

(2026) 08 DEL CK 4079

In the Delhi High Court, Principal Bench, New Delhi

Case No : RFA(COMM) 47/2025

Ram Lakhan Shukla

APPELLANT

Vs

Hintek Electronics Private Limited & Anr.

RESPONDENT

Date of Decision : 03-08-2026

Acts Referred:

Commercial Courts Act, 2015 — Section 2(c), 2(1)(c)(xviii), 2(1)(c)
CPC — Order VII Rule 11

Citation : (2026) 08 DEL CK 4079

Hon'ble Judges : Prathiba M. Singh, J;Vikas Mahajan, J

Bench : Division Bench

Advocate : Mr. Ayush Singh

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.
2. The present Appeal arises out of the impugned order dated 12thSeptember, 2024, passed by Lokesh Kumar Sharma, Id. ADJ (Commercial Court) – 05, South District, Saket Courts, New Delhi in **CS Comm. 611/23**,by which the suit of the Appellant has been dismissed.
3. The Appellant had filed a suit before the Id. Trial Court seeking recovery of a sum of Rs.14,33,073/- against Hintek Electronics Pvt. Ltd. and other Respondents.
4. The case of the Appellant, who was the Plaintiff before the Id. Trial Court is that he was appointed as a Senior Manager/General Manager on 1stAugust, 2016 at Hintek Electronics Pvt. Ltd. in terms of the letter dated 1st August, 2016.
5. Further vide an e-mail dated 17thAugust, 2016, the terms of employment of the Appellant/Plaintiff were stipulated are as under:

"7. That the terms of the employment of the Plaintiff were as follows:

- a. Salary: Rs.50,000 with appraisal of Rs.5,000 after three months, i.e. w.e.f. 1.11.2026, on a consolidated salary of Rs.6,60,000 p.a. with effect from 1.11.2026
- b. 5-6% basic standard annual increment.
- c. Actual out of pocket expenses including mobile bill, LTA and other expenses.
- d. Incentive sale @ 2% on L/C sales and 1.5% on VAT sales."

6. The Appellant/ Plaintiff had subsequently raised certain claims based on his employment contract which were not paid and hence, the suit for recovery was filed before the Commercial Court, Saket District Court Complex.

7. A perusal of the TCR reveals that summons were issued to the Respondents on 20th November, 2023.

8. On behalf of the Respondents/Defendants, one Counsel had appeared on 10th January, 2024 and time was sought to file the written statement. Thereafter, again, on 24th January, 2024, time was sought to file the written statement.

9. Cost was also imposed on the Respondents/Defendants on 28th February, 2024 for seeking further time to file the written statement. However, the written statement was not filed.

10. Finally, on 13th March, 2024, the recovery suit proceeded *ex parte*, due to no appearance on behalf of the Respondents/Defendants.

11. The Appellant / Plaintiff led his evidence and he appeared as PW1, who was examined and discharged on 30th April, 2024.

12. On 5th June, 2024, a query was put to the Appellant/Plaintiff to satisfy as to how a dispute between employer and employee for recovery of certain amounts due under various heads would be a commercial dispute.

13. On 12th September, 2024, the suit was dismissed and the view taken by the Commercial Court was that the substratum of the dispute did not constitute a commercial dispute under Section 2(c) of the Commercial Courts Act, 2015.

14. A perusal of the impugned order dated 12th September, 2024 shows that the Id. Trial Court has cited various decisions to hold that the subject matter of the dispute is not a commercial dispute. The case laws relied upon by the Id. Trial Court are as under:

- i. *Arvind Processing Park Pvt. Ltd. v. Mayursinh Bhupathsinh Vaghela* [2019 SCC OnLine Guj 4100]
- ii. *M/s Ekanek Networks Private Limited v. Aditya Mertia* [2024:DHC:4384]
- iii. *Atmastco Ltd. v. Mandeep Kalra* [2024:DHC:4830]
- iv. *T.V. Today Network Limited v. News Laundry Media Private Limited & Ors.* [MANU/DE/2679/2022]

v. *Jatin Jain & Ors. V. Anuj Jain & Ors. [MANU/DE/2303/2024]*

vi. *Ruby Thukral & Ors. V. Ajay Arora [MANU/DE/2027/2023]*

vii. *Vijay Jain v. Dios Lifesciences Private Limited [CS (COMM) 189/2023, Decision dated 20.01.2024, decided by Id. District Judge (Commercial-03) South East District, Saket, New Delhi]*

15. Thus, while relying upon the said decisions passed by the various Courts, Id. Trial Court dismissed the suit filed by the Appellant/Plaintiff. The relevant portion of the impugned order dated 12th September 2024 is set out below-

"11.....

Therefore, I have no hesitation in holding that a dispute for recovery of dues towards arrears of salary between an employee and an employer could not be termed as a commercial suit by any stretch of imagination.

Although the plaintiff here had claimed his entitlement for commission on sales however his own appointment letter ex. PW19 as well as confirmation letter ex. Pw1/10 do not provide for any such commission to be payable to him upon sales.

Hence, I have no hesitation in holding that the suit of the Plaintiff is not maintainable as a commercial suit and same is accordingly dismissed with no order as to costs. Decree sheet be drawn accordingly."

16. The submission on behalf of the Appellant before this Court is that if the Commercial Court did not find the suit filed by Appellant to be a commercial dispute, the Court ought to have returned the plaint and directed the suit to be presented before the appropriate Court instead of dismissing the suit in its entirety.

17. None appears in this Appeal for the Respondents despite being served.

18. As stated above, the Respondents had remained *ex parte* even before the Trial Court.

19. In this appeal, Respondent no.3 has already been deleted and Respondent nos. 1 and 2 were proceeded *ex parte* vide order dated 24th February, 2026 for non-appearance despite being served.

20. A perusal of the plaint filed before the Id. Trial Court would show that the suit would not be a commercial dispute, as it is a dispute between employer and employee arising out of the terms of employment and certain increments and salary that are alleged to be due to be paid to the Appellant.

21. The question as to whether such a suit would constitute a 'commercial dispute' has been considered by Id. Single Judges of this Court in the following decisions relied upon by the Id. Trial Court as well:

• **M/s Ekanek Networks Private Limited v. Aditya Mertia [2024:DHC:4384]**

"24. In view of the foregoing discussion, this Court finds that the impugned order dated

21.12.2023 passed by the learned Trial Court dismissing the application under Order VII Rule 11 of the CPC does not suffer from any illegality, perversity or incorrect approach in law. Much mileage was sought to be taken by the learned counsel for the petitioner to the high value attached to the contract between the parties in the instant matter. The said aspect does not cut any ice. **Merely because a contract of personal service or employment may have some attributes of being high value or have high stakes therein, as in the instant case, that by itself would not be sufficient so as to bring any dispute arising out of such contract within the scope and ambit of a commercial dispute. Merely because a contract of service also involves payment, remuneration and several other service perks or peculiar benefits, that alone would not be a decisive factor in holding it to be a commercial dispute. Unhesitatingly, this Court finds that a contract of service that requires rendering of personal services by one of the parties to another, is purely and simply a service dispute governed by the Service Law jurisprudence and the Common Law, for which remedy lies elsewhere. There is no doubt in the mind of this Court that the legislature never intended to bring a contract for the purpose of rendering personal services of an executive or administrative nature within the scope and ambit of the CC Act.** In essence, intra-departmental disputes between the employer and employee of an organization are outside the purview of the CC Act.

• **Atmastco Ltd. v. Mandeep Kalra [2024:DHC:4830]**

"23. All said and done, evidently the CC Act has been enacted for the purpose of providing an efficacious remedy for speedy disposal of high valued commercial disputes, and its provisions should be strictly construed. In an earlier judgment passed by this Court in M/s. Ekanek Networks Private Limited v. Aditya Mertia (CRP 31/2024), wherein a contract of service between an employer and employee came up for consideration so as to decide whether such agreement of personal service would be a 'commercial dispute' within the scope and ambit of section 2(1)(c)(xviii) of the CC Act, a note of caution was addressed by this Court to the effect that if the provisions of the CC Act are given a liberal interpretation, the object behind the constitution of the Commercial Division of Courts to fast-track the resolution of commercial disputes would be defeated. Thus, every other suit, which may or may not be filed before a Commercial Court, need not be levelled as a 'commercial dispute' and recourse has to be found in accordance with the purport and object of the statute besides the substratum of the matter."

22. Further, in another decision titled **ARM Digital Media Pvt. Ltd. v. Ritesh Singh [2025:DHC:10726]** reiterated the same position, as held in **M/s Ekanek Networks (supra)** and while extensively dealing with this issue, ruled that disputes arising from employment agreements do not constitute commercial disputes under the Commercial Courts Act, 2015, even when such agreements contain ancillary business-related clauses such as confidentiality, non-compete obligations, or intellectual property assignments. Relevant portions of the said decision are as under:

"15. In this backdrop, the mere presence of ancillary business-related clauses such as confidentiality, intellectual property assignment, or non-compete obligations does not metamorphose an employment contract, which is fundamentally a contract of personal service, into a commercial arrangement. This position has been affirmed by various High

Courts. In *Ekanek Networks Pvt. Ltd.*, this Court considered whether breaches of an employment agreement containing detailed terms on remuneration, non-compete, non-solicitation, confidentiality, IP assignment, and termination could be treated as a "commercial dispute" under Section 2(1)(c)(xviii) of the CC Act. The Court held that the expression "provision of services" in the said clause must be accorded a strictly commercial connotation, and cannot be conflated with a contract of service, which is inherently a personal service relationship governed by the employer's control, supervision, and disciplinary authority. **Relying on *Bar of Indian Lawyers v. D.K. Gandhi* (2019 SCC Online SC 2365) and *Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP* ([2020] 15 SCC 585), the Court underscored that the Commercial Courts Act is intended to streamline adjudication of genuine mercantile and commercial disputes, and that importing ordinary employer-employee disputes into this framework would subvert the very objective of the statute.**

xxx

19. Thus, any dispute relating to an employment agreement cannot be treated to be a commercial dispute within the purview of Section 2(1)(c) of the CC Act."

23. Thus, in view of the aforementioned decisions of Id. Single Judges of this Court in various cases cited above and keeping in mind the basic intent of the Commercial Courts Act, 2015 this Court is of the opinion that the disputes arising from employment agreements entered into between an employer and an employee would not fall within the ambit of "commercial dispute", as provided under the Act.

24. Inclusion of employer-employee disputes under the definition of 'commercial disputes' would be contrary to the legislative mandate under the Commercial Courts Act, 2015 which sets out a clear definition as to what kind of disputes constitute 'commercial disputes'. The court cannot stretch the said definition to include disputes as have arisen in the present suit. Thus, the trial court's order is affirmed on this legal issue.

25. However, after holding that the dispute is not a commercial dispute, the suit need not have been dismissed but the plaint ought to have been returned for being presented before the appropriate Court. Whenever a litigant approaches a wrong forum, the Court may reject relief but permit presenting of the case before the appropriate forum, as dismissal would entail fresh expenses to the litigant such as court fees, legal costs etc.,

26. Accordingly, the impugned judgment dated 12th September, 2024 is modified to the extent that the suit is permitted to be presented to the appropriate Court.

27. Let this matter be listed before the Id. Commercial Court, South District, Saket Courts, New Delhi on 24th August, 2026 for return of plaint. The Appellant shall appear before the Commercial Court.

28. On the said date, the plaint shall be returned to the Appellant and thereafter, the Appellant is given 30 days' time to present the same before the appropriate Court.

29. The present Appeal is disposed of in said terms. Pending applications, if any, are disposed of.