COMMERCIAL OR COLLABORATIVE? THE KARNATAKA HIGH COURT ON JOINT DEVELOPMENT AGREEMENTS AND THE COMPOSITE-DISJUNCTIVE FORK IN THE COMMERCIAL COURTS ACT

Prahil Tak, Amity Law School

Amishi Arora, Amity Law School

An analysis of the Karnataka High Court's conflicting rulings on whether joint development agreements qualify as commercial disputes, and what the classification battle costs real estate litigants in practice.

ABSTRACT

Joint Development Agreements (JDAs) are the standard mechanism through which residential real estate is built in urban India, typically governed by a single composite arbitration clause that treats the relationship, land, construction, allocation, and handover, as one undifferentiated legal package. This article examines what happens once such a clause produces an arbitral award and that award is challenged: which court has jurisdiction to hear the challenge turns on whether the underlying JDA qualifies as a "commercial dispute" under the Commercial Courts Act, 2015, a threshold the Act's text does not resolve directly. Karnataka High Court benches have read this threshold inconsistently, and in June 2026, in D. Arun Reddy v. Late Muni Reddy, a single judge held that a residential JDA between individuals was neither a "construction contract" nor a "joint venture" under the Act, a finding at odds with earlier coordinate-bench rulings, prompting a reference to a larger bench that remains open. Using this decision as its point of entry, the article works through the statutory definition of "commercial dispute," the conflicting precedent generated within and beyond Karnataka on the character of JDAs, and the commentary the decision has so far attracted, to test three questions: whether such an agreement falls within Section 2(1)(c)(vi); whether that provision is one composite phrase or two disjunctive categories; and whether standard JDA drafting anticipates this forum-allocation risk at all. It finds the classification unsettled well beyond Karnataka, and argues that current drafting practice does little to guard against the fifteen-year procedural detour this case illustrates.

This article examines the doctrinal instability in characterizing Joint

Development Agreements as "commercial disputes" post-D. Arun Reddy, and argues that this instability, left unresolved until the larger bench rules, has direct, underexamined consequences for the ADR framework embedded in JDAs, both in terms of which court exercises supervisory jurisdiction over arbitration and in terms of how such clauses should be drafted to survive the classification dispute.

Introduction

Somewhere inside nearly every Joint Development Agreement (JDA) signed in urban India sits one unremarkable-looking clause: any dispute arising out of or in connection with this Agreement shall be referred to arbitration. Landowners and developers sign it without a second thought, treating the relationship, land, construction, allocation, handover, as one legal package that a single clause can govern uniformly.

In June 2026, a single judge of the Karnataka High Court quietly disturbed that assumption. In *D. Arun Reddy v. Muni Reddy*, the Court held that a residential JDA between two individuals was, for the purposes of the Commercial Courts Act, 2015, neither a "construction contract" nor a "joint venture." It was something the Court called a collaborative development arrangement, a description that fits comfortably in ordinary language but has no clean home in the statute. Because that conclusion conflicted with earlier rulings of coordinate benches of the same High Court, the judge could not settle the point outright and referred it to a larger bench, where it remains open.

The Structural Role of JDAs

A JDA is the standard mechanism through which Indian urban real estate now gets built. Instead of a developer buying land outright, which demands large upfront capital and attracts steep stamp duty, the landowner contributes the land and the developer contributes construction expertise and finance. On completion, the built-up area or its sale proceeds is split between them in an agreed ratio, commonly expressed as a share such as 60:40. The structure lets landowners monetise land without selling it, and lets developers build without the cost of acquiring it outright.

The catch is that a single JDA usually bundles several legally distinct relationships into one document: a transfer of development rights, often through an irrevocable power of attorney, a construction obligation, an allocation-and-handover mechanism, and sometimes a revenue-

sharing arrangement layered on top. Because the relationship is expected to run for years, parties draft one composite arbitration clause and assume it will be enough. *D. Arun Reddy* shows why that assumption is incomplete. The arbitration clause itself may be perfectly valid; what it does not settle is which court supervises the dispute once the award is challenged, a separate, freestanding question with nothing to do with whether the arbitration agreement is enforceable.

The Statutory Framework

The Commercial Courts Act, 2015 was enacted to create specialised courts and divisions for high-value commercial litigation. Section 10 of the Act is what actually channels arbitration matters into this track: it vests Commercial Courts and Commercial Divisions with jurisdiction over arbitration-related applications, including challenges to arbitral awards under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996, wherever the underlying dispute is a commercial dispute of specified value. That value threshold is now ₹3 lakh, sharply reduced from the original ₹1 crore by a 2018 amendment intended to widen access to the specialised track.

Whether a JDA dispute clears this gate depends entirely on Section 2(1)(c) of the Act, which defines commercial dispute through a closed, exhaustive list of categories. Courts cannot invent a new residual category for an instrument that does not neatly fit; the only live question is whether a JDA falls within an existing label. Three were in play in *D. Arun Reddy*: Section 2(1)(c)(vi), construction and infrastructure contracts, including tenders; Section 2(1)(c)(vii), agreements relating to immovable property used exclusively in trade or commerce; and Section 2(1)(c)(xi), joint venture agreements. None of these phrases is separately defined, and it is precisely here that Karnataka High Court benches began disagreeing with one another.

Facts of the Case

On 24 March 2011, D. Arun Reddy and his wife (the developers) entered a JDA with the Muni Reddy family (the landowners) for a residential apartment complex in Devarabisanahalli, Bengaluru, under which the developer was to receive 60% and the landowners 40% of the built-up area.

Disputes followed on three fronts: delay in completion, allocation of built-up area in excess of

the developer's agreed 60 percent share, and the developer's sale of a penthouse, allegedly forming part of the landowners' entitlement, to his own wife. The developer invoked the JDA's arbitration clause, and the arbitral tribunal dismissed the landowners' claims by an award dated 12 July 2019.

The landowners challenged that award under Section 34 of the Arbitration and Conciliation Act, 1996, before the Commercial Court in Bengaluru. At that stage the developer, now defending the award he had won, applied under Section 151 of the Civil Procedure Code for the petition to be returned, arguing that a dispute between individuals over a residential JDA was not commercial at all and so did not belong before a Commercial Court. The Commercial Court rejected that application on 3 January 2023, holding the JDA fell within Section 2(1)(c)(vi) as a construction and infrastructure contract. The developer carried that finding up to the Karnataka High Court under Article 227 of the Constitution.

Issues Raised

The appeal turned on two questions, and it is worth separating them cleanly, since they are doing very different work.

The first is a classification question specific to this JDA: does a residential development agreement between individuals, where no commercial use of the property is otherwise shown, constitute a construction and infrastructure contract under Section 2(1)(c)(vi)? This question is fact-sensitive. Its answer changes with the terms of the particular agreement, the parties before the court, and what the record shows about the property's use.

The second is a pure question of statutory construction, detached from this JDA's facts entirely: should the phrase construction and infrastructure contracts in Section 2(1)(c)(vi) be read as one composite expression, requiring both a construction dimension and a genuine infrastructure or commercial character together, or as two independently sufficient categories, so that any construction contract qualifies on its own, however small or purely residential?

The second question is the one that will actually govern future disputes. Whatever the larger bench decides on this point applies to every JDA that comes after, not merely to the Reddy-Muni Reddy dispute. It is also, as the discussion below shows, considerably less settled than either side's submissions suggested.

Judgement by the Court

Justice Tara Vitasta Ganju's reasoning proceeded in three steps. First, relying on *Sushil Kumar Agarwal v. Meenakshi Sadhu*, the Court distinguished a pure construction contract, a fee for service with no interest in land, from this JDA, where the developer acquired a genuine transferable interest through his 60 percent share. Because the developer held an actual proprietary stake rather than a contractor's fee, the Court declined to treat the arrangement as a simple construction contract.

That finding might have suggested a commercial character by another route, so the Court turned second to Section 2(1)(c)(vii), immovable property used exclusively in trade or commerce, and found it not attracted either. The land had not been shown to be used exclusively for trade or commerce, and the dispute concerned redevelopment and allocation of residential units between private parties, nothing in the record supplied the commercial character the provision requires.

Third, the Court rejected the argument that the arrangement was a joint venture under Section 2(1)(c)(xi), holding that a true joint venture requires joint control, participation in management, and sharing of profits and losses, none of which were present in a JDA structured around a fixed area split.

Having found the JDA fell within none of the three categories argued, and having done so in direct conflict with two coordinate-bench decisions that had gone the other way, Justice Ganju could not resolve the point finally. She referred both the classification question and the composite-disjunctive question to a larger bench, disposing of the writ petition on those terms.

Precedents and the Coordinate-Bench Conflict

The conflict the Court flagged is real and longstanding. *Kiran Builders v. M. Surya Babu* and *R.J. Dayananda v. Narasamma* had both read Section 2(1)(c)(vi) broadly, holding that any development or construction agreement automatically falls within Commercial Court jurisdiction, regardless of the parties' status or the property's character. *D. Arun Reddy* aligned instead with the narrower line taken in *Indraprastha Shelters v. South India Biblical Seminary*, which had confined the provision to agreements possessing an inherent commercial character.

The conflict is not confined to Karnataka. In *Sanjay Suganchand Kasliwal v. Golden Dreams*

Buildcon Private Limited, the Bombay High Court applied the same *Sushil Kumar Agarwal* land-interest test to a development MoU and reached a result consistent with *D. Arun Reddy*'s reasoning: a development agreement conferring a genuine interest in land and the developed property cannot be treated as a mere construction contract simply because it involves construction activity. The Karnataka High Court expressly considered *Kasliwal* in reaching its own view, which confirms this is a live, pan-India interpretive problem rather than a quirk internal to one High Court's docket.

One Phrase or Two: The Composite-Disjunctive Fork

The second referred question deserves close attention, since it is doing most of the real work in this dispute and remains genuinely open.

The disjunctive reading traces back to *Blue Nile Developers v. Movva Chandra Sekhar* (Andhra Pradesh High Court), later adopted by *Kiran Builders*. *Blue Nile* was a fee-for-service dispute, an owner recovering money overpaid to a contractor for building a villa, with no land interest changing hands. Construction alone was enough to trigger Section 2(1)(c)(vi) there, because nothing else was in play. *Kiran Builders* carried that logic over to JDAs, a structurally different instrument built on a transfer of land interest rather than a fee, without testing whether it still held.

Blue Nile did reach the Supreme Court on special leave and survived, but only through a bare, non-speaking dismissal. Under *Kunhayammed v. State of Kerala*, that kind of dismissal is a discretionary refusal to hear the appeal, not an endorsement of the reasoning below. It also sits in tension with *Ambalal Sarabhai Enterprises v. K.S. Infraspace LLP*, decided two years earlier, where the Supreme Court held that the CC Act's commercial-dispute categories must be construed strictly, precisely so the specialised track is not diluted by ordinary disputes wearing a commercial label. *Kiran Builders* did not engage with that principle when it adopted the disjunctive reading.

The Real Cost: Forum Uncertainty and the Drafting Gap

It would be easy to mistake this for a technicality, but the procedural stakes are substantial. Commercial Courts operate under a materially different regime from ordinary civil courts, including mandatory case-management hearings, a hard 120-day cap on filing a written

statement that forfeits the right to file regardless of merit, and appeals routed within 60 days to a dedicated Commercial Appellate Division. None of this applies in the same form to a dispute proceeding in an ordinary civil court.

Because the specified-value threshold was cut to ₹3 lakh in 2018, this question arises in nearly every JDA dispute of any real consequence, not occasionally. And getting the forum wrong is expensive, not merely untidy. The standard remedy for a petition filed in the wrong court is to return it for refiling in the correct one, and that is exactly the trap this case illustrates: a JDA signed in 2011, an award in 2019, a jurisdictional objection first raised in 2023, and the underlying question still unresolved in 2026. Fifteen years on, the landowners' actual grievance, over a penthouse and a share of built-up area, has not been reached on its merits even once.

Part of this is a drafting problem, not only a judicial one. Nothing in the reported facts suggests the 2011 JDA contained any recital establishing the developer's business character, the project's intended scale, or its market orientation, the kind of language a court could point to when deciding whether the transaction carries genuine commercial character. Standard JDA drafting still treats the agreement as a single undifferentiated package, an arbitration clause bolted on without any accompanying signal of whether the underlying transaction was meant to be commercial in the statute's sense. Until the larger bench rules, that omission leaves every JDA arbitration clause exposed to the same forum-allocation risk this case illustrates.

Existing Commentary

Commentary on *D. Arun Reddy* has, so far, tracked the order closely: the referral itself, the conflict it creates with *Kiran Builders* and *R.J. Dayananda*, and the Court's reasoning for holding the JDA outside both Section 2(1)(c)(vi) and 2(1)(c)(vii). This writing has fixed the shape of the conflict and its immediate procedural stakes, but has not yet set the composite-disjunctive question against its own precedential foundation, the weight actually carried by a non-speaking SLP dismissal in *Blue Nile*, or its tension with the stricter construction demanded in *Ambalal Sarabhai*.

Conclusion

D. Arun Reddy leaves two questions open, but they are not equally balanced. The classification

question is fact-sensitive and will likely resolve differently across different JDA structures. The composite-disjunctive question is not: it is a pure interpretive choice, and the disjunctive reading currently resting on *Kiran Builders* draws on a precedent, *Blue Nile*, whose Supreme Court survival carries no binding weight under *Kunhayammed*, and which has never squared itself with *Ambalal Sarabhai*'s insistence on strict construction. A composite reading, read purposively against the Act's objective of reserving the specialised track for genuinely commercial matters, is the more defensible position for the larger bench to adopt.

Until that bench rules, the safer course for practitioners is not to wait. JDAs can be drafted to speak directly to commercial character, through recitals on the developer's business capacity, the project's scale, and its market orientation, so that the next dispute does not spend a decade and a half litigating who gets to hear it before anyone reaches the merits.

REFERENCES

1. *D. Arun Reddy & Ors. v. Muni Reddy & Ors.*, Writ Petition No. 3571 of 2023, Karnataka High Court, 2026:KHC:25826.
2. Commercial Courts Act, 2015, Section 2(1)(c).
3. Commercial Courts Act, 2015, Section 10.
4. Arbitration and Conciliation Act, 1996, Sections 9 and 34.
5. *Kiran Builders v. M. Surya Babu*, Writ Petition No. 3873 of 2023.
6. *R.J. Dayananda v. Narasamma & Ors.*, Writ Petition No. 28536 of 2024.
7. *Indraprastha Shelters Private Limited v. South India Biblical Seminary*, Writ Petition No. 11783 of 2020.
8. *Sushil Kumar Agarwal v. Meenakshi Sadhu*, (2019) 2 SCC 241.
9. *Blue Nile Developers Private Limited v. Movva Chandra Sekhar*, 2021 SCC OnLine AP 3964.
10. *Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP*, (2020) 15 SCC 585.
11. *Sanjay Suganchand Kasliwal v. Golden Dreams Buildcon Private Limited*, 2023 SCC OnLine Bom 2469.
12. *Kunhayammed v. State of Kerala*, (2000) 6 SCC 359.
13. Samit Shukla and Yesha Badani, "Residential Joint Development Agreements and Commercial Disputes: Karnataka High Court Refers Interpretative Conflict to a Larger Bench," Trilegal Knowledge Repository, 7 August 2026.
14. "Whether Residential JDAs Fall Within 'Construction & Infrastructure Contracts' Under Commercial Courts Act: Karnataka High Court Refers to Larger Bench," Verdictum, 19 June 2026.