Act, the statutory provisions of the Act and the words incorporated thereon are to be meaningfully interpreted for quick disposal of commercial litigations so as to benefit the litigants especially those who are engaged in trade and commerce which in turn will further economic growth of the country. On the above reasonings, I agree with the conclusion arrived at by my esteemed brother Justice A.S. Bopanna.”

35. The following is discernible from the aforesaid decision of the Supreme Court:

[1] The Act, 2015 has been enacted for the purpose of providing an early disposal of high value commercial disputes.

[2] The provisions of the Act should be strictly construed. If the provisions are given a liberal interpretation, the object behind the constitution of the commercial division of Courts namely putting the matter on fast track and speedy resolution of the commercial dispute would be defeated.

[3] A dispute relating to the immovable property *per se* may not be a commercial dispute. But it may become a commercial dispute if it falls under any of the sub-clauses of Section 2(1)(c) of the Act.

[4] The purpose for which the Act of 2015 has been enacted would be defeated if every other suit merely because it is filed before the Commercial Court is entertained.

39. There is no doubt that the word “or” is a disjunctive that marks an alternative which generally corresponds to the word “either”. Where general words follow the designation of particular things, or classes of persons or subjects, the general words will usually be construed to include only those persons or things of the same class or general nature as those specifically enumerated. This is the rule known as “*ejusdem generis*”, and it is founded upon the idea that if the legislature intended the general words to be used in an unrestricted sense, the particular classes would not have been mentioned. It is, specially applicable to the penal statutes. But under no circumstances, and regardless of the type of the statute involved, must the rule be used where the language of the statute under consideration is plain and there is no uncertainty. Its use is



permissible only as an aid to the Court in its attempt to ascertain the intent of the law makers. Nor will it be proper for the Court to follow the rule where to do so will defeat or impair the plain purpose of the legislature. It cannot be employed to restrict the operation of an Act within narrower limits than was intended by the lawmakers. Nor is the rule to be applied where the specific words enumerate subjects which greatly differ from each other, or where the specific words exhaust all the objects of the class mentioned. Under such circumstances, the general words must have a different meaning from that of the specific words or be meaningless.

46. It is settled law that the word “or” can be read as “and” and the word “and” can be read as “or” where it is necessary to do so in order to give effect to the intention of the legislature. The Supreme Court in *Mazagaon Dock Ltd. v. Commr. of Income-tax and Excess Profits Tax*, AIR 1958 SC 861 laid down the proposition that the word “or” has to be read as “and” to give effect to the intention of the legislature. A Full Bench of the Madras High Court has held in *P.V. Rayarappa v. P. Kelappa*, AIR 1918 Mad 1026 (FB) that the word ‘and’ can be read as ‘or’ where it is necessary to do so in order to carry out the obvious intention of the legislature.

53. From what we have said above, it follows that if the meaning of the word sought to be given stultifies the purpose of the statute, or produces absurdity or contradiction, in that event the Court must take into account the purpose and the context of the provisions of the Act while interpreting the same.”

(Underlined portions emphasized)

21. In the light of the aforesaid view, unhesitatingly, if the plea of the learned counsel for the petitioner/defendant is accepted that the expression “provision of service” should be read akin to “contract of service” thereby encompassing a service or employment dispute between the parties that involves rendering of personal services within the scope and ambit of Section 2(1)(c) (xviii) of the CC Act, it would lead to patent absurdity or contradiction. Such service disputes between parties regarding the terms and conditions of employment operate on a different tangent and they cannot be held to be



commercial disputes within the domain of the CC Act. It goes without saying that service disputes are such where specific performance cannot be sought in terms of Section 14¹⁶ of the Specific Relief Act, 1963, whereas commercial disputes would constitute such category of matters where the respective obligations or the contract could be specifically enforced.

22. In view of the aforesaid backdrop, reliance by the learned Trial Court on the case of *Sanjay Kumar (supra)* cannot be faulted. It was a case where the respondent company employed the petitioner initially under an employment agreement and later on, he was designated as partner with a minor share in the firm. It appears that owing to certain omissions and commissions on the part of the petitioner, an inquiry was initiated against him, upon which the petitioner filed a Commercial Arbitration Application under Section 9 of the Arbitration and Conciliation Act, 1996, which came to be dismissed by the learned Commercial Court on the ground that the dispute raised was not a commercial dispute. The facts in the above noted case were similar to the present one inasmuch as services of the petitioner were terminated by the respondent company and the suit instituted under the provisions of CC Act was held to be not maintainable. It was held as under:-

¹⁶ 14. The following contracts cannot be specifically enforced, namely:— (a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20; (b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise; (c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and (d) a contract which is in its nature determinable.



“16. If every Employment Agreement of the kind that is the subject matter in the case at hand is brought within the ambit of commercial dispute, it would then be opening a pandoras’ box or will be opening flood gates of litigation before the commercial Court/s that would clog the said Court. This in effect would defeat the very reason why the commercial Court was constituted. The view of mine, in this regard, is fortified by the judgment of the Apex Court in the case of AMBALAL SARABHAI ENTERPRISES LTD. V. K.S. INFRASPACE LLP1 where the Apex Court interprets what is and what could be a commercial dispute within several enumerations under Section 2(1)(c) of the Act. The Apex Court has held as follows:

“6. At the outset, it is noticed that the consideration required in the instant case is as to whether the transaction between the parties herein which is the subject-matter of the suit could be considered as a “commercial dispute” so as to enable the Commercial Court to entertain the suit. In that regard, it is necessary to take note of Section 2(1)(c)(vii) of the CC Act, 2015. The said provision to the extent relevant is extracted here below for reference.

“2. Definition.—(1) In this Act, unless the context otherwise requires—

(a)-(b) * * *

(c) “commercial dispute” means a dispute arising out of—

(i)-(vi) * * *

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

(viii)-(xxii) * * *”

From a perusal of the provision relied upon by the learned Senior Advocates it is noticed that the disputes arising out of agreements relating to immovable property used exclusively in trade or commerce will qualify to be a commercial dispute to be tried by Commercial Courts. The question therefore would be that, in the instant case though the parties have entered into a sale transaction of the immovable property and presently in the suit the registration of a mortgage deed pertaining to the immovable property is sought, whether the immovable property involved could be considered as being used exclusively in trade or commerce.

7. The learned Senior Advocate for the appellant has 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



presently Respondent 1 has 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 has 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 Respondent 1 has sought for change of land use and to develop the land, the 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.

8. Though such rival contentions are put forth by the learned Senior Advocate on either side, these aspects cannot be dealt with in abstract. Instead the nature of the dispute and the jurisdiction to try the same is to be reflected in the suit itself since in a civil suit the pleadings, namely, averments in the plaint would at the outset be relevant to confer jurisdiction. Hence before adverting to the other aspects it would be necessary to carefully examine the plaint. The plaintiff has in detail referred to the nature of the transaction between the appellant and the respondents herein. In Para 5 thereof the detail of the land bearing R.S. No. 122 corresponding to City Survey Nos. 1101 and 1100/1 having land area of 9207 sq m at Mouje Subhanpura Reg. District, Vadodara is referred. Further the schedule of the property is indicated in Para 6 and reference is made to the Memorandum of Understanding where again the reference is made to the land. It is averred therein that it would be the total responsibility of Respondent 1 herein (Defendant 2 in the suit) to change the land use as well as to pay the amount that may be required for the permission. The amount to be paid as premium is referred and the right of the plaintiff to secure the mortgage deed in view of the terms of the MoU is stated. In the entire plaint there is no reference to the nature of the land or the type of use to which it was being put as on the date of the agreement to sell/sale deed/memorandum of understanding or as on the date of the suit.

9. Further on referring to the cause of action in Para 21, the plaintiff has thereafter referred in Para 22 to the



jurisdiction of the Court to hear and decide the matter. It would be appropriate to extract the same which reads as hereunder: “22. Jurisdiction: The plaintiff states that the defendants having their office at Vadodara land which is the subject-matter of the instant suit is situated within the territorial jurisdiction of this Hon'ble Court and hence this Hon'ble Court has the jurisdiction to hear and decide the matter.”

Even though in the paragraph describing jurisdiction the plaintiff has stated with regard to the territorial jurisdiction since the office and land being at Vadodara, there is no reference indicating the reason for which the plaintiff pleads that the court which is the Commercial Court exclusively constituted to try the commercial disputes has jurisdiction to try the instant suit. In that background, a perusal of the prayer made in the plaint would essentially indicate that the suit is one seeking for specific performance of the terms of MoU whereunder it is agreed that the mortgage deed be executed. Even if the immovable property under the mortgage deed was the subject-matter it was necessary to plead and indicate that the same was being used in trade or commerce due to which the jurisdiction of Commercial Court is invoked. Without such basic pleadings in the plaint, any explanations sought to be put forth subsequently would only lead to a situation that if an objection is raised, in every suit a consideration would be required based on extraneous material even to ascertain as to whether the intended transaction between the parties was of such nature that it is to be construed as a commercial dispute.

10. Be that as it may, the learned Senior Advocates on both sides have sought to rely on the legal position decided by the various High Courts in the absence of the pronouncement of this Court. The learned Senior Advocate in that regard have referred to the various decisions on the same point. However, we do not find it appropriate to refer to each of them and over burden this order since we notice that the High Court in fact has referred to various decisions while deciding the instant case and has thereafter arrived at its conclusion. The discussion as made by the High Court with reference to the various decisions is also justified. In that view, we would refer to the decision of a Division Bench in Jagmohan Behl v. State Bank of Indore [Jagmohan Behl v. State Bank of Indore, 2017



SCC OnLine Del 10706] relied on by the learned Senior Advocate for the appellant. In that regard, it is noticed that in the said case on taking note of the provision contained in Section 2(1)(c)(vii) of the CC Act, 2015 it is held that the dispute involved therein would constitute a commercial dispute and the expression “arising out of” and “in relation to immovable property” should not be given the narrow and restricted meaning and the expression would include all matters relating agreements in connection with the immovable properties. The said conclusion reached was in a circumstance where the immovable property in question was undoubtedly being used for a trade or commerce and it was held so when the claim in the suit is for recovery of rent or mesne profit, security deposit, etc. for the use of such immovable property.

11. On the other hand, the learned Senior Advocate for the respondents has relied on the decision of a Division Bench of the Gujarat High Court in Vasu Healthcare (P) Ltd. v. Gujarat Akruvi TCG Biotech Ltd. [Vasu Healthcare (P) Ltd. v. Gujarat Akruvi TCG Biotech Ltd., 2017 SCC OnLine Guj 724 : AIR 2017 Guj 153] wherein a detailed consideration has been made and the conclusion reached therein by taking note of an earlier decision is that on a plain reading of Section 2(1)(c) of the CC Act, 2015 the expression “used” must mean “actually used” or “being used”. It is further explained that if the intention of the legislature was to expand the scope, in that case the phraseology “likely to be used” or “to be used” would have been employed. The verbatim consideration therein is as hereunder: (SCC OnLine Guj para 33)

“33. Therefore, if the dispute falls within any of the Section 2(c) the dispute can be said to be “commercial dispute” for which the Commercial Court would have jurisdiction. It is required to be noted that before the learned Commercial Court the original plaintiff relied upon Sections 2(c)(i), 2(c)(ii) and 2(c)(xx) of the Commercial Courts Act only. The learned counsel appearing on behalf of the original plaintiff has candidly admitted and/or conceded that the case shall not fall within Sections 2(c)(i); 2(c)(ii) or 2(c)(xx) of the Commercial Courts Act. It is required to be noted that before the learned Commercial Court it was never the case on behalf of the original plaintiff that the case would fall within



Section 2(c)(vii) of the learned Commercial Court. Despite the above we have considered on merits whether even considering Section 2(c)(vii) of the Commercial Courts Act, the dispute between the parties can be said to be “commercial dispute” within the definition of Section 2(c) of the Commercial Courts Act or not? 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. As observed hereinabove, at the time of filing of the suit and even so pleaded in the plaint, the immovable property/plots the agreements between the parties cannot be said to be agreements relating to immovable property used exclusively in trade or commerce. As per the agreement between the party after getting the plots on lease from the GIDC, the same was required to be thereafter developed by the original Defendant 1 and after providing all infrastructural facilities and sub-plotting it, the same is required to be given to other persons like the original plaintiff. It is the case on behalf of the original plaintiff that as the original Defendant 1 has failed to provide any infrastructural facilities and develop the plots and therefore, a civil suit for specific performance of the agreement has been filed. There are other alternative prayers also. Therefore, it cannot be said that the agreement is as such relating to immovable property used exclusively in trade or commerce. It is the case on behalf of the original plaintiff that as in clause (vii) of Section 2(c), the phraseology used is not “actually used” or “being used” and therefore, even if at present the plot is not used and even if it is likely to be used even in future, in that case also, Section 2(c)(vii) shall be applicable and therefore, the Commercial Court would have jurisdiction. The aforesaid has no substance. As per the cardinal principle of law while interpreting a particular statute or the provision, the literal and strict interpretation has to be applied. It may be noted that important words used in the relevant provisions are “immovable property used exclusively in trade or commerce”. If the submission on behalf of the original plaintiff is accepted in that case it would be adding something in the statute which is not there in the statute, which is not permissible. On plain reading of the relevant clause it is clear that the expression “used” must mean “actually used” or “being used”. 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”. Similar view has been taken by the Bombay High Court (Nagpur Bench) in Dineshkumar Gulabchand Agrawal [Dineshkumar Gulabchand Agrawal v. CIT, 2003 SCC OnLine Bom 1289 : (2004) 267 ITR 768] and it is observed and held that the word “used” denotes “actually used” and not merely “ready for use”. It is reported that SLP against the said decision has been dismissed [Dineshkumar Gulabchand Agrawal v. CIT, 2004 SCC OnLine SC 13] by the Hon'ble Supreme Court.”

(emphasis in original)

12. Though we are informed that the said decision is assailed before this Court in a special leave petition we are inclined to agree with the view expressed therein. This is for the reason that this Court while examining the issue relating to exclusive land use, though in the different context has laid emphasis on the present user of the land either for agriculture or non-agriculture purpose being relevant. In that regard, the decision relied on by the learned Senior Advocate for the respondent in Federation of A.P. Chambers of Commerce & Industry v. State of A.P. [Federation of A.P. Chambers of Commerce & Industry v. State of A.P., (2000) 6 SCC 550] is noticed, wherein it is observed as under: (SCC pp. 552-53, paras 6 & 9) “6. Section 3 of the said Act speaks of “land is used for any industrial purpose”, “land is used for any commercial purpose” and “land is used for any other non-agricultural purpose”. The emphasis is on the words “is used”. For the purposes of levy of assessment on non-agricultural lands at the rate specified in the Schedule for land used for industrial purposes, therefore, there has to be a finding as a fact that the land is in fact in praesenti in use for an industrial purpose. The same would apply to a commercial purpose or any other non-agricultural purpose.

9. We are in no doubt whatever, therefore, that it is only land which is actually in use for an industrial purpose as defined in the said Act that can be assessed to non-agricultural assessment at the rate specified for land used for industrial purposes. The wider meaning given to the word “used” in the a b c d e f g h This is a True Court Copy™ of the judgment as appearing on the Court



website. MANU/KA/1206/2023 : Downloaded from www.manupatra.com Printed on : 27 May 2024 Printed for : WBNUJS Library and Information Centre 29 judgment under challenge is untenable. Having regard to the fact that the said Act is a taxing statute, no court is justified in imputing to the legislature an intention that it has not clearly expressed in the language it has employed.” (emphasis supplied)

13. The learned Senior Advocate for the appellant would however, contend that a strict interpretation as in the case of taxing statutes would not be appropriate in the instant case where the issue relates to jurisdiction. In that regard, the learned Senior Advocate has referred to the Statement of Objects and Reasons with which the Commercial Courts Act, 2015 is enacted so as to provide speedy disposal of high value commercial disputes so as to create the positive image to the investors world about the independent and responsive Indian legal system. Hence, he contends that a purposive interpretation be made. It is contended that a wider purport and meaning is to be assigned while entertaining the suit and considering the dispute to be a commercial dispute. Having taken note of the submission we feel that the very purpose for which the CC Act of 2015 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 lawmakers. In commercial disputes as defined a special procedure is provided for a class of litigation and a strict procedure will have to be followed to entertain only that class of litigation in that jurisdiction. If the same is strictly interpreted it is not as if those excluded will be non-suited without any remedy. The excluded class of litigation will in any event be entertained in the ordinary civil courts wherein the remedy has always existed.

14. In that view it is also necessary to carefully examine and entertain only disputes which actually answers the definition “commercial disputes” as provided under the Act. In the instant case, as already taken note a b c d e f g h This is a True Court Copy™



of the judgment as appearing on the Court website. MANU/KA/1206/2023 : Downloaded from www.manupatra.com Printed on : 27 May 2024 Printed for : WBNUJS Library and Information Centre 30 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. Further the very relief sought in the suit is for execution of the mortgage deed which is in the nature of specific performance of the terms of Memorandum of Understanding without reference to nature of the use of the immovable property in trade or commerce as on the date of the suit. Therefore, if all these aspects are kept in view, we are of the opinion that in the present facts the High Court was justified in its conclusion arrived through the order dated 1-3-2019 [K.S. Infraspac LLP v. Ambalal Sarabhai Enterprises Ltd., 2019 SCC OnLine Guj 1926] impugned herein. The Commercial Court shall therefore return the plaint indicating a date for its presentation before the Court having jurisdiction.”

(Emphasis supplied)

23. In view of the aforesaid discussion, learned Single Judge of the Karnataka High Court held as under:

The Apex Court holds that issues which not relate to commercial disputes are filed before the commercial Courts merely because of high value and with the intention of seeking early disposal. Such issues brought before the commercial Court should not be entertained, as it is not intended to bring in every dispute before the commercial Court by the law makers. The Apex Court further holds that the excluded class of litigation will, in any event be entertained, in the ordinary civil Courts wherein the remedy always existed to add, does always exist.”

24. In view of the foregoing discussion, this Court finds that the impugned order dated 21.12.2023 passed by the learned Trial Court dismissing the application under Order VII Rule 11 of the CPC does not suffer from any illegality, perversity or incorrect approach in law.



Much mileage was sought to be taken by the learned counsel for the petitioner to the high value attached to the contract between the parties in the instant matter. The said aspect does not cut any ice. Merely because a contract of personal service or employment may have some attributes of being high value or have high stakes therein, as in the instant case, that by itself would not be sufficient so as to bring any dispute arising out of such contract within the scope and ambit of a commercial dispute. Merely because a contract of service also involves payment, remuneration and several other service perks or peculiar benefits, that alone would not be a decisive factor in holding it to be a commercial dispute. Unhesitatingly, this Court finds that a contract of service that requires rendering of personal services by one of the parties to another, is purely and simply a service dispute governed by the Service Law jurisprudence and the Common Law, for which remedy lies elsewhere. There is no doubt in the mind of this Court that the legislature never intended to bring a contract for the purpose of rendering personal services of an executive or administrative nature within the scope and ambit of the CC Act. In essence, intra-departmental disputes between the employer and employee of an organization are outside the purview of the CC Act.

25. Accordingly, the present revision petition is dismissed.

26. The pending application also stands disposed of.

DHARMESH SHARMA, J.

MAY 28, 2024

Sadiq