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

Reserved on: 14th October, 2026
Pronounced on: 04th November, 2026
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\# **CNR No. DLHC010022422026**

\+ FAO (COMM) 23/2026 and CM APPL. 5150/2026

SHEKHAR GIRDHAR & ANR. ....Appellants

Through: Mr. Rakesh Patiyal, Advocate.

versus

BRIJ DWIVEDI ....Respondent

Through: Mr. Tarun Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE DR. JUSTICE ADITI CHOUDHARY

J U D G M E N T

REPORTABLE

***Per* ADITI CHOUDHARY, J.**

1. By way of the present appeal under Section 13(1A) of the Commercial Courts Act, 2015 (for brevity 'Act of 2015'), the appellants assail the impugned order dated 13.12.2025, passed by the learned District Judge (Commercial Court)-05, Central District, Tis Hazari Courts, Delhi in CS (Comm) No. 1298/2025, vide which the plaint in the suit for recovery was returned under Order VII Rule 10 of the Code of Civil Procedure, 1908 (for brevity 'CPC'), holding that the suit does not arise from a commercial dispute.

FACTUAL MATRIX

2. As per the case made out in the plaint, the appellant nos.1 and 2/ plaintiff nos.1 and 2 are real brothers. The appellants/plaintiffs and the

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respondent/defendant had "good family and business relations" with each other since long. On many occasions, the appellants' family extended financial help to the respondent.

2.1 In the second week of March 2018, the respondent came to the appellants' house to meet them regarding his financial requirement. He told them that he is investing in a building project, for which he is running short of funds. He asked for a sum of Rs. 18 lacs to meet his business requirement for a period of four months. Since the financial requirement of the respondent was for business purpose and he would earn profit therefrom, he offered the appellants that he would pay interest at the rate of 1% per month on the borrowed money. The appellants keeping in view the "old family and business relations" with the respondent agreed to pay a sum of Rs.18 lacs on interest at the rate of 1% per month, as offered by the respondent.

2.2 On 20.03.2018, the appellants gave the said sum (in cash) to the respondent at his house. The respondent executed a promissory note dated 20.03.2018 in favour of the appellants for Rs.18 lacs. Thereafter, the respondent started making payment of Rs. 18,000/- per month as interest to the appellants. He paid the said interest amount till July 2018 and thereafter stopped. After the expiry of four months, as agreed by the respondent, the appellants demanded the principal amount of Rs.18 lacs. However, neither the said amount nor the interest was paid. It is averred that apart from the amount of Rs.18 lacs borrowed by the respondent there were some other business transactions which were pending between the appellants and the respondent. Whenever, the appellants asked the respondent to clear all the transactions and return Rs.18 lacs, the respondent said that he would keep "all the transactions separate"

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and would clear all transactions separately. When the respondent did not return the loan amount, the appellants filed the suit for recovery of Rs.33,66,000/- towards the principle amount and interest.

2.3 Initially the suit for recovery (CS DJ 430/2022) was filed by the appellants against the respondent before the regular Court of District Judge-16, Central District. The respondent filed an application under Order VII Rule 11 CPC, on the premise that the transaction between the appellants and respondent was of a commercial nature, therefore the Court had no jurisdiction. The said application of the respondent was allowed vide order dated 06.08.2025 and the plaint was returned with the liberty to file the fresh suit in accordance with the provisions of the Act of 2015.

2.4 In terms of Section 12A of the Act of 2015, the appellants preferred the pre-litigation mediation application against the respondent on 26.08.2025, before the Central District Legal Service Authority, Delhi, however, the respondent did not appear. Therefore, a non-starter report dated 18.11.2025 was issued by the Central District Legal Services Authority.

2.5 The appellants filed the commercial suit as defined in Section 2(1)(c)(i) and (xviii) of the Act of 2015 in the Commercial Court. Before the learned Commercial Court Judge, the learned counsel for the appellants submitted that the dispute in the said suit was only covered under Section 2(1)(c)(i) of the Act of 2015. Vide the impugned order the learned Commercial Court Judge held that although in the plaint, the appellants asserted that they were having business relations with the respondent, however, it was nowhere mentioned as to what was the nature of the business. The dispute did not arise from any agreement of

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sale of goods or provisions of services or ordinary transactions of merchants, bankers, financiers or traders and thus the suit did not arise from a commercial dispute as defined under Section 2(1)(c) of the Act of 2015, therefore, the plaint was accordingly returned under Order VII Rule 10 CPC.

SUBMISSIONS OF BOTH SIDES

3. We have heard the learned counsels for both sides.

4. It was argued by the learned counsel for the appellants that the money borrowed by the respondent was for business purpose and therefore was "commercial borrowing". Since the promissory note executed by the respondent was for "commercial borrowing" therefore, the same was a mercantile document in terms of Section 2(1)(c)(i) of the Act of 2015. It was further argued that the learned Commercial Court Judge failed to appreciate the facts pleaded in the plaint that earlier also the appellants and respondent had business relations. It was further argued that the learned District Judge-16, vide his order dated 06.08.2025 while returning the plaint, rightly relied upon the judgment of this Court in ***Amanpreet Kohli v. Pankaj Dayal*** 2023 SCC Online Del 1808, and held that the promissory note was a mercantile document and the loan was advanced for business purpose so the dispute was a commercial dispute within the meaning of Section 2(1)(c)(i) of the Act of 2015. However, the said position of law was ignored by the learned Commercial Court Judge.

5. *Per contra,* it is argued by the learned counsel for the respondent that there is no cause of action against the respondent as the suit is based upon a forged promissory note and receipt. The respondent did not avail any loan whatsoever from the appellants. The learned counsel however

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conceded that the respondent had filed an application under Order VII Rule 11 CPC before the learned District Judge-16 *inter alia* averring that as per the transaction and purpose of lending money as alleged in the plaint, the dispute was covered under the definition of commercial dispute under Section 2(1)(c) of the Act of 2015. Thus, he was not opposed to the appeal being allowed.

ANALYSIS AND FINDINGS

6. The issue to be decided is whether the learned Commercial Court Judge *vide* the impugned order rightly held that the dispute between the parties, based on the loan transaction is a commercial dispute within the meaning of Section 2(1)(c)(i) of the Act of 2015. The said provision for reference is extracted herein below:

> *"2. Definitions.- (1) In this Act, unless the context otherwise requires,-*
>
> *(a) ...*
>
> *(aa) ...*
>
> *(b) ...*
>
> *(c) "commercial dispute" means a dispute arising out of-*
>
> *(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents."*

7. The manner in which Section 2(1)(c) of the Act of 2015 has to be interpreted has been laid down by the Hon'ble Supreme Court in ***Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP And Another*** (2020) 15 SCC 585. In this case, the issue before the Hon'ble Supreme Court was whether the transaction was a commercial dispute as defined in Section 2(1)(c)(vii) of the Act of 2015 i.e. disputes arising out of agreements relating to immovable property used exclusively in trade

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and commerce. Briefly stated, the facts are that the appellant agreed to sell a piece of land to the 2nd respondent. Then, the 2nd respondent assigned all his rights under the agreement to the 1st respondent. Though a deed of sale was executed, certain other aspects remained unfulfilled for completing the transfer. So the parties entered into a Memorandum of Understanding (for brevity 'MoU'), under which the 1st respondent had to execute a deed of mortgage in the appellant's favour. This arrangement gave rise to a dispute at the appellant's behest. The appellant filed a commercial civil suit to compel the 1st respondent to execute a mortgage deed. The respondents objected to the maintainability of the commercial civil suit. However, the Commercial Court rejected the respondents' application under Order VII Rule 10 CPC. The Commercial Court referred to the appellant Company's Memorandum and Articles of Association and took note of the business the Company could undertake. Thus, it concluded that the dispute was commercial. The High Court found fault with this finding of the Trial Court and concluded that the immovable property was not being used for trade or commerce.

7.1 The Hon'ble Supreme Court observed that the suit is one seeking specific performance of the terms of the MoU. 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 the Commercial Court was invoked. Without such basic pleadings in the plaint, any explanations sought to be put forth *qua* the same subsequently, would be of no avail. It was held that in commercial disputes as defined under the Act of 2015, a special procedure is provided for a class of litigation, and a strict procedure must be followed to entertain only that class of litigation in

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that jurisdiction. It held that only disputes which actually answer the definition of commercial dispute as provided under Section 2(1)(c) of the Act of 2015, must be entertained by Commercial Courts and therefore a strict construction to the provisions of the Act of 2015 is required. The Hon'ble Supreme Court observed as under:

> *"13. The learned Senior Advocate for the appellant would however, contend that a strict interpretation as in the case of taxing statues 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 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*

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through the order dated 1-3-2019 [K.S. Infraspace 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)

8. As laid down by the Hon'ble Supreme Court in ***Ambalal*** (*supra*), the definition of commercial dispute under Section 2(1)(c) has to be strictly interpreted and limited to the specific transactions mentioned therein, entered only for a commercial purpose. With regard to Section 2(1)(c)(i) of the Act of 2015, it is only disputes arising out of ordinary transactions between the said four classes of persons, which have been formalized by way of mercantile documents or wherein, the enforcement or interpretation of such documents is in issue, that such disputes shall qualify as commercial disputes. A mercantile document has to be understood as a document used in a transaction or in relation to a transaction between merchants, bankers, financiers and traders. To qualify as a commercial dispute under Section 2(1)(c)(i) of the Act of 2015, the dispute needs to arise from a transaction which concerns the business of both sides as merchants, bankers, financiers and traders. Where there is a loan, the same must be part of a commercial transaction and not a personal or friendly loan.

9. In the course of arguments the learned counsel for the appellants relied upon the judgment of this Court in ***Amanpreet Kohli*** *(supra)*, in support of his arguments that the dispute in the present case is a commercial dispute. The cited judgment does not assist the case of the appellants, as it is distinguishable on facts.

10. In the present case, for us to determine the nature of the suit, we have to see the averments made in the plaint. The plaint does not have

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any averment therein for the dispute to qualify as a commercial dispute. It is apparent that the learned District Judge-16 in the first instance, committed an error in returning the plaint for being presented before the Commercial Court. He went solely by the vague averment in the plaint that both parties were having business relations since long and the case involved the execution of a promissory note, to erroneously hold that the dispute is a commercial dispute under Section 2(1)(c)(i). There was no attempt to further ascertain if the transaction *per se* had a commercial flavour or that the loan transaction was within the scope of the business of the appellants/plaintiffs.

11. As rightly observed by the learned Commercial Court Judge in the impugned order, the appellants/plaintiffs although have claimed that the parties were having business relations however, in the entire plaint and documents filed therewith, it is nowhere mentioned as to what business the parties are or were into. It is stated in the plaint that the appellants/plaintiffs, keeping in view the "old family and business relations" with the respondent/defendant agreed to pay a sum of Rs.18 lacs on interest at the rate of 1% per month to him as he needed money for investing in a building project, for which he was running short of funds. Thus, even accepting that the parties did do some business together at one point of time, the loan transaction in question cannot be treated as an ordinary transaction between merchants, bankers, financiers or traders but is a private or personal transaction *sans* any commercial or business purpose.

12. Disputes arising from friendly loans, even if given for furthering the business interest of the borrower alone, like in the present case, would not qualify as a commercial dispute. The loan was not extended in

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the capacity of the appellants/plaintiffs as merchants, bankers, financiers or traders but in their personal capacity. The appellants/plaintiffs are not carrying on the business of bankers or financiers, as such the transaction of lending money, even with an intent to earn interest cannot be said to be a commercial transaction. There is nothing in the language of the promissory note or receipt for us to come to a different conclusion. Also, the execution of the promissory note or receipt *per se* by the respondent/defendant for the loan being given on interest, as in the present case, would not make the dispute a commercial dispute.

13. Thus, we conclude that the claim for recovery of money in the present case does not qualify as a commercial dispute under Section 2(1)(c)(i) or for that matter under any of the clauses under Section 2(1)(c) of the Act of 2015. We find no infirmity in the impugned order of the learned Commercial Court Judge dated 13.12.2025, returning the plaint of the appellants/plaintiffs under Order VII Rule 10 CPC. The appeal is accordingly dismissed. Pending application also stands disposed of.

14. The appellants are however, given six weeks' time to file the plaint that has been returned by the learned Commercial Court Judge *vide* order dated 13.12.2025 in the Court of competent jurisdiction.

ADITI CHOUDHARY
(JUDGE)

DINESH MEHTA
(JUDGE)

NOVEMBER 04, 2026/*naw/vp/p'ma*

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