

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Krishna Rao

G.A. (Com) No. 5 of 2025

In

C.S. (Com) No. 650 of 2024

Kamalesh Mohta

Versus

Karnani Constructions and Ors.

Mr. Sourojit Dasgupta

Mr. Aasish Choudhury

Mrs. Uma Bagree

... For the plaintiff.

Mr. Rachit Lakhmani

Ms. Pooja Sah

Mr. Piyush Kumar

... For the defendants.

Hearing Concluded On : 10.09.2025

Judgment on : 17.09.2025

Krishna Rao, J.:

1. The defendants have filed the present application being G.A. (Com) No. 5 of 2025 praying for rejection of plaint or dismissal of suit or in the alternative, the suit be returned to the plaintiff for presenting before the appropriate Court having jurisdiction.
2. The defendants say that from a bare perusal of the plaint, it is evident that the suit filed by the plaintiff is not a commercial suit within the meaning of Commercial Courts Act, 2015 and the plaintiff has wrongly pleaded that the disputes between the parties are commercial in nature under Section 2(1)(c)(i) of the said Act.
3. Mr. Rachit Lakhmani submits that the alleged disputes mentioned in the plaint do not classify as commercial disputes. He further submits that no disputes between the parties as pleaded in the plaint arise out of transactions of merchants, bankers, financiers or traders relating to mercantile document.
4. Mr. Lakhmani submits that the plaintiff has filed the instant suit simply for recovery for money allegedly lent and advanced on oral basis. There is no mercantile document to say that the transactions between the plaintiff and the defendants are commercial in nature. He submits that the plaintiff is neither a banker nor a non-banking financial company or a registered money lender.

5. It is the case of the plaintiff that the plaintiff lent and advanced money to the defendants by way of an oral understanding without any written document. Mr. Lakhmani in support of his submissions, relied upon the judgment in the case of ***Ladymoon Towers Private Limited vs. Mahendra Investment Advisors Private Limited*** reported in **2021 SCC OnLine Cal 4240** and submits that Section 2(1)(c) of the Commercial Courts Act, 2015 only contemplates a commercial dispute and not any other form of dispute where the basis of disagreement between the parties has a non-commercial cause. He further relied upon the judgment in the case of ***Glasswood Realty Private Limited & Ors. vs. Chandravilas Kailashkumar Kothari*** reported in **2021 SCC OnLine Bom 5032** and submits that taking of hand-loan for whatever purposes, including starting a business of agency, cannot come within the four corners of the definition of commercial transaction.
6. Mr. Lakhmani in support of his submissions, relied upon the judgment in the case of ***Prime Hitech Textiles LLP vs. Manish Kumar*** reported in **2022 SCC OnLine Cal 2326** and submits that all suits for recovery of money cannot fall under Section 2(1)(c) of the Commercial Courts Act, 2015.
7. *Per contra*, Mr. Sourojit Dasgupta, Learned Advocate representing the plaintiff submits that the transactions between the parties are commercial in nature as the suit filed by the plaintiff contemplates consideration of mercantile documents. He submits that in paragraph 1

of the plaint, it is categorically pleaded that the amount of Rs. 20,00,000/- was lent and advanced by the plaintiff to the defendants for the purpose of their businesses, thus the transactions between the plaintiff and the defendants are commercial in nature.

8. Mr. Dasgupta submits that the defendants failed to file their written statement and the suit is marked as “Undefended Suit” and only to kill the time, and to delay the suit proceedings, the defendants have filed the present application though the defendants have personal knowledge that the defendants have obtained loan from the plaintiff for the purpose of their business only.
9. Mr. Dasgupta submits that the plaintiff has filed the document i.e. the confirmation of accounts from 1st April, 2010 till 31st March, 2023 entered between the parties which reflects transactions between the parties and the said confirmation of accounts was exchanged between the parties through an e-mail dated 30th June, 2015. He further submits that the plaintiff has also relied upon the TDS Certificate to show the deduction of tax with respect to the money lent and advanced by the plaintiff to the defendants.
10. Mr. Dasgupta submits that if the plaint is read as a whole and to consider the documents relied by the plaintiff which clearly indicates that a suit filed by the plaintiff is commercial in nature. Mr. Dasgupta in support of his submissions, has relied upon the judgment in the case of ***Meena Vohra vs. Master Hosts Pvt. Ltd. & Ors.*** reported in

2025 SCC OnLine Del 1758 and submits that “mercantile documents” in commercial disputes necessitates an examination of specific instruments commonly used in trade and finance. One such crucial instrument is commercial paper which plays a significant role in business transactions by facilitating payments and credit arrangements. Since commercial papers itself forms the basis of a commercial disputes, it becomes essential to analyze how a mercantile document must fit within the definition of commercial paper to qualify as part of a commercial dispute.

- 11.** Heard the Learned Counsel for the parties, perused the materials on record and the judgments relied by the parties. It is the case of the plaintiff that the defendants approached the plaintiff for financial accommodation of Rs. 20,00,000/- as the defendants represented that the defendants are engaged in the business of manufacturing and transportation of railway materials and are also the railway contractors. As per the terms and conditions between the parties, the defendants agreed that from time to time at the end of each financial year, the defendants will issue a statement of confirmation of accounts in favour of the plaintiff which will include the principal amount as well as the interest component. It was further agreed that the defendants shall pay the interest and shall deposit of TDS at the end of each financial year.
- 12.** The plaintiff has relied upon the confirmation of accounts from 1st April, 2010 to 31st March, 2023. Each confirmation of accounts shows about the opening balance, closing balance and interest. The said

confirmation of accounts are between the plaintiff and the defendants. The plaintiff has also relied upon TDS Certificate under Form 26AS reflecting the TDS amount deposited by the defendant no. 1 from time to time under Section 194IA.

13. Section 2(1)(c)(i) of the Commercial Courts Act, 2015 reads as follows:

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

(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.”

14. The term “*commercial dispute*” is of wide import. It brings within its compass any dispute connected with a commercial world. However, each and every commercial dispute pending before the High Court or Civil Court prior to coming into the effect of the Act in 2015 will not be considered as a commercial dispute necessitating invocation of Section 15 of the Act unless such disputes come within the purview of definition of commercial disputes as provided in Section 2 of the Commercial Courts Act. For ascertaining whether the suit needs to be transferred to the Commercial Division or the Commercial Court, the three factors to be considered are:

(i) the suit or the application under the Arbitration & Conciliation Act, 1996 was pending on the date

when the Commercial Division or the Commercial Court was constituted;

(ii) that the court seisin of the suit or the application is required to find out whether the dispute involved comes within the definition of commercial dispute; and

(iii) whether the value of such suit is of the specified valuation.

15. If these three tests are satisfied, then a suit may be transferred from a regular Civil Court to Commercial Division.

16. In the case of ***Lady Moon Towers Pvt. Ltd. v. Mahindra Investment Advisors Pvt. Ltd., IA No. GA/4/2021 in CS/99/2020, 13-8-2021 (Cal)***, it was observed by the High Court of Calcutta that the definition contemplates a commercial dispute and not any other form of dispute where the basis of disagreement between the parties has a non-commercial cause. The gradation of disputes in Section 2(1)(c) takes into account all possible forms of Agreements from which a commercial dispute may arise; it makes it clear that the framers of the statute gave emphasis on the commercial flavour of the transaction as opposed to agreements entered into between the parties without a commercial purpose. The commercial purpose would generally mean a transaction by which a person's commercial or economic interest may be advanced and would result in an economic benefit to that person. It would not include an agreement where profit making is an incidental outcome of

the transaction or may happen by accident. Home Loan for example is given by a person or entity to another with the expected outcome of principle sum being returned with interest. The essential commercial flavour in such a loan may be lost by way of informal terms under which the money is lent and advanced and the consequent uncertainty which may result therefrom. It was further observed that in terms of Section 2(1)(c) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents implies ordinary transactions between 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. Only those disputes arising out of a transaction between the named classes of persons which has been formalised by way of a mercantile document would be termed as a commercial dispute. In the said suit, a loan of Rs. 50 lakhs had been given by the plaintiff Company to the defendant since the Directors of the Plaintiff Company were known to the defendant since long. It was held that simplicitor because a loan transaction was involved would not attract a commercial flavour to it and was held to be not a commercial dispute.

17. This Court in ***Kailash Devi Khanna v. DD Global Capital Ltd.***, reported in **2019 SCC OnLine Del 9954** held that all suits for recovery of monies cannot brought under Section 2(1)(c)(i) of the Act where the suit is not based on any transaction relating to mercantile

documents. The Bombay High Court in ***Bharat Huddanna Shetty v. Ahuja Properties & Developers (Interim Application (L) No. 14350 of 2021; decided on 13th July, 2021)*** rejected the contention that the suit should be treated as a commercial summary suit on the mandate that the transaction had occurred between merchants, bankers, financiers and traders and further clarified that transactions between individuals where the plaintiff gives a friendly loan to a needy friend will not be seen as a transaction in the course of ordinary business. The Madras High Court in ***R. Kumar v. T.A.S Jawahar Ayya, OA No. 686 of 2019, decided on 14-8-2020 (Mad)***, was of the view that since the plaintiffs did not transact in the capacity of financiers, the dispute was not a “commercial dispute” and that an ordinary transaction of the four classes of persons mentioned in 2(1)(c)(i) arising out of mercantile documents alone would fall within the definition of a commercial dispute. The Calcutta High Court in ***Associated Power Co. Ltd. v. Ram Taran Roy, AIR 1970 Cal 75***, focused its gaze on a “mercantile document” within the meaning of the First Schedule of the City Civil Court Act, 1953 as a document between merchants and traders where the construction, interpretation and meanings of words and clauses of the mercantile documents would assume significance.

18. 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.

19. In the case of ***Meena Vohra (supra)***, the Delhi High Court held that:

“Any document of a formal nature which serves as a record of a commercial transaction or trade between merchants, traders, etc. could qualify as a “mercantile document”. The nature of the document may be relevant in determining the real nature of the dispute as it would reveal the element of commercial flavour, however, the real nature of a document is to be determined on a case to case basis and the general expression used by the legislature cannot be curtailed to narrow down the scope of application of the Act of 2015 in any manner. The real test to determine whether a particular document qualifies as a “mercantile document” is whether merchants, bankers, financiers or traders would ordinarily execute such a document to record a commercial/mercantile transaction, having regard to the prevailing practices and extant law. The presence of the word “mercantile” narrows down the scope of the word “documents” and thus, the mere presence of a document evidencing the transaction is not enough unless the document qualifies as a mercantile document in the sense discussed above.”

20. In the present case, as per the demand of the defendants, the plaintiff has lent and advanced an amount of Rs. 20,00,000/-. The plaintiff is

one of the Director of Strong Towers Private Limited and the defendants are engaged in the business of manufacturing and transportation of the railway materials and are the railway contractors.

- 21.** The confirmation of accounts between the plaintiff and the defendants from 1st April, 2010 till 31st March, 2023 are in the name of respective firms. The TDS Certificate is used for tax deduction at source. The confirmation of accounts has been exchanged between the plaintiff and the defendants through e-mail. In the case of **Venkatesh Vincom Private Limited vs. Spice of Joy, Multicuisine Restaurant Cum Bar and Others**, reported in **SCC OnLine Del 3010**, the Hon'ble Division Bench of this Court held that:

“Undisputedly, the cheque was issued by the appellant to the Respondent no. 2 and the receipt or a note evincing such transaction, was issued by the Respondent no. 1 firm. It is not a case where the Respondent no. 2 utilised the money for his individual purposes but in fact the money given by the appellant was used and utilised by the Respondent no. 1 firm and the TDS certificate also corroborate the same. Even the interest is paid by the Respondent no. 1 firm and, therefore, even if the cheque covering the loan amount was issued in the name of one of the partners but shall be regarded as a payment to the firm. As indicated above, there is no condition laid down in the said definition ‘commercial dispute’ that the mercantile document must be executed at the beginning or before the transaction having affected rather the document defined in Section 2(1)(f) of the Act includes any matter expressed or described upon any substance by means of letters, figures or marks or electronic means intended to be used or which may be used for the purpose of recording the matter. We, therefore, find no difficulty in considering that the mercantile document as an instrument by any other means coming within the

ambit of the definition of a document executed by a merchant in an ordinary course of business and any restrictive interpretation would frustrate the legislative intent and the object and purpose underlying the promulgation of the Commercial Courts Act, 2015.”

22. The confirmation of the accounts and the TDS Certificate which establishes that the transactions between the plaintiff and the defendants are commercial in nature and is duly covered under Section 2(1)(c)(i) of the Commercial Courts Act, 2015.

23. In view of the above, **G.A. (Com) No. 5 of 2025** is **dismissed**.

(Krishna Rao, J.)