

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17<sup>TH</sup> DAY OF MARCH, 2026

PRESENT



THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

**COMMERCIAL APPEAL NO. 163 OF 2024**

**BETWEEN:**

1. SRI K.H. NARAYANA  
S/O SRI HANUMAYYA  
AGED ABOUT 72 YEARS
2. SMT. BHAGYALAKSHMI  
W/O SRI K.H. NARAYANA  
AGED ABOUT 47 YEARS
3. MR B.N. SKANDA  
S/O SRI K.H. NARAYANA  
AGED MINOR
4. MS. SRUSTI B.N.  
D/O SRI K.H. NARAYANA  
AGED MINOR

APPELLANT No.3 & 4 ARE  
REPRESENTED BY  
THEIR NATURAL GUARDIAN MOTHER  
i.e., APPELLANT NO.2  
ALL THE ABOVE APPELLANT ARE  
RESIDING AT:  
BIRUR, KADUR TALUK  
CHIKMAGALUR

...APPELLANTS

(BY SRI CHANDAN GOWDA PATIL, ADVOCATE)



**AND:**

1. SRI S.L. BALAKRISHNA  
S/O SRI S.R. LAKSHMANAPPA  
AGED ABOUT 66 YEARS  
R/A RAJAJINAGAR  
BIRUR, KADURR TALUK  
CHIKAMAGALUR - 577 116
  
2. NAYARA ENERGY LIMITED  
FORMERLY KNOWN AS:  
ESSAR OIL LIMITED  
HAVING ITS OFFICE AT:  
3<sup>RD</sup> FLOOR  
MAXIMUM COMMERCIAL COMPLEX  
LIGHT HOUSE HILL ROAD  
MANGALORE - 575 001  
REPRESENTED BY ITS MANAGER

...RESPONDENTS

(SRI SAMARTH S. MURTHY, ADVOCATE FOR  
SRI MUNISWAMY GOWDA S.G., ADVOCATE FOR  
RESPONDENT No.1  
SRI R. GOPAL KRISHNA, ADVOCATE FOR  
RESPONDENT No.2)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015 R/W ORDER XLIII RULE 1(R) OF THE CPC, 1908, PRAYING TO SET ASIDE THE ORDER DATED 14.03.2024 PASSED BY THE HON'BLE PRINCIPAL DISTRICT AND SESSIONS COURT AT CHIKKAMAGALUR IN FR. NO.COM. O.S.NO.104/2023 ON THE PLAINT FILED UNDER ORDER VII RULE 1 AND 2 READ WITH SECTION 26 OF THE C.P.C. & ETC.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE  
and  
HON'BLE MR. JUSTICE C.M. POONACHA

**C.A.V. JUDGMENT**

(PER: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE)

1. The appellants have filed the present appeal under Section 13(1A) of the Commercial Courts Act, 2015 [**CC Act**] read with Order XLIII Rule 1 of the Code of Civil Procedure, 1908 [**CPC**] impugning an order dated 14.03.2024 passed by the Principal District and Sessions Judge, Chikkamagaluru [**Commercial Court**] in Com.OS.FR No.104/2023 [**impugned order**]. In terms of the impugned order, the learned Commercial Court had directed return of the plaint to be presented before a proper court in accordance with law. The impugned order is premised on the basis that the suit instituted by the appellants did not involve any commercial dispute under Section 2(1) of the CC Act.

2. The only question to be addressed is whether the aforementioned suit instituted by the appellants involved a commercial dispute.

3. The appellants who are plaintiffs in the suit had filed the suit, *inter alia*, seeking a decree of ejectment of the respondents

(defendants in the suit) from the suit property which was described as under:

"SCHEDULE PROPERTY

All the piece and parcel of the commercial land along with structures, if any, standing thereon admeasuring 1575 Square Meters out of total 4048 Square Meters land bearing Property No.:10-2-676, Ward No.11, Survey No.40/3 (Old Sy.No.:40), (One (1) Acre land In Survey No.40/3 as converted by order issued by the Deputy Commissioner, Chikmagalur District, order bearing No.:LAND10010464 dated 03.12.2018), situated at Berur Kaavalu Village, Berur Hobli, Kadur Taluk, Chikmagalur District, Karnataka and is bounded by:

On the East : Property of Chandana Bhargavi  
On the West : Road  
On the South: Property of Suresh  
On the North : Property of K.H.Narayan"

4. Additionally, the appellants also sought a decree for recovery of the amount of ₹8,10,000/- as arrears of rent and for the *mesne* profits for occupying the suit property.

5. A plain reading of the plaint indicates that the appellants had claimed that appellant No.1 is the absolute owner of an immovable property measuring two acres falling in Survey No.40/3 (old Survey No.40), Berur Kaavalu Village, Berur Hobli, Kaduru Taluk, Chikkamagaluru District. Appellant No.2 is appellant No.1's wife, and appellant Nos. 3 and 4 are their children.

6. The appellants state that under a Notification dated 31.08.2016, the National Highway Authority of India acquired 2023 sq. mtrs. of land out of the aforementioned land measuring 2 acres. After the said land was acquired, appellant No.1, who claimed to be the absolute owner of the suit property, applied for the conversion of one acre of the remaining land for commercial purposes for setting up a petroleum outlet. The said one acre of land was converted by an order dated 03.12.2018 for commercial use. The said property was accorded a new property number—property No.10-2-676 measuring 40.24 mts. from east to west and 100.60 mts. from north to south, totally measuring an area 4048 sq. mts. Out of the aforesaid area, 1575 sq. mts. [**the suit property**] was leased to respondent No.1 (arrayed as defendant No.1 in the suit) under a lease deed dated 06.03.2021. The lease was for a term of 29 years 11 months (commencing from 01.12.2020 till 31.10.2050), and the monthly rent was fixed at ₹30,000/-, inclusive of all taxes and rates. The appellants stated that respondent No.1 had obtained a licence for running a retail outlet/storage depot/retail station for retailing of petroleum products like MS/HSD/Lubes allied and other products and services. The appellants claim that respondent No.1 failed to pay the lease rentals as agreed. It is also averred that respondent No.1 was constructing a building for the

installation of a petrol pump on the suit property. Subsequently, a Rectification Deed of Lease dated 25.02.2022 was executed between the parties. By virtue of the same, appellant No.2 and appellant Nos.3 and 4 (through their guardian, appellant No.2) were added as Lessors, as well as a rent enhancement of 8% every five years was introduced.

7. In the aforesaid circumstances, appellant No.1 sent a legal notice dated 12.08.2022 calling upon respondent No.1 to pay the arrears of rent and hand over peaceful possession of the suit property, and not to carry on any further development work. Subsequently, appellant No.1 issued another legal notice dated 03.02.2023 (erroneously dated 03.02.2021) to respondent Nos.1 and 2 stating that the lease deed and the rectification deed stood infringed. Respondent No.2 replied on 09.02.2023 stating that it had issued a notice to respondent No.1, alerting him to make necessary corrections with the appellants. The appellants aver that respondent No.1 responded to the said legal notice. In his reply dated 22.02.2023, sent through an advocate, respondent No.1 claimed that he had been making efforts to complete the establishment of a petrol bunk and to commence the said business



"48. ... The expressions "pertaining to", "in relation to" and "arising out of", used in the deeming provision, they are used in the expansive sense, as per decisions of the court, meanings found in standard dictionaries and principles of broad and liberal interpretation in consonance with Article 39 (b) and (c) of the Constitution."

11. Although the observations were made in the context of analysing the scope of an arbitration agreement, it is clear that the expressions "in relation to" and "arising out of" are words of the broadest scope.

12. In the present context, given the wide import of the expression "arising out of", the expression "commercial dispute" would encompass all disputes arising from agreements relating to immovable properties used exclusively for trade or commerce. The principal question to be addressed is whether the lease deed dated 06.03.2021 in respect of the suit property is to be construed as an agreement relating to the immovable property used exclusively in trade or commerce.

13. Recital 2 of the said lease deed is relevant and is set out below:

"The LESSEE is desirous of taking the said land on lease for the purpose of setting up a Retail Outlet /Storage Depot / Retail Station on the Demised Premises for retailing of petroleum products like

MS/HSD/Lubes allied and other products and services (THE BUSINESS)."

14. In terms of the said lease deed, respondent No.1 (Lessee)

had agreed as under:

"2) The LESSEE to the intent that obligations may continue throughout the terms hereby granted doth hereby covenant with the LESSOR as follows :

a) To pay the rent hereby reserved on the date and in the manner aforesaid.

b) To use the Demised Premises for any lawful purpose which the LESSEE desires and especially as a Retail Outlet for the storage and sale of petroleum products, motor accessories etc., as well as a service station and / or filling station and for all other purposes incidental thereto and for any other business as the LESSEE may deem fit and for all such purposes the LESSEE shall have full liberty to make excavations thereon for tanks and construct and erect thereon any buildings, boundary walls, pumping plants and accessories as may be required, The LESSEE shall have full accessories as may be required, The LESSEE shall have full freedom of access over suitable approaches thereto for its workmen, servants, agents and customers and for the usage of lorries, cars and all other vehicles to maintain supplies and otherwise for running the Retail Outlet on the Demised Premises.

c) To exercise due precaution in working the Retail Outlet against explosion, fire, or other accidents and comply with all regulations as imposed by public authorities in that behalf.

d) To regularly pay bills for electricity and water consumed on the Demised Premises.

e) At the expiration of the said term to deliver unto the LESSOR the Demised Premises."

15. As noted above, the suit property was already converted, pursuant to the conversion order dated 03.12.2018, to be used for "*Non-Agricultural Commercial, Petrol Station purposes*".

16. It is apparent from the above that the suit property was for exclusive use for commercial purposes. As noted above, the lease deed expressly recorded the purpose for which the suit property was leased. It is contended on behalf of respondent No.1 that although the property was leased for commercial purposes, it was in fact not used for the same as the business had not commenced.

17. The photographs on record indicate that a petrol station is fully constructed on the suit property, and that fuel dispensing units have also been installed. There is also no dispute that the suit property was leased for establishing and operating a fuel pump. It is apparent that the lease is for commercial purposes, and respondent No.1 has used it for the said purpose. In response to the legal notice, respondent No.1 clearly stated that large sums of money had been spent on constructing the petrol bunk.

18. In view of the above, it can hardly be disputed that the suit property is used for the respondent's business. The fact that the petrol pump was not operational or was in a construction phase

does not detract from the fact that the suit property was used for the business of establishing a petrol pump, which is clearly a part of the respondent's commercial enterprise. The fact that a business is in its gestation period does not mean that its resources are not used for commercial purposes. Setting up a petrol bunk is an integral part of establishing a retail outlet and dispensing fuel or petroleum products. As noted above, the suit property was already converted for the purposes of a petrol pump and thus, clearly an integral part of the said business and its profit-making apparatus.

19. In the aforesaid view, we are unable to accept that the lease deed is not an agreement in respect of an immovable property used exclusively for commercial purposes.

20. The learned counsel appearing for respondent No.1 fashioned his contentions on the decision of the Supreme Court in **Ambalal Sarabhai Enterprises Ltd. vs K.S. Infraspace LLP and Ors.**<sup>2</sup> The learned counsel has emphasised that the word "used" in clause 2(1)(c)(vii) of the CC Act must mean 'actual use'.

21. There is no cavil that the word "used", as used in Section 2(1)(c)(vii) of the CC Act, must mean actual use of the immovable

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<sup>2</sup> (2020) 15 SCC 585

property. The agreements, which contemplate an immovable property, likely to be used for trade or commerce or may in the future be used for the said purpose, may not give rise to a commercial dispute within the meaning of clause 2(1)(c)(vii) of the CC Act. However, the word "used" cannot be read restrictively to mean only revenue operations, excluding all other facets, activities, or stages of a commercial enterprise.

22. The expression "commercial dispute" must be interpreted using the principle of purposive interpretation.

23. The relevant extract of the Statement of Object and Reasons of the CC Act is set out below:

**"Statement of Objects and Reasons.**—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 question 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.

2. The global economic environment has since become increasingly competitive and to attract business at international level, India needs to further improve its ranking in the World Bank 'Doing Business Report' which, inter alia, considers the dispute resolution environment in the country as one of the parameters for doing business. Further, the tremendous economic development has ushered in enormous commercial activities in the country including foreign direct

investments, public private partnership, etc., which has prompted initiating legislative measures for speedy settlement of commercial disputes, widen the scope of the courts to deal with commercial disputes and facilitate ease of doing business. Needless to say that early resolution of commercial disputes of even lesser value creates a positive image amongst the investors about the strong and responsive Indian legal system. It is, therefore, proposed to amend the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015."

24. A plain reading of the above indicates that the immovable property which is used in trade or commerce is also one of the resources used for commerce, and the disputes arising from the agreements of those properties are sought to be covered under the definition of a "commercial dispute". Thus, guided by the main principal objective, the question to be considered is whether the immovable property in question is a part of the integral resources of the business enterprise. In the present case, there is little doubt that the suit property – which, as noted above, was converted for the purpose of "... petrol station purposes" and was leased for the said purpose – was used as an exclusive resource for the respondent's commercial enterprise.

25. If the respondent's contention is accepted, the immovable property must physically be used for revenue operations only and use in all other facets is to be excluded; it shall yield results which

are neither contemplated under the CC Act nor serve its principal object. Illustratively, if a shop is leased out for the first time and the lessee has six months' time as a rent-free fit-out period to stock goods and commence retail operations, the disputes relating to the said lease arising in the first six months would not be classified as a commercial dispute, but the disputes thereafter would. The contention that the immovable property must already be used for trade and commerce prior to the agreement relating to it is also equally untenable.

26. The decision in **Ambalal Sarabhai Enterprises Ltd.** (*supra*) is to be understood in its context. The appellant in the said case had instituted the suit for execution of a mortgage deed. The appellant had entered into an agreement to sell the immovable property in favour of a party (arrayed as respondent No.2 in the Supreme Court), who, in turn, had assigned its rights under the agreement to sell to another party (respondent No.1 in the Supreme Court) by executing an assignment deed. The subject property was conveyed by executing a deed of conveyance. However, certain aspects regarding the nature of land use were still pending. The appellant was required to be protected as the parties had entered into a Memorandum of Understanding in terms of

which the mortgage deed was required to be executed. The property in question had not been converted. In the said case, the use of the property would not be *in prasenti*, but possibly in the future. However, in the present case, the suit property has been converted for petrol pump purposes and leased for the said business.

27. In view of the above, the appeal is allowed. The impugned order is set aside, and the plaint is restored before the learned Commercial Court. The parties shall appear before the learned Commercial Court on 10.04.2026.

28. The pending application also stands disposed of.

**Sd/-  
(VIBHU BAKHRU)  
CHIEF JUSTICE**

**Sd/-  
(C.M. POONACHA)  
JUDGE**

AHB