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

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*Judgment reserved on: 07.01.2026*

*Judgment pronounced on: 20.01.2026*

*Judgment uploaded on: 20.01.2026*

+ RFA(COMM) 348/2024

PRAMOD KUMAR

.....Appellant

Through: Mr. Rajeev Kumar Rai, Adv.

versus

M/S GANNON DUNKERLEY AND CO. LTD. .....Respondent

Through: Mr. Vaibhav Tyagi and Mr. Kartikeya Misra, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**JUDGMENT**

**ANIL KSHETARPAL, J.:**

1. The present Appeal, preferred under Section 13 of the Commercial Courts Act, 2015 [hereinafter referred to as 'CC Act'], challenges the judgment and decree dated 30.04.2024 [hereinafter referred to as 'Impugned Judgment'] passed by the Commercial Court, whereby the Commercial Court dismissed the Appellant's suit for recovery, holding that the dispute did not qualify as a "commercial dispute" under Section 2(1)(c) of the CC Act.

2. The Appellant is before this Court on a limited legal grievance i.e., that even if the Commercial Court correctly identified the dispute as non-commercial, it erred in law by *dismissing* the suit instead of *returning* the plaint under Order VII Rule 10 of the Code of Civil



Procedure, 1908 [hereinafter referred to as 'CPC'] for presentation before the appropriate non-commercial forum.

## **FACTUAL BACKGROUND**

3. The Appellant was appointed as a Junior Engineer with the Respondent-company *vide* an appointment letter dated 31.08.1992. After successfully completing a one-year probation period, his services were confirmed. Over a long and dedicated tenure spanning more than 27 years, the Appellant rose through the ranks to the position of Deputy General Manager (Civil).

4. On 03.02.2020, the Appellant applied for earned leave for the period of 04.02.2020 to 04.03.2020 to attend his elder son's wedding. However, on 06.02.2020, the Respondent-company summarily terminated the Appellant's employment, purportedly invoking Provision 14(a) of a revised terms and conditions of the letter dated 20.12.2012.

5. Following this termination, the Appellant sought a full and final settlement of his dues and claimed a total outstanding sum of Rs.4,10,184/-, which included:

- i. Rs.1,00,000/- towards the balance of two months' basic salary in lieu of notice (the Respondent-company having paid only one month);
- ii. Rs.2,55,000/- for the encashment of 153 days of earned leave;
- iii. Rs.5,184/- for pending Travel Expense bills; and



iv. Rs.50,000/- towards the refund of a laptop security deposit.

6. The Respondent failed to settle the dues despite legal notices dated 09.07.2020 and 09.12.2022. Consequently, the Appellant instituted a recovery suit before the Commercial Court. The Commercial Court, however, took the view that since the dispute was essentially a service-related recovery matter between an employee and a private employer, it did not satisfy the criteria of a "commercial dispute" as defined under the CC Act. On this basis, the Commercial Court dismissed the suit of the Appellant.

### **SUBMISSIONS OF THE PARTIES**

7. Learned counsel for the Appellant submits that the dismissal of the suit has resulted in a gross miscarriage of justice. Learned counsel argues that the Commercial Court's power, upon finding a lack of subject-matter jurisdiction under the CC Act, was restricted to the return of the plaint under Order VII Rule 10 of the CPC.

7.1 Learned counsel further submits that by dismissing the suit, the Commercial Court has effectively shut the doors of justice on the Appellant's substantive claims for his terminal benefits, whereas the defect was merely one of the "wrong forum". Learned counsel seeks a *de novo* trial before the appropriate Court.

8. Learned counsel for the Respondent, while defending the Impugned Judgment, submits that the Appellant's termination was in accordance with the revised company policy of 2012 and that all legitimate dues had been settled.



8.1 Learned counsel further submits that since the Appellant chose to approach a specialized Commercial Court for a non-commercial matter, the dismissal was a natural consequence of the suit being non-maintainable before that specific forum. Learned counsel has also submitted that the suit was vexatious and based on fabricated documents.

## **ANALYSIS AND REASONING**

9. Heard learned counsel for the parties and with their able assistance, perused the paperbook.

10. The primary question before this Court is whether a Court, upon finding that it lacks jurisdiction because a dispute is "non-commercial," can dismiss the suit or is mandated to return the plaint.

11. Under Section 2(1)(c) of the CC Act, "commercial disputes" are specifically enumerated. Judicial consensus, as well as the plain reading of the statute suggests that a simple recovery of salary or terminal benefits by an employee from a private employer does not fall within the categories of "merchants, bankers, financiers and traders" or other specified commercial transactions. Thus, this Court finds no infirmity in the Commercial Court's conclusion that the dispute was non-commercial.

12. However, the procedural consequence of this finding is where the Commercial Court erred. Order VII Rule 10 of the CPC clearly stipulates as under:

*"Subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted."*



13. In our measured opinion, “dismissal” of a suit is a final adjudication on the merits or on a bar that prevents the claim from ever being heard (such as *res judicata* or limitation). Conversely, the “return of a plaint” is a procedural mechanism, which is used when a Court finds it is not the correct forum to hear the matter. By dismissing the suit, the Commercial Court treated a jurisdictional defect as a substantive failure of the cause of action.

14. The Bombay High Court in *AJ Organica Pvt. Ltd. v. State of Maharashtra*<sup>1</sup> explicitly held that when a Court holds that it lacks jurisdiction over the subject matter, it is duty-bound to pass an order under Order VII Rule 10 of the CPC for the return of the plaint. A litigant cannot be left remediless simply for approaching the wrong door of the courthouse, especially when the claim involves substantial terminal benefits after 27 years of service.

15. The Supreme Court in *Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP & Anr.*<sup>2</sup>, while dealing with the strict interpretation of “commercial disputes”, explicitly and unambiguously suggested the procedure to be followed when a suit is found to be non-commercial. The Supreme Court observed as under:

*“14. In that view it is also necessary to carefully examine and entertain only disputes which 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*

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<sup>1</sup> 2019 SCC OnLine SC 1311

<sup>2</sup> (2020) 15 SCC 1



*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 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.”*

16. What the Supreme Court demonstrated therein can be construed as: if a dispute does not qualify as a “commercial dispute”, the Commercial Court does not lose the power to do justice; rather, it loses the jurisdiction to hear that specific matter, thereby necessitating the return of the plaint to the appropriate forum.

17. The dismissal of the suit on the grounds of the “wrong forum” is liable to be set aside to allow the Appellant to pursue his claims on merits before the appropriate Court. This necessitates a *de novo* trial where the evidence and arguments can be appreciated by a Court of competent jurisdiction.

## **CONCLUSION**

18. In view of the aforesaid, this Court finds that the Commercial Court has erred in dismissing the suit filed by the Appellant. The interest of justice requires that the Appellant be permitted to present his case before the correct forum.

19. Accordingly, the present Appeal is allowed. The Impugned Judgment is hereby set aside, while directing as follows:

i. The suit filed by the Appellant is restored to its original position.



ii. The Commercial Court is directed to return the plaint (while indicating the date for its presentation) to the Appellant in terms of Order VII Rule 10A CPC, while giving the date of appearance to the parties for presentation of the returned plaint, before the appropriate Court of competent jurisdiction.

iii. The Larger Bench of the Supreme Court in *EXL Careers v. Franklin Aviation Services*<sup>3</sup> has held that on return of the plaint under Order VII Rule 10 of the CPC, *de novo* proceedings will have to take place, however, in the present case, not only the respective pleadings were filed by the parties but documentary and oral evidence was also led after granting the parties complete opportunity to cross-examine the witnesses. Hence, with the consent of the learned counsel representing the parties, who will take a pragmatic view, the Competent Court may utilise the pleadings and evidence (documentary and oral) which have already been produced by the parties.

20. The parties, through their counsel, are directed to appear before the concerned Commercial Court on 03.02.2026.

21. The present Appeal stands disposed of.

**ANIL KSHETARPAL, J.**

**AMIT MAHAJAN, J.**

**JANUARY 20, 2026**  
*jai/kb*

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<sup>3</sup> (2020) 12 SCC 667