



HC-KAR

NC: 2025:KHC:21666
WP No. 17588 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 17588 OF 2022 (GM-CPC)

BETWEEN:

M/S. VISWAS TEXTILE PROCESSORS,
A PARTNERSHIP FIRM HAVING ITS OFFICE AT
SY. NO. 24, GUDIMAVI VILLAGE,
Kengeri Hobli, Mysuru Road,
Bengaluru - 560 074,
Represented by its Managing Partner,
MR. B.K. RAMAKRISHNA.

...PETITIONER

(BY SRI. HEMANTH R. RAO, ADVOCATE FOR
SRI. RUKKOJI RAO H.S, ADVOCATE)

AND:

1. ICICI BANK LIMITED,
REGISTERED ADDRESS:
ICICI BANK TOWER, NEAR CHAKLI CIRCLE,
OLD PADRA ROAD, VADODARA, GUJRAT - 390 007,
BRANCH OFFICE ADDRESS:
ICICI BANK LIMITED, KUMBALAGODU BRANCH,
RAJARAJESHWARI COLLEGE OF ENGINEERING,
NO. 14, RAMOHALLI CROSS, MYSORE ROAD,
KUMBALAGODU, BENGALURU - 560 074.
2. MR. MOHAN NAIK,
FATHERS NAME NOT KNOWN,
AGED ABOUT 27 YEARS,





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RESIDING AT NO. 772, CHOWKIMANE,
GUDDINAKATTU, KADATOKA,
HONNAVARA TALUK,
UTTARA KANNADA - 581 334.

3. MR. ARUN KUMAR K.S,
S/O SIDDAPPA,
AGED ABOUT 27 YEARS,
RESIDING AT KITHEGERI VILLAGE,
K. HOSEKOTE POST, HOBLI ALUR TALUK,
HASSAN - 573 213.

4. MS. SHALINI B.G,
W/O ARUN KUMAR K.S,
AGED ABOUT 27 YEARS,
RESIDING AT NO. 474,
NANDAGOKULA HOUSE,
YAMUNA ROAD, SMV LAYOUT,
G. BELLUR VILLAGE, PALYA HOBLI,
ALUR TALUK, HASSAN - 573 213.

5. MR. SHIVALINGEGOWDA,
AGED ABOUT 36 YEARS,
RESIDING AT HUYLLEGALA VILLAGE,
HALUGURU HOBLI, MALAVALLI TALUK,
MANDYA DISTRICT - 571 430.

...RESPONDENTS

(BY SRI. JAI M. PATIL, ADVOCATE FOR R1;
VIDE ORDER DATED 16.01.2025, NOTICE TO R3 AND R5 IS
DISPENSED WITH AND SERVICE OF NOTICE TO R4 IS
HELD SUFFICIENT;
R2 SERVED - UNREPRESENTED)

THIS WP IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER



DATED 30.08.2022 PASSED BY THE X ADDL. DISTRICT AND SESSION JUDGE, BENGALURU RURAL DISTRICT, BENGALURU PASSED IN COMM.OS.NO.95/2022 PRODUCED AT ANNEXURE-A AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR JUSTICE M.NAGAPRASANNA**

ORAL ORDER

The petitioner - plaintiff is before this Court calling in question an order dated 30.08.2022 by which the concerned Court rejects the plea of the petitioner - plaintiff that the dispute is a commercial dispute within the meaning of Section 2(1)(c) of the Commercial Courts Act, 2015 ('the Act for short) and therefore as to be tried by the Commercial Court.

2. Heard Shri Hemanth R. Rao, learned counsel and Shri Rukkoji Rao H.S., learned counsel appearing for the petitioner and Shri Jai M. Patil, learned counsel appearing for respondent No.1.



3. The facts in brief germane are as follows:

The plaintiff is a partnership firm in the business of garment processing and manufacturing. The defendant No.1 is a banking company and other defendants are employees of the banking company. The plaintiff had appointed defendant No.3 as its Accountant with effect from 01.07.2017 and the other defendants are associates of defendant No.3. A current account is maintained at the branch of defendant No.1 for several years. Several irregularities in the said account were found in the month of December-2019. It transpires that huge sums of money were withdrawn in cash through cheques by defendant No.3 from the current account by allegedly forging the signatures of the partners of the plaintiff firms. All the said cheques have been passed by defendant No.1 through defendant No.2, without due verification.

4. The plaintiff then was informed by defendant No.1 that defendant No.3 had changed the registered mobile number of the plaintiff's banking account to his personal number and thereby all the OTP would come to his mobile number. On coming to know of the said misappropriation of funds, a crime



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comes to be registered by the plaintiff and the police after investigation have filed a charge sheet, which is pending in C.C.No.2281/2020. The plaintiff then causes a legal notice on the defendants calling upon them to jointly and severally pay a sum of Rs.4,58,75,000/- with 18% interest per annum.

5. The notice was served and defendant No.1 replies to the notice denying the same. The plaintiff then institutes an O.S.No.117/2021 before the V Additional Senior Civil Judge, Bengaluru Rural District. On constitution of the Commercial Court, the plaintiff is said to have filed an application under Section 15 of the Act seeking transfer of the suit to the Commercial Court, as according to the plaintiff the dispute was a commercial dispute in terms of the Act. The Court taking up the application, rejects it on the ground that it is not a commercial dispute. None of the defendants objected to the application, but consented to the matter to be transferred to the Commercial Court. The suit was transferred on 16.04.2022 and registered as Commercial O.S.No.95/2022. The Commercial Court then framed an issue as to whether the Commercial OS was maintainable, as a preliminary issue.



Answering the preliminary issue, the Commercial Court holds that the suit, before the Commercial Court is not maintainable. It is therefore, the petitioner - plaintiff is before this Court.

5. Learned counsel appearing for the petitioner would reiterate the submissions made before the concerned Court to contend that the definition is clear, that it is a commercial dispute. If it were to be misappropriation in a savings bank account, it would not have become a commercial dispute, but what has happened is in a current account, as day to day business happens in that account. Therefore, it becomes a commercial dispute. He would seek to place reliance upon plethora of judgments, all of which would bear consideration *qua* the relevance, in the course of the order.

6. *Per contra*, the learned counsel representing respondent No.1 would submit that they never objected to the maintainability of the commercial OS nor objecting now. The Court on by itself has framed a preliminary issue and answered the said issue. The learned counsel submits it does amount, to a commercial dispute.



7. I have given my anxious consideration to the submissions made by the respective learned counsel and have pursued the material available on record.

8. The afore-narrated facts would not require reiteration, as they are a matter of record. The issue now lies in a narrow compass. Whether misappropriation of funds or loss of funds, in a current account maintained in a banking institution, would become the subject matter of a commercial dispute, it is necessary to notice the Act.

THE ACT:

9. Section 2 of the Commercial Courts Act, 2015 reads as follows:

"2. Definitions.—(1) In this Act, unless the context otherwise requires,—

[(a) "Commercial Appellate Courts" means the Commercial Appellate Courts designated under section 3A;]

[(aa)] "Commercial Appellate Division" means the Commercial Appellate Division in a High Court constituted under sub-section (1) of section 5;

(b) "Commercial Court" means the Commercial Court constituted under sub-section (1) of section 3;

(c) "commercial dispute" means a dispute arising out of—

(i) ordinary transactions of merchants, bankers, financiers and traders such as those



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relating to mercantile documents, including enforcement and interpretation of such documents;

- (ii) export or import of merchandise or services;
- (iii) issues relating to admiralty and maritime law;
- (iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;
- (v) carriage of goods;
- (vi) construction and infrastructure contracts, including tenders;
- (vii) agreements relating to immovable property used exclusively in trade or commerce;
- (viii) franchising agreements;
- (ix) distribution and licensing agreements;
- (x) management and consultancy agreements;
- (xi) joint venture agreements;
- (xii) shareholders agreements;
- (xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;

(xiv) mercantile agency and mercantile usage;

- (xv) partnership agreements;
- (xvi) technology development agreements;
- (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;
- (xviii) agreements for sale of goods or provision of services;
- (xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;
- (xx) insurance and re-insurance;
- (xxi) contracts of agency relating to any of the above; and
- (xxii) such other commercial disputes as may be notified by the Central Government.

Explanation.--A commercial dispute shall not cease to be a commercial dispute merely because—

- (a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;



(b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;

(Emphasis supplied)

Section 2 of the Commercial Courts of the Act deals with definition. Section 2(1)(c) of the Act defines what is a commercial dispute. A commercial dispute in terms of 2(1)(c) of the Act would mean in relationship to an immovable property.

PRECEDENTIAL LANDSCAPE:

10. The Apex Court in the case of **PRADEEP KUMAR Vs. POSTMASTER GENERAL**, reported in **(2022) 6 SCC 351** holds that, on the opening of a bank account, a contractual relationship is created between the customer and the banker.

The Apex Court has held as follows:

"24. When deciding whether the bank is negligent it is necessary to see whether the rules or instructions of the bank are followed or not, though this may not always be conclusive. **Till an account is opened, banker and customer relationship is not created, but once the account is opened contractual relationship is created.** Moreover, mutual rights and obligations between the banker and customer are also created under law. In case of fraudulent encashment of cheques, the collection and payment embraces the bank's duty to the real owner, if the customer happens not to be the real owner. In such cases, the bank's liability is protected on the satisfaction of the



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conditions mentioned under Section 131 of the NI Act and not otherwise. This is so because the drawer of the cheque is not the customer of the bank while the payee is. Consequently, if there is anything to arouse suspicion regarding the cheque and the ownership of the customer, the bank may find itself beyond the protection of Section 131 of the NI Act. **Suspicion may arise when the amount is very large, credibility and identity of the customer is pieced, etc. Further, negligence may be established when collection and payment is made contrary to the tenor of the instrument. Carelessness occurs when there is failure to pay due attention to the actual terms of the mandate."**

(Emphasis supplied)

The Apex Court holds that till an account is opened, banker and customer relationship is not created. But once the account is opened, contractual relationship is generated.

11. The High Court of Delhi in the case of **JAGMOHAN BEHL Vs. STATE BANK OF INDORE**, reported in **2017 SCC OnLine Del 10706** while interpreting the words "arising out of" used in Section 2(1)(c) of the Act holds that the words have an expansive and wide meaning. It reads as follows:

"9. In order to appreciate the controversy, we would first reproduce the relevant definition clause, i.e. 2(1)(c)(vii), as also the explanation thereto:—

"Definitions.-(1) In this Act, unless the context otherwise requires-

(c) "commercial dispute" means a dispute arising out of-



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

Explanation.-A commercial dispute shall not cease to be a commercial dispute merely because-

- (a) *It also involves action for recovery of immoveable property or for realisation of monies out of immoveable property given as security or involves any other relief pertaining to immoveable property;*
- (b) *One of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;"*

10. The explanation in the present case has to be read as part and parcel of clause (vii), for the language of the explanation shows the purpose, and the construction consistent with the purpose which should be placed on the main provision. The main provision, therefore, has to be construed and read in the light of the explanation and accordingly the scope and ambit of sub-clause (vii) to clause(c), defining the expression "commercial dispute", has to be interpreted. The explanation harmonises and clears up any ambiguity or doubt when it comes to interpretation of the main provision. In *S. Sundaran Pillai v. V.R. Pattabiraman* (1985) 1 SCC 591, it was observed that explanation to a statutory provision can explain the meaning and intendment of the provision itself and also clear any obscurity and vagueness to clarify and make it consistent with the dominant object which the explanation seems to sub-serve. It fills up the gap. However, such explanation should not be construed so as to take away the statutory right with which any person under a statute has been clothed or to set at naught the working of the Act by becoming a hindrance in the interpretation of the same.

11. Clause (c) defines the "commercial dispute" in the Act to mean a dispute arising out of different sub-clauses. The expression "arising out of" in the context of clause (vii) refers to an agreement in relation to an immoveable property. The expressions "arising out of" and "in relation to immoveable property"¹ have to be given their natural and general contours. These are wide and expansive expressions and are not to be given a narrow and restricted meaning. The



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expressions would include all matters relating to all agreements in connection with immoveable properties. The immoveable property should form the dominant purpose of the agreement out of which the dispute arises. There is another significant stipulation in clause (vii) relating to immoveable property, i.e., the property should be used exclusively in trade or commerce. The natural and grammatical meaning of clause (vii) is that all disputes arising out of agreements relating to immoveable property when the immoveable property is exclusively used for trade and commerce would qualify as a commercial dispute. The immoveable property must be used exclusively for trade or business and it is not material whether renting of immoveable property was the trade or business activity carried on by the landlord. Use of the property as for trade and business is determinative. Properties which are not exclusively used for trade or commerce would be excluded."

(Emphasis supplied)

12. The High Court of Calcutta in the case of **LADYMOON TOWERS (P) LTD. Vs. MAHENDRA INVESTMENT ADVISORS (P) LTD.**, reported in **2021 SCC OnLine Cal 4240**, while interpreting the definition of "bankers" used in Section 2(1)(c)(i) holds that a banker is one, who is involved in the business of receipt of money, in the current or deposit account, and in the collection of cheques. The Court also holds that only a dispute arising out of a transaction between the named classes of persons falling under Section 2(1)(c)(i) of the Act, which has been formalized by way of a



mercantile document will be a “commercial dispute” under Section 2(1)(c)(i) of the 2015 Act. It reads as follows:

““Bankers”

7. In Halsbury's Laws of England, Fourth Edition, Volume 3, **a banker has been defined as one who is involved in the business of receipt of money on current or deposit account and the payment of cheques drawn by and the collection of cheques paid in by a customer.** Section 5(b) of The Banking Regulation Act, 1949 defines the work of a Banker on the same lines.

.....

13. It should also be pointed out that the words used in sub-clause (i) of clause (c) are “*ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents*”. The placement of the underlined words between ordinary transactions of the named persons and the mercantile documents indicates that all transactions between the specified classes of persons will not result in a “commercial dispute” where the transaction does not relate to mercantile documents. **Hence, only a dispute arising out of a transaction between the named classes of persons which has been formalised by way of a mercantile document will be a “commercial dispute” under Section 2(1)(c)(i) of the 2015 Act.**”

(Emphasis supplied)

13. In a later judgement a Division Bench of the High Court of Calcutta in the case of **VENKATESH VINCOM (P) LTD. Vs. SPICE OF JOY**, reported in **2022 SCC OnLine Cal 3010** holds that the definition of “mercantile documents” mentioned under Section 2(1)(c)(i) of the Act is a definition wide enough to include any expression or a description of any



substance by means of letters, marks or figures or electronic means, which would be sufficient enough to bring clarity of the matter. The word “mercantile” means a document relating to a merchant or trading or a document which is commercial in nature, and commercial paper includes negotiable instruments like cheques too. It reads as follows:

“7. Reverting to the core issue the eventuality enshrined in Clause (i) of Section 2(1)(c) of the said Act postulates that a dispute arising out of the ordinary transaction of financier relating to mercantile documents including its enforceability and interpretation are the important factors to be borne in mind. The said Clause can be segregated into 3 parts. Firstly, the dispute must arise out of ordinary transaction of financier and secondly, such ordinary transaction must relate to a mercantile document and thirdly, the enforceability and the interpretation of such document is involved. Admittedly, the appellant is a non banking financial corporation which would be evident from the averments made in the plaint and the certificate of incorporation annexed thereto. The primary function of the non banking corporation is to extend financial supports and can be regarded as an ordinary transaction of the financier. We find no ambiguity in this regard that lending money by the appellant is fundamentally the transactions which it does and can be regarded as the ordinary transaction. The parties are not ad idem on the expression “mercantile document” appearing in the said clause for the reason that there was no agreement in writing nor any document evincing the money given as loan to the respondents. **The mercantile document is not defined in the said Act. However, the said Act defines ‘document’ in Section 2(1)(f) to mean any matter expressed or described upon any substance by means of letters, figures, or marks, or electronic means or, by more than one of those means, intended to be used, or which may be used, for the purpose of recording that manner. The definition of a document is expansive and is not restricted to any agreement to be executed by and**



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between the parties recording the transactions at the beginning thereof. The definition is wide enough to include any expression or a description of any substance by means of letters, marks or figures or electronic means which would be sufficient enough to bring clarity of the matter. The word 'mercantile' in ordinary parlance means a document relating to a merchant or trading or a document which is commercial in nature. In *Black's Law Dictionary*, 8th Edition 'mercantile' is defined as in "BLD"

8. Since the word 'mercantile' includes the transaction which is of commercial nature the "commercial paper" is also defined in the *Black's Law Dictionary* as an instrument other than the cash for the payment of money and include negotiable instrument of a particular kind in the following:

"Commercial Paper : 1. An instrument, other than cash, for the payment of money. Commercial paper - typically existing in the form of a draft (such as a check) or a note (such as a certificate of deposit) - is governed by Article 3 of the UCC. But even though the UCC uses the term commercial paper when referring to negotiable instruments of a particular kind (drafts, checks, certificates of deposit, and notes as defined by Article 3), the term long predates the UCC as a business and legal term in common use. Before the UCC, it was generally viewed as synonymous with negotiable paper or bills and notes. It was sometimes applied even to nonnegotiable instruments. - Also termed mercantile paper; company's paper. See NEGOTIABLE INSTRUMENT."

"'Commercial paper' is rather a popular than a technical expression, often used, however, both in statutes and in decisions of courts, to designate those simple forms of contract long recognized in the world's commerce and governed by the law merchant."

"Defined most broadly, commercial paper refers to any writing embodying rights that are



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customarily conveyed by transferring the writing. A large subset of commercial paper consists of such writings that are negotiable, which means that the law enables a transferee to acquire the embodied rights free of claims and defences against the transferor."

"Sec. 2 (c) "Commercial dispute" means a dispute arising out of -

(ii) Ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents."

A coalesce of the judgments rendered by the Apex Court and the other High Courts, would unmistakably infer that the suit instituted by the petitioner-plaintiff for misappropriation of funds, or loss of funds from the current account maintained by the banking institution, based on the withdrawals of money by defendant No.3 by encashing forged cheques would become the subject matter of a commercial dispute, as it is arising from the ordinary transaction between the petitioner-plaintiff and defendant No.1 - banking institution.

14. With the aforesaid reasons, the following

ORDER

i) The writ petition is allowed.



- ii) The order dated 30.08.2022 passed by the concerned Court impugned stands quashed.
- iii) It is declared that the Commercial Court has jurisdiction to try the suit and shall try it as a commercial OS.
- iv) The Court shall regulate its procedure in accordance with law.

Sd/-
(M.NAGAPRASANNA)
JUDGE

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List No.: 1 Sl No.: 1
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