

Present: Sri Dev Kumar Sukul (JO Code: WB00766)
Judge, Commercial Court at Alipore
Title Suit 20 of 2021
CNR no. WBSP18-000022-2019

Order No. 51
22.12.2022

In the matter of :
Suit for declaration, recovery of
possession with claim of money and
damages with permanent injunction
valued at Rs. 4,00,10,000/-

And

In the matter of :
Sri Ashis Bhuniya and Anr.

Vs.

In the matter of :
Sri Bishnupada Mondal and 23 Ors.

Appearacne for the Plaintiff(s)

Mr. Amitabha Basu, Ld. Counsel

Ms. Sayantani Das, Ld. Counsel

Appearacne for the Defendant(s)

Mr. Satyabrata Chokraborty, Ld. Counsel

Mr. Subhas Jana, Ld. Counsel

.....for the Defendant No. 24.

Mr. Sakya Maity, Ld. Counsel

.....for the Defendant Nos. 1, 3, 4, 5, 6, 7 11, 12, 13, 14, 16, 18, 19, 20, 21, 22 & 23.

ORDERED

The day is fixed for passing the Order in respect of the Interlocutory Applications being no. 24 of 2022 corresponding to under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) for rejection of the plaint relating to this instant suit registered as Title Suit 20 of 2021.

Plaintiffs had instituted the instant suit for declaration, recovery of possession with claim of money and damages with permanent injunction valued at Rs. 40,00,10,000/- before this Court on 03.09.2021 and on the very day this Court passed an Order restraining Defendant/Respondent

no. 24 from dealing with the property in question without the consent of this Court till the next date and this Order was extended from time to time. In the said suit Plaintiffs prayed for reliefs, which will be evident from the prayer portion of the plaint as made out by the plaintiffs, in respect of a deed of transfer dated 18th April, 2013 which is the cynosure of the present suit.

Parties to this present proceeding file their respective haziras through their respective Ld. Counsels.

In this instant title suit there are 24 Defendants. *Inter alia* Defendants, Defendant no. 24 filed the interlocutory application under Order VII Rule 11 for rejection of the plaint pertaining to this present title suit and during the course of submission, all other Defendants i.e. from Defendant nos. 1 to 23 grossly supported the case of Defendant no. 24. Therefore, this Court has clubbed all submissions as percolated from the said application into one bucket for consideration of the same and decided to adjudicate by this present Order.

I.A. No. 24 of 2022

THE COURT: Plaintiffs of this apropos Title Suit filed this suit for granting some very prayers as exposted in the impugned plaint. During the propagation of *per se* Suit, as said earlier, Defendant no. 24 has filed this instant interlocutory application being no. 24 of 2022 under Order VII Rule 11 of CPC. Therefore, this Court is in the position to dispose of this present interlocutory application by penning this Order before pursuing to the other applications, if any, and/or instant title suit.


1. After going to pen this present application it is very indispensable to enumerate the brief introduction of the spate of Defendants as well as the Plaintiffs. In this present case Plaintiff No. 1 Shri Ashis Bhuniya and Shri Ashok Bhuniya Plaintiff No. 2 herein conjointly filed this present suit against all the Defendants No. 1 to 23 and Defendant No. 24 for declaration, recovery of possession of the suit property with claim of money and damages together with permanent injunction grossly valued at Rs. 4,00,10,000/-.

2. As per the proviso of Order VII Rule 11 of the CPC is concerned, the present application must and/or shall be revolved around the plaint pertaining to this present suit. Therefore, *in limine*, brief facts that vexed the Plaintiffs to sue before this Court as enumerated in the said plaint are to be appreciated at the time of disposal of the present interlocutory application under Order VII Rule 11 of CPC.

3. Conspectus of facts of the case exposed in the plaint: By dint of 23 deeds of lease (from the annexed certified copies of the said deeds of lease it is exposed that all are dated on 25th April, 2009) Plaintiff No. 1 acquired leasehold right over the suit property leased out by one Sri Bishnupada Mandal along with other Defendants being Defendant Nos. 1 to 23 herein. By virtue of the said lease Plaintiff No. 1 was acquired a leasehold right which was conferred in respect of the suit property in favour of the Plaintiff no. 1 with right to deal with the same in the manner as mentioned in those deeds of lease. It is further averred by the Plaintiffs in their plaint that those lease deeds were executed

initially for a term of 9 years. On perusal of the those lease deeds it is to be stated that there are three clauses being no. 12, 13 and 14, wherein, clause no. 12 bars the lessee and/or leaseholder being Plaintiff No. 1 herein, to sub-lease the plot to any third party without intimating the same to the lessors Defendant Nos. 1 to 23 herein, clause no. 13 confers that in the leased period lessors and/or their legal heirs are bound not to sale the leasehold property to any third party, and clause 14 gives a scope to the lessee to renew said lease after expiry of the leased period with certain terms and conditions as exposted therein. It is also pertinent to mention here that the plot under lease was a 'Jaljami' (more appertaining to 'swamp' and/or 'quire mere') in nature at the time of leasing to the lessee, i.e. Plaintiff No. 1 herein and Plaintiff No. 1 along with Plaintiff No. 2, then, were intended to manufacture a brick field, which after due course of time was climbed up into a nomenclature "Dream Bricks Industries". Plaintiffs also built all appropriate structures as regard building of a brick field.

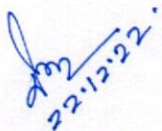
During the sustention of the said lease deeds Plaintiffs, with a tacit consent of Defendant Nos. 1 to 23, decided to transfer the business pertaining to the said leasehold property to the Defendant No. 24, Kalipada Manna herein, by way of a deed of transfer dated 18th April, 2013. Consequently said Kalipada Manna, the Defendant No. 24 herein was put in possession of the said property purely as a permissive occupant and licensee, as the ownership of the structures constructed by the Plaintiffs at their own cost and responsibility out of the fund of the said partnership business owned by the Plaintiffs. Defendant No. 24 was only permitted to use and occupy the same till he pays the entire consideration as agreed for buying and purchasing the said structure


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upon payment of full consideration amount. However, Defendant No. 24 allegedly failed to pay the requisite agreed sum of money. It is also the case of the Plaintiffs that the Defendant nos. 1 to 23 executed a deed of lease in favour of Defendant no. 24 with an ulterior motive. As such being flagrantly aggrieved Plaintiffs filed the present suit before this Court praying for reliefs as expounded in the prayer portion of the instant plaint.

4. Defendant no. 24 with other Defendants herein filed the present interlocutory applications under *Order VII Rule 11 of the Code of Civil Procedure, 1908* and as such argues that the instant suit is deserved to be dismissed as:

- a) The deeds of lease all dated 04.05.2009 are appertained to "Jaljami-in-nature" and the period of lease was for 9 years, that has already been expired. But Plaintiffs did not produce any piece of documents so as to whether the lease period extended or new lease deed executed between original owners of schedule of property and the Plaintiff No. 1. Whereas present suit was filed on 03.09.2021 i.e. more than 4 years of expiry of the leasehold period.
- b) It is alleged by the Defendant No. 24 that Plaintiffs violated the terms and conditions of the said deeds of lease by transferring the leasehold property in favour of Defendant No. 24.
- c) The cardinal objection as regards allowing the present Order VII Rule 11 application is that the leasehold properties are


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'Jaljami-in-nature' i.e. agricultural lands and said lands were not used exclusively for commercial purpose on the date of agreement and as such this Court has no jurisdiction to try the instant suit, rather the disputes pertaining to the present suit are absolutely civil disputes which are to be tried by a competent civil court, but not this court.

- d) The claim of amount allegedly made after three years by the Plaintiff in this present suit is devoid of any substantial supported documents.
- e) Therefore, Defendant No. 24 prays for rejecting the plaint being barred by law and in the alternative to pass necessary orders to return the plaint for want of jurisdiction for refiling of the same in the Civil Court having competent jurisdiction.

5. On perusal of the said application under Order VII Rule 11 of CPC as well as hearing of the submission of the Ld. Counsel appearing on behalf of the Defendant no. 24 (it is pertinent to mention here that during the course of hearing, Ld. Counsel appearing on behalf of the Defendants no. 1 to 23 assumed the submission of the Ld. Counsel on behalf of the Defendant no. 24), this Court opines that the letter and spirit of the said Order VII Rule 11 application revolves around the pertinent question i.e. whether the impugned suit is a commercial suit or

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6. Ld. Counsel of the Defendants argues that on the date of agreement the properties, which was leased out to the Plaintiff no. 1 by the Defendant nos. 1 to 23, was not used exclusively in trade and commerce. Rather at the time of execution of the deed of lease the nature of land was either 'Jala-jami' or 'Kala'. In other words the land

was either water-body or cultivated land more specifically land was not used in trade of commerce. The nature of the land is the substantial corner stone to determine a suit in a commercial court as per *Section 2(1)(c)(viii) of the Commercial Courts Act, 2015* (hereinafter referred to as CCA) regarding this point Ld. Counsel also draws the attention of this Court to the decision of the Hon'ble Supreme Court of India in the case of *Ambalal Sarabhai Enterprises Limited v. K.S. Infrastructure and another*¹ whereat, the Hon'ble Court concurrently viewed that the disputes arising out of the agreements relating to immovable property used exclusively in trade or commerce on the date of said agreement. Moreso, he also argued that the Plaintiffs have prayed for declaration of ownership of the brick field appertaining to the suit property. The suit property is the land in question and the business of manufacturing bricks are being carried on the said land through some machinery which are mostly movable properties and not mentioned or included in the description of suit property. The Plaintiffs, pleas of decree against the defendants for recovery of possession, permanent injunction, attachment of property all in respect of the suit property which is immovable property. The plaintiffs argument, to save the plaint from it's rejection, that the suit is not in respect of the landed property but regarding the transfer of business only, is baseless since the business of manufacturing of bricks is non-existing without the land i.e. the suit property. Ld. Counsel for the Defendants also contends the instant plaint is merely a ploy of clever drafting by not disclosing the actual nature of the land on the date of agreement. As such filing of the present suit is absolutely

¹ (2020) 15 SCC 585

barred before this Court and as per Section 9 of the *Code of Civil Procedure, 1908* this suit is supposed to be barred as well.

Ld. Counsel for the Defendant no. 24 also states that the lease was granted on 25.04.2009 with validity upto 24.04.2019. However, the Plaintiffs not being in possession of the suit property on and from 18.04.2013, which is the actual date of transfer of the same to the Defendant no. 24, whereas Plaintiffs have pleaded protection under *Section 116 of the Transfer of Property Act*, which is a contradictory statement. As regards, Ld. Counsel for the Defendant no. 24 referred to the observation of the Hon'ble Supreme Court of India in the case of **Karnani Industrial Bank Limited v. Province of Bengal and Ors.**² wherein the Hon'ble Court settled down the application of Section 116 of the T.P. Act as a) *the lessee should be in possession after the termination of the lease, and b) the lessor or his representative should accept rent or otherwise assent to his continuing in possession.*

For stemming on the said argument Ld. Counsel also stressed that as per Section 12A of the CCA is concerned, there should be shown an urgent need to file a suit before this Court and as such placed reliance on the decision of the Hon'ble Apex Court of India as regards in **Patil Automation Private Limited v. Rakheja Engineers Private Ltd.**³ decided on 17th August, 2022 wherein it was held as with effect from 20th August, 2022 pre-institution mediation under Section 12A of CAA is mandatory and that no suit can be entertained without having resorted to pre-institution mediation in accordance with Section 12A of the CAA. Whereas in the plaint, there is no such expositions which express need of urgency, which is one of the substantial grounds to

² 1951 SCC 457

³ Civil Appeal Nos. 5333-34/2022

enter into the commercial court. Rather, as alleged by the Ld. Counsel of the Defendants, it is a dispute as regards recovery of possession of immovable properties under Section 106 of the *Transfer of Property Act, 1882* that is why the instant suit is not maintainable before this Court. Regarding that he also refers the decision of the Hon'ble High Court at Calcutta in the case of **Deepak Polymers Private Limited v. Anchor Investments Private Limited**⁴

Ld. Counsel also contends that Plaintiffs sub-leased the impugned property to the Defendant no. 24 after expiry of original lease period i.e. 9 years without the knowledge and consent of Defendant nos. 1 to 23. Beside this, he further contends that in the plaint only 23 deeds have mentioned but no total area, boundary or nature of land even the schedule given in the plaint is a vague.

Prayers (a) and (m) of the suit are for declaration of the ownership of the Plaintiffs in respect of the suit property and also the brick field appertaining to the suit property is completely based on the Plaintiffs alleged leasehold interest in respect of the suit property on the basis of the said deeds of lease dated 25th of April, 2009 the determination of which was made on 24th of April, 2018 for efflux of time. In such event any suit for declaration of leasehold interest on the suit property is to be filed within three years when the right to sue accrues as per Article 113 of the limitation. As regards prayer (b) of the plaint is the declaration for which the right to sue of the Plaintiffs arose first time when the Defendant no. 24 denied the claim of the Plaintiffs by the purported reply dated 14th July, 2014 and for such declaration the suit has to be taken within three years thereof as per article 113 of the Limitation Act.

⁴ C.O. No. 759 of 2021 with I.A. No. CAN 1 of 2021 with CAN 2 of 2021

In the same way the prayers (i), (j) and (k) of the plaint regarding compensation for loss of business and interest the suit has to be filed within three years of the date by which the alleged consideration was payable as per article 113 of the limitation. Ld. Counsel of the Defendants then resorted to the decision of the Hon'ble Supreme Court of India reported in (2007) 5 SCC 614 and submitted that if it appears that the suit is barred by limitation the plaint is liable to be rejected on the ground of limitation only and "law" within the meaning of *Order VII Rule 11(d)* must include the law of limitation as well.

7. This Court contemplatively heard the above said argument as preferred by the Ld. Counsel of the Defendants.

8. Plaintiffs' actual line of defence in respect of the application being no. 24 of 2022 is:

a) Plaintiffs' prayers as exposted in the said plaint are all around to the transfer of the business pertaining to the *per se* leasehold property to the Defendant No. 24, Kalipada Manna herein, by way of a deed of transfer of ownership of Bricks Manufacturing Unit, dated 18th April, 2013 executed by "Dream of Brick Industries". In page no. 2 of the said deed of transfer it is exposted as transferee/purchaser being intended to purchase the said bricks manufacturing unit from the transferor/seller in above sale value and in clause 1 it has been clearly mentioned that the transferor/seller i.e. the plaintiffs shall make transfer in favour of the purchaser/transferee etc. subject to payment of the contractual amount as mentioned therein being the consideration price for sale of the said brick manufacturing


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unit. There is no crystal clear indication of sale of the property wherein the said brick field was situated.

- b) In the year 2009 on the strength of a bunch of deeds of lease, Plaintiff no. 1 herein got the lease of the impugned property from the Defendant nos. 1 to 23 on certain terms and conditions as stated therein and on that particular time of making the said agreement the nature of land was Jal-jami or etc. but, this cannot be a crucial material at all in respect of the instant suit as the present suit was filed based on the Deed of Transfer dated 08.04.2013. Rather, on or before 08.04.2013 the property was being used for commercial purpose in the nature of brick field by the plaintiffs and since, after being made the said deed, till date the property is being used by the Defendant no. 24 as brick manufacturing unit as regards he also refers to the decision of the Hon'ble Supreme Court of India in the case of **Ambalal Sarabhai Enterprises Limited v. K.S. Infrastructure** (*supra*). More so, he also states that from 2009 to 2013 the property was solely used for the purpose of bricks field not for land therefore, the contention as regards agricultural land cannot and/or should not be tenable. Regarding that he refers to the decision of the Hon'ble Supreme Court of India in **B.P. Jeevan Reddy and S.P. Bharucha**⁵ wherein the Hon'ble Court held as land was not agricultural at the time of sale if the said land had not been cultivated for 4 years preceding sale.


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⁵ AIR 1993 Supreme Court 2585

c) He further contends that the question of application of Section 54 of the Transfer of Property Act under the circumstances does not arise because the document dated 08.04.2013 is not a contract for sale and/or tenancy at all. Rather it is mere permission and/or licence granted to the Defendant no. 24 by the Plaintiffs to occupy and use the structure of the brick field business owned by the Plaintiffs. As regards Ld. Counsel for the Plaintiffs grossly drew the attention of this Court to assail the case of Deepak Polymers Private Limited v. Anchor Investment Private Limited (*supra*).

d) Ld. Counsel of the Plaintiffs also assails all the decisions as raised by the Ld. Counsel of the Defendants during the course of argument.

9. The present interlocutory applications corresponding to Order VII Rule 11 of the CPC. Therefore, while an application is singularly aspect the Order VII Rule 11 of the Code of Civil Procedure, the Court is, *prima facie*, bound to see whether the case in hand falls within the six limbs stated in the said order or not. If the suit is not falling under any of those categories, the plaint cannot be rejected. (V. Bragan Nayagi Vs. R.R. Jeyaprakasam⁶). The six limbs are apposite to set out hereunder:

The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do

so;

⁶ 2015(4) MLJ 538)

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.

(Emphasis added)

10. As per the proposition of the Hon'ble Supreme Court of India laid down in various decisions it is clarified that the Court, while dealing with such an application seeking rejection of a plaint, ought to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon. In this regard, it is also clarified that while making such a determination, Courts will have to disregard the pleas taken by the Defendant(s) in the Written Statement and application for rejection of the plaint on merit. Hence, the SC clarified that while determining any application filed under Order VII Rule 11 of CPC, the Courts should restrict itself to the plaint and should not go into the delineated facts as provided under the Written Statement or even the application filed under Order VII Rule 11. In the case of Liverpool and London S.P. and I Association Ltd. vs. M.V. Sea Success, which, *inter alia*, provides that whether the plaint discloses a cause of action or not is essentially a question of fact, however, whether it does or does not must be found from the reading of the plaint itself during which the averments made in the plaint in their entirety must be held to be correct. In other words,


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the plaint must be construed as it stands, without addition or subtraction of words. Therefore, it is very clear that when a Court goes to adjudicate an Order VII Rule 11 application, the Plaint annexed with the documents will be the sacrosanct and if the Plaint does not disclose a cause of action {as per clause (a) of the said Order}, or that the suit is barred by any law {as per clause (d) of the said Order}, the Court has no option, but to reject the Plaint (**Dahiben vs. Arvindhai Kalyanji Bhansai**).

11. A comprehensive perusal of the present applications as well as hearing of the parties to this present proceeding, it is conspicuous to this Court that Defendants filed this present interlocutory application mainly resorting to clause (a) and clause (d) of the Order VII Rule 11 and all other residual clauses as enumerated in the said Order are otiose in term of the factual aspects of the instant application.

12. It is reiterated that it is well settled golden proposition in law that at the time of the considering an application for rejection of plaint, Court has to confine itself only to averments made therein. Whether the Plaintiffs will succeed or not is a matter of trial and not the subject matter of enquiry under Order VII Rule 11.

13. In the present suit, at first, this Court has to find out the seminal issue whether the suit property is used and/or being used for trade and commerce or not. In other words, whether the dispute between the parties is a commercial dispute within the purview of Section 2(1)(c)(viii) of the CAA.

On perusal of the plaint along with the prayers *uno flatu*, it is *ex facie* shows that Plaintiffs on the strength of 23 numbers of Registered deeds

⁷ 2020 SCC Online 563 para 12.10

of lease executed by Defendant nos. 1 to 23 acquired lease hold right and interest over the suit property. The said deeds of lease were executed and registered on 25th April, 2009. At that point of time nature of the land was either water-body or agricultural land. Subsequently, Plaintiffs constructed brick field on the said land and later on in the year 18.04.2013 said brick field business was transferred to Defendant no. 24. Ultimately, dispute and difference cropped up between the Plaintiffs and Defendant no. 24 over the issue of alleged breach of the terms of the agreement dated 18.04.2013 regarding non-compliance of the payment as per schedule. As a result, Plaintiffs' came before this court with the present suit with the present suit for the reliefs stated earlier. Thus, the case of the Plaintiffs is revolved around the agreement dated 18.04.2013 in between Plaintiffs and Defendant no. 24. Therefore, there is no iota of doubt that at the time of transferring the same to the said Defendant no. 24 business of brick field under the name and style "Dream Bricks Industries" was running on the said land. So, as per statutory provision of the Commercial Courts Act this property was being used exclusively for the purpose of trade and commerce. As such this Court relying on the decision of the Hon'ble Supreme Court in Ambalal Sarabhai Enterprises Limited v. K.S. Infrastructure' case opines that at the time of making deed of transfer dated 18th April, 2013 the said property was a brick field and was being used exclusively in trade and commerce and as such there is no dubitation to consider the said property as a commercial dispute. That being so, the present suit is well within the purview of *Section 2(1)(c)(viii) of the Commercial Courts Act, 2015*. The contention as raised by the Ld. Counsel for the Defendants that the basis of the instant suit is the land that was given to the Plaintiff no. 1


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by the Defendant nos. 1 to 23 by virtue of said lease deeds that is why transferring of any business situated on the said land of course means to transfer the land along with the business as without land there is no existence of business. But, this Court does not find any force to that agreement as, has already been discussed above, when there is an admitted deed of transfer so there is no hesitation to imbibe such things that at the time of transferring of the said property the property was exclusively in trade and commerce and when the prayer made out in the said plaint are revolved around the said deed transfer so, *prima facie* at this stage, it is concluded that this suit is well maintainable in this Court to be tried.

14. The next contention of the Ld. Counsel for the Defendants is whether the land is agricultural land or not. The present issue is interlinked with the issue that has already been discussed in the very aforesaid paragraph of this order. At the risk of repetition, I am reiterating again that the present suit has arisen out of an agreement dated 18th April, 2013 between Plaintiffs and Defendant no. 24 and not on the basis of the deeds of lease dated 25th April, 2009. The said agreement dated 18th April, 2013 is in respect of an immovable property and at the time of execution of the said agreement the land was being used exclusively for the trade and commerce constructing a brick field.

15. The next question is whether the said suit can fall into the arena of Transfer of Property Act or not. On perusal of the decision of the Hon'ble High Court at Calcutta in the case of *Deepak Polymers Private Limited's* case as referred by the Defendants is very much distinguishable on their respective facts with the present case. As in the said case it was particularly mentioned in paragraph no. 13 that the said

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suit was a tenancy dispute and from the paragraph no. 32 it is also expounded that the said suit has been filed for recovery of possession in respect of immovable property on the ground of forfeiture for contravention of any of the terms and conditions of the respective agreements-in-question therein and it has been argued that the suit pertains to disputes "arising out of" such agreements. *Per contra*, in the present suit it is not at all a suit under Section 106 of Transfer of Property Act nor it is preceded by any such notice as it is required to be given under T.P. Act for initiating such proceeding. Notice, which was issued by the Plaintiffs to the Defendant no. 24 before institution of the suit, manifestly shows the same as a demand notice claiming outstanding rent from the Defendant no. 24. Besides, that there is no landlord-tenant's relationship at all. As such this suit is maintainable in this Court being treated as a commercial suit.

This Court also takes view from the decision of the Hon'ble High Court at Calcutta in the case of *Bhagwati Prasad Jhunhunwala (HUF) & Ors. v. UCO Bank & Anr^s*, wherein the Hon'ble Court held that since the said case involves action for recovery of immovable property as well as profit which is nothing but a relief pertaining to immovable property it cannot be taken out of purview of the expression "cannot dispute" defined u/s 2(1)(c) of the 2015 Act.

This Court also resorts to the explanation to Section 2(1)(c) of the 2015 Act provides that a commercial dispute shall not cease to be a commercial dispute merely because it also involves action for recovery of immovable property or for realization of money out of immovable

⁸ 2022(1) Indian Civil Cases 262 (Cal.)

property giving as security or involve any other relief pertaining to immovable property.

16. Defendants also raised a point of limitation, in that regard this Court opines and reiterates that this is an application under *Order VII Rule 11 of CPC* and the scope for rejection of a plaint is very limited. When the question of limitation comes into play at the time of rejection of a plaint, it is not desirable to dismiss the suit as barred by limitation without framing of proper issues and that should be decided after considering the evidence of the parties as the point of limitation is a mixed question of law and fact. Accordingly, the contention of the Ld. Counsel for the Defendants regarding assessment of dates to reckon the limitation of time, of course a mixed question of facts and law. *Ex facie*, on reading of the plaint, a suit cannot be held to be barred by limitation. Parties relegated to contest the suit; it shall be opened to defendant-petitioner to raise any plea available to it under the law including the plea of limitation, maintainability of the suit etc. This view of mine gains authoritative support from the decision of the Hon'ble Supreme Court of India in the case of *Balalaria Construction (P) Ltd. vs. Hanuman Seva Trust and Others*⁹. As such merely because of point of limitation, which is to be tried, the plaint cannot be rejected at this very primary stage. As a result, this Court thinks it fit to keep this issue open and the present issue to be adjudicated in course of trial.

17. In respect of other points as raised by this Defendants such as Plaintiffs made the deed of transfer without consent of the Defendant nos. 1 to 23; as the lease of original deeds of lease as leased by the Defendant nos. 1 to 23 to the Plaintiff no. 1 had already been

⁹ (2006) 5 SCC 658

transgressed the lease period i.e. 9 years, there is no obligation to lease the said property to the third party; consideration of the issue, whether the Defendant no. 24 is liable to pay the outstanding dues to the Plaintiffs or not; not at all entertainable at this stage as in the present stage this Court is dealing with an application under Order VII Rule 11 of CPC. As the rejection of plaint under Order VII Rule 11 of CPC has limited application and it is a drastic step to terminate civil action at the threshold when mixed question of fact and law arise, the plaint cannot be rejected at threshold. It is to be noted here that through Defendant no. 24 has come up challenging the sanctity of the agreement dated 18.03.2013 but he himself acted upon the said agreement and still he has been carrying on the said business on the basis of the said agreement. The Hon'ble Punjab and Haryana High Court in the case of **Balraj Singh and others v. Banwari Lal and others**¹⁰ reiterated that same view that when there is a mixed question of law and facts, plaint cannot be rejected at threshold.

Moreover, this Court stressed on the explanation of the Section 2 of the CCA and in consonance with the said clause it is provided that when principal relief is against a party to agreement and such dispute is a commercial dispute as per Section 2(1)(c)(vii) of the CCA, mere fact that consequential reliefs has been prayed for against a third party in addition to person with whom agreement is subsisting cannot take out such dispute from the ambit of a commercial dispute.

18. Defendants' objection in their Order VII Rule 11 application that this suit is liable to be rejected as it is particularly barred by the clause (d) of the Order VII Rule 11. First of all it is to be said that Order VII Rule

¹⁰ 2021 (4) Indian Civil Cases 730 (Pb. & Hry.)

11(d) of the CPC has limited application (Kamala & Ors. vs. K.T. Eshwara Sa & Ors'). A perusal of the documents as well as the hearing of the parties to this proceeding, it is pertinent to mention here that this suit is very maintainable in this Court and this stage is inchoate to determine all the issues as raised by the Plaintiffs in this suit and if this Order VII Rule 11 application is allowed at this stage, the prayers of this present suit will not be entertained and as such gross injustice will prevail over.

19. Therefore, from the above delineation it is clear that the instant interlocutory application being no. 24 of 2022 is devoid of merit and as such the present interlocutory application is dismissed.

20. There shall be, however, no Order as to costs.

21. Due to intervention of the winter vacation the following time schedule is fixed as regards I.A. No. 01 of 2021 under Order XXXIX Rule 1 and 2 filed by the Plaintiffs and for I.A. No. 10 of 2021 under Order XXXIX Rule 4 filed by the Defendants 24:

On 19.01.2023 at 1:30 p.m. for filing written notes of argument by both the parties.

On 02.02.2023 at 11:45 a.m. hearing on behalf of the Plaintiffs.
Defendants.

On 06.02.2023 at 2:00 p.m. hearing on behalf of the Defendants.

On 08.02.2023 at 12:45 p.m. for reply, if any.

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At this stage, Plaintiffs file another interlocutory application supported by an affidavit praying for extension of the ad interim

order of injunction dated 03.09.2021. Let the same be registered as I.A. No. 38 of 2022.

Considered and prayer is allowed.

Let the ad interim order of injunction dated 03.09.2021 be extended till the next date fixed.

Accordingly, the instant I.A. is also disposed of.

Both parties are to act on the basis of the downloaded copy of the ordersheet from the Web-site/E-courts-app.

Dictated and corrected by me



Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram

Judge
Commercial Court at Alipore



Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram

Judge
Commercial Court at Alipore

Present: Sri Dev Kumar Sukul (JO Code WB00766)
Judge, Commercial Court at Alipore
Misc Case 01 of 2022
(Arising out T.S. 20 of 2021)
WBSP18-000013-2022

Order No. 52
22.12.2022

Today is fixed for filing rejoinder to the objection if any, to the instant application.

Defendant no. 24 files hazira.

Defendants no. 1 to 23 except 2 & 15 also files hazira.

Petitioners file an application for adjournment on the grounds stated therein.

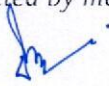
Copy served.

Heard. Considered and prayer is allowed.

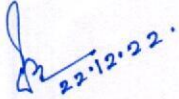
*Fix **19.01.2023 at 1.30 p.m** for filing rejoinder to the objection if any, to the instant application.*

Both parties are to act on the basis of the downloaded copy of the ordersheet from the Web-site / Ecourts-app.

Dictated & corrected by me,


Judge, Commercial Court at Alipore
For districts of South 24 Parganas, Purba Medinipur,
Paschim Medinipur & Jhargram

Judge
Commercial Court at Alipore


Judge, Commercial Court at Alipore
For districts of South 24 Parganas, Purba Medinipur,
Paschim Medinipur & Jhargram

Judge
Commercial Court at Alipore