

A leave and licence dispute concerning office premises, where possession was never handed over and where actual exclusive commercial use at the time of the agreement is not shown, does not qualify as a commercial dispute merely because the licensee is a business entity and intended to use the premises for business purposes

The **Bombay High Court** in the case of **Jayshree Jagdish Thakker vs Pragati Infra Interiors [Writ Petition No. 8129 of 2026]** dated **July 07, 2026**, has held that under Section 2(1)(c)(vii) of the Commercial Courts Act, a dispute relating to immovable property becomes a commercial dispute only when the property is actually and exclusively used in trade or commerce at the relevant time. Mere intended, proposed, or future business use is not enough. A leave and licence dispute concerning office premises, where possession was never handed over and where actual exclusive commercial use at the time of the agreement is not shown, does not qualify as a commercial dispute merely because the licensee is a business entity and intended to use the premises for business purposes.

The Court also clarified that where a Commercial Court lacks jurisdiction because the dispute is not a commercial dispute, the plaint should not be rejected outright on that ground. The proper course is to return the plaint under Order VII Rule 10 of the Code of Civil Procedure for presentation before the proper ordinary civil court.

The Court explained the purpose of the Commercial Courts Act, and noted that the Act creates a special and speedier mechanism for resolution of commercial disputes, originally for high-value claims and later extended to lower-value claims as well. Because the Act provides a special procedure and stricter timelines, only disputes that clearly fall within the statutory definition of “commercial dispute” can be tried by Commercial Courts; ordinary civil disputes cannot be brought into that framework merely by broad interpretation.

The Court identified the central issue as whether this dispute arose out of an agreement relating to immovable property “used exclusively in trade or commerce” under Section 2(1)(c)(vii) of the Act. The Court reproduced the statutory language and emphasized that the real controversy was the meaning of the words “used exclusively in trade or commerce”.

The Court also held that the fact that the premises were described as “office premises” and were situated in a business park was not enough by itself to show that they were being used exclusively in trade or commerce. The agreement did not show that the defendants were themselves using the premises exclusively for trade or commerce when the agreement was entered into. The Court made it clear that use as an office does not automatically mean exclusive use in trade or commerce for the purpose of Section 2(1)(c)(vii).