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THE EVOLVING DEFINITION OF "COMMERCIAL SUIT": A CRITICAL ANALYSIS OF AMBALAL SARABHAI ENTERPRISES LTD. VERSUS K.S. INFRASPACE LLP AND ANOTHER

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Abstract:

With the establishment of commercial courts through the mandate of The Commercial Courts Act 2015, there has been an attempt to provide for speedy disposal of specific disputes which are of commercial nature and are of specific value as per the requirement by the Act. However with this there has also been an increasing number of commercial suits being filed in the commercial courts and thus poses a challenge for the courts to determine whether the suits being filed actually fall within the ambit of the commercial courts as per the Commercial Courts Act 2015 or not. As the purpose of the Act would stand defeated if matters which are not commercial in nature as per the act are also instituted before the commercial courts. In regards to that this article aims to critically analyse the judgment of the Hon'ble Supreme Court in the matter of **Ambalal Sarabhai Enterprises Limited Versus K.S. Infrastructure LLP and Another**, in which the court through its judgement reflected upon the issue as to what all matters are qualified to be instituted as commercial suits under the Commercial Courts Act 2015.

Introduction:

The Commercial Courts Act, 2015 was a much needed step towards streamlining commercial dispute resolution in India in order to promote ease of doing business in India. A core aspect of this Act is ensure that cases are disposed of in an expeditious manner and at reasonable cost to the litigant. Further since the high value commercial suits involve various complex facts and questions of law, so it is imperative to have an independent mechanism for their speedy resolution. In turn this will help boost the commercial activity, bring in higher foreign investment, and make the country an attractive place for investors and multinational businesses. The act does this by delineating the jurisdiction of Commercial Courts through the definition of a "commercial suit" under Section 2(1)(c) of the Act.

In **Ambalal Sarabhai Enterprises Limited Versus K.S. Infraspace LLP and Another**⁷⁹⁶

The scope of the definition of commercial dispute has been the subject of judicial interpretation, particularly in regards to section 2(1)(c)(vii) which deals with agreements relating to immovable property used exclusively in trade or commerce, in regards to this a significant refinement is provided by Justice A.S. Bopanna and Justice Bhanumathi's judgment in this case. The judgment delves into the critical takeaways, particularly addressing how her interpretation shaped the understanding of a "commercial suit" under the Commercial Courts Act, 2015.

Background:

The brief facts of the present case is that the appellant executed an agreement to sell a

⁷⁹⁶ *Ambalal Sarabhai Enterprises Limited. Versus K.S. Infraspace LLP and Another*, AIR 2020 SUPREME COURT 307

parcel of land in favour of respondent 2, and the respondent 2 assigned and transferred all his rights under the said agreement to sell in favour of respondent 1 by executing an assignment deed. In regards to that the respondent 1 was to purchase the lands which were the subject matter of the agreement from the appellant herein. Further in accordance to that the sale was made under a deed of conveyance. Since certain aspects were to be completed regarding the change relating to the nature of the land for finalisation of the transaction, the appellant's right in the land needed to be protected. Hence, a Memorandum of Understanding was entered into between the appellant and the respondents. And a mortgage deed was required for the same to be executed by respondent 1 in favour of the appellant. And the same was made but not registered. In this light a commercial suit was filed for the execution of the mortgage deed and for permanent injunctions. And orders were issued by the respective commercial court in this regards. However the orders were set aside by the order of the High Court of Gujrat on grounds that the matter is not a commercial dispute and thus commercial court does not have the jurisdiction to entertain such matters. Hence, the matter came before the Supreme Court to decide whether the dispute in concern amounts to commercial dispute as per Commercial Courts Act, 2015 or not.

Interpretive Approach of the Supreme Court:

The Supreme Court's judgment was pivotal in clarifying the concept of a "commercial suit". The court meticulously examined Section 2(1)(c)(vii) of the Commercial Courts Act, 2015, highlighting the critical elements constituting a commercial suit which is that the dispute must be in the nature of a commercial dispute that of a specified value as specifically provided by the Act. The Supreme Court while hearing this matter observed that as per the cardinal principle of law while interpreting a particular statute or the provision, the literal and strict interpretation has to be applied. A heavy emphasis need to be given to the words used

under section 2(1)(c)(vii) of the Commercial Courts Act 2015, which states:

"(vii) agreements relating to immovable property used exclusively in trade and commerce;"⁷⁹⁷

As per the court's observation it must be very carefully noted that choice of the phrase ***"used exclusively in trade and commerce"*** in the language of the section 2(1)(c)(vii) denotes the intent of the legislature in drafting of the statute. On a plain reading it could easily be grasped that the choice of the word ***"used"*** must mean ***"actually used"*** or ***"being used"*** and not ***"to be used"*** or ***"likely to be used"***. If the intent of the legislature would have been to expand the scope for immovable property to be used for future activities then they must have incorporated the words such as likely to be used in place of used.

Further it was also observed that The Commercial Courts Act 2015, was enacted in order to provide speedy disposal of commercial suits of specific value or higher than that and to create a positive image as of the efficacy of the Indian legal system. While interpreting the provisions of the act if a wider or more liberal approach will be adopted then it would defeat the purpose for which the Act was enacted. In that view it is extremely crucial to entertain only those suits which actually for under the ambit of commercial disputes as per section 2(1)(c) of the Act.

In this case, neither the agreement between the parties had any direct reference as to property being exclusively used for trade or commerce as on the date of the agreement nor was there any pleading to that effect in the plaint. In addition that the very relief which was sought in the suit is for the execution of the mortgage deed which is in the nature of specific performance of the terms of the Memorandum of Understanding without making any reference to nature of the use of the immovable property in trade or commerce.

⁷⁹⁷ THE COMMERCIAL COURTS ACT, 2015

Further Justice R. Bhanumathi highlighted that the establishment of commercial courts not only benefits the litigants, but also helps in the reduction in backlog caused by the heavy number of suits being filed in ordinary courts. While referring to the statement of objects and reasons of the Commercial Courts Act 2015, and the numerous amendments made to the Civil Procedure Code, the intent of the legislature seems to be very clear and specific that to have a procedure which provides for disposal of commercial disputes in an expeditious manner and thus thereby creating a positive environment for investing and business activities in the country. She further observed that a purposive interpretation of these, leaves no room for doubt that the provisions of the Act require to be strictly construed.

Emphasis on Substantive Nature: Justice Bhanumathi's decision underscored that the form of a transaction is less important than its substantive commercial nature. Courts must investigate the underlying intent and purpose of the transaction when determining its commercial character.

Narrower Scope for Immovable Property Disputes: The judgment established a stricter threshold for immovable property disputes to fall within the Commercial Court's purview. Only when such property is exclusively used for commercial purposes at the time of the dispute would the matter be considered a commercial suit. This approach narrows the scope of property-related disputes that can be tried by Commercial Courts. If we take a closer look at the Statement of Objects and Reasons, words such as "early" and "speedy" have been incorporated and reiterated.

Points of Analysis:

1. Legislative Intent: Justice Bhanumathi carefully considered the legislative intent behind the Commercial Courts Act, 2015. She highlighted the Act's objective of expediting the resolution of commercial disputes and promoting ease of doing business in India. Therefore the provision

of the Act needs to be construed in a strict and literal sense in order to stay true to the meaning of the provisions which was intended by the legislature while enacting the Act. This understanding informed her strict interpretation of the conditions for a case to come under a Commercial Court.

2. Meaning of "Exclusively": Significant debate revolved around the word "exclusively" in the context of immovable property being "used exclusively" for commercial purposes. Justice Bhanumathi adopted a practical interpretation, indicating that the primary and dominant use of the property must be commercial. Any incidental or minor non-commercial use would not disqualify the property from the 'commercial' classification.

3. Precedence & Reference to other Judgments: The judgment drew from prior judgement of the Gujrat High Court in the matter of **Vasu Healthcare (P) Ltd. Versus Gujrat Akruiti TCG Biotech Ltd.**⁷⁹⁸ in which it was held that on a plain reading of the relevant clauses of the Act it is very clearly evident that the expression "used" must mean "actually used" or "being used". This analysis demonstrated a continuity of thought while also highlighting the specific points where Justice Bhanumathi provided further refinement of the definition.

4. Impact on Real Estate Disputes: The judgment directly affects how land-based disputes are classified. Land intended for development or clearly marked for commercial ventures with ongoing transactions would more readily fall under the Commercial Court's purview. Disputes over land with mixed-use or ambiguous development plans

⁷⁹⁸ Vasu Healthcare (P) Ltd. Versus Gujrat Akruiti TCG Biotech Ltd. AIR 2017 Guj. 153

may potentially be directed to regular civil courts .

5. **Shift in Burden of Proof:** With a stricter interpretation, the onus might now be on the plaintiff to demonstrate that a dispute arises from a transaction of a definitively commercial nature and that any immovable property involved is predominantly used for commercial purposes.
6. **Potential for Further Refinement:** Justice Bhanumathi's decision provides a strong foundation but leaves room for evolving interpretations as new and diverse commercial disputes would continue to arise. The concept of a commercial suit is likely to be further explored and refined by subsequent judgments which would provide more clarity as to what particular other matters. Would originally fall under the ambit of commercial courts. Thus, would help create a more robust and streamlined operations for the commercial courts and would allow the courts to achieve to objectives for which they are established.

Conclusion

The Supreme Court's judgement is a landmark judgment in this regard as it provides clarity as to what constitutes commercial dispute in regards to immovable property as per section 2(1)(c)(vii) of the Commercial Courts Act 2015, which could be instituted in form of commercial suits at the different levels of commercial courts established under the Act. The judgement focuses on the "transaction of a commercial nature" and the requirement of exclusive commercial use of immovable property has significantly impacted how courts determine their jurisdiction in commercial disputes. This, in turn, plays a crucial role in streamlining litigation and ensuring a more efficient and focused resolution process for businesses in India. As it provides for a clear demarcation of what suits can be filed before the commercial courts and thus preventing unnecessary filing of suits which does not fall under the ambit of

commercial courts to decide. Thus this judgment has been revolutionary in the sense as it also provides for the order in which the provisions of the specific legislations are needed to be interpreted. Hence, this judgement was truly remarkable as it shows the ability of the judiciary to decide over complex issues which further helps towards upholding the trust in the judicial bodies.