

IN THE COMMERCIAL COURT AT ALIPORE

Present: Smt. Suparna Ray (JO Code:WB00711)

Title Suit 22 of 2022
T.S. (Com) 44 of 2022
CNR No. WBSP18-000185-2022

Macneil Properties LLP

.....Plaintiff

Vs.

Orient Beverages Ltd. & Ors.

.....Defendants

Order No. 32

Date: 09.12.2025

Today is fixed for passing the Order of the application being I.A. no. 04 of 2023.

Both sides file their respective haziras.

Now, the instant record is taken up for passing order in respect of I.A. no. 04 of 2023.

I.A. No. 04 of 2023

The instant application has been filed by the defendant no. 8 under Order VII Rule 10 read with Section 151 of the Code of Civil Procedure, 1908.

The prime contention of the petitioner/defendant no. 8 in the instant application is that the suit in context has been filed by the plaintiff for recovery of possession of immovable property from the defendants and as such, the relief as sought for by the plaintiff in

the instant suit is the statutory relief and not for any relief which may be sought for before a Commercial Court akin to this.

The defendant no. 8 has contended that there is no agreement between the defendants as well as the defendant no. 8 and the plaintiff herein even any such agreement between the parties has not been disclosed. More so, the cause of action even against the defendant no. 1 is not arising out of any agreement. As such, it is merely a suit for eviction under Section 111(a) of the Transfer of Property Act, 1882.

The said petitioner/defendant no. 8 has also stated that the plaintiff does not and cannot have any cause of action against the defendant no. 8. However, the said defendant no. 8 has not raised such issue in the instant application and reserved its right to raise the same before the appropriate court inasmuch as, in accordance with the defendant no. 8, this Court being a Commercial Court does not have subject matter jurisdiction to entertain the instant suit.

Learned Advocate appearing on behalf of the defendant no. 8 has submitted that the case of the plaintiff is that the defendants in the suit, including the defendant no. 8, are trespassers in respect of various portions of the suit property inasmuch as allegedly the head lease which was granted in favour of the defendant no. 1, has stood expired by efflux of time on 11.05.2019 and the plaintiff having acquired leasehold interest in respect of the suit property by virtue of a purported lease deed dated 31.03.2021 from the original owner thereof being the proforma defendant herein, they are

entitled to seek eviction of the defendants therefrom. In view of that the learned Advocate for the defendant no. 8 has relied on the paragraphs nos. 5,6,11,13 to 20 of the plaint in context.

Upon sparking reliance on the aforesaid averments of the plaint, learned Advocate appearing for the defendant no. 8 has submitted that the plaintiff's claim of eviction against the defendants is on the basis of expiry of lease under Section 111(a) of the Transfer of Property Act, 1882 and not pursuant to any existing agreement. Therefore, learned Advocate has submitted that the disputes forming the subject matter of the present suit do not arise out of any right conferred by way of any agreement in respect of an immovable property, but on the basis of a statutory right of seeking eviction due to expiry of lease by efflux of time in terms of Section 111(a) of the Transfer of Property Act, 1882. To give buttress of his submission, learned Advocate has further submitted that in terms of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 for the commercial courts to have jurisdiction to adjudicate a suit for recovery of possession of an immovable property, it is necessary that the disputes forming the subject matter of such suit arise out of an agreement relating to immovable property used exclusively for trade or commerce. But, the disputes forming the subject matter of the present suit between the plaintiff and the defendants do not have arisen in respect of an agreement relating to the property forming the subject matter of the present suit, therefore, the same cannot be termed as a "commercial dispute" within the meaning of

the Commercial Courts Act, 2015 and cannot be adjudicated before this Court.

In support of the aforesaid contention the learned Advocate appearing for the defendant no. 8 has made reliance on the decision of the Hon'ble High Court at Calcutta reported in **MANU/WB/0311/2023 [Jayanta Krishna Dutta & Anr. vs. Indian Oil Corporation Limited]** wherein the Hon'ble Court held that the disputes forming the subject matter of suit for recovery of possession as instituted by the plaintiff on the ground of expiry of lease by efflux of time in terms of Section 111(a) of the T.P. Act, 1882 cannot be termed as a commercial dispute within the meaning of the CCA, 2015 as the same has not arisen out of an agreement relating to an immovable property but a statutory right conferred under Section 111(a) of the T.P. Act, 1882. In this respect, the learned Advocate has also relied on a further decision of the Hon'ble High Court at Calcutta reported in **MANU/WB/0744/2021 [Deepak Polymers Pvt. Ltd. vs. Anchor Investments Pvt. Ltd.]** wherein the Hon'ble Court held that disputes leading to institution of a suit for recovery of possession which arises out of a notice of eviction under Section 106 of the CCA, 2015 cannot be treated as "commercial dispute" within the mandate of the CCA, 2015 inasmuch as such disputes have not arisen out of a statutory right of seeking eviction in terms of Section 106 of the T.P. Act, 1882.

Lastly, learned Advocate for the defendant no. 8 has also relied on the decision of the Hon'ble Supreme Court of India reported in

2020 15 SCC 585 [Ambalal Sarabhai Enterprises Limited vs. K.S. Infraspace LLP and Anr.], wherein the Hon'ble Apex Court clearly laid down that the provisions of the Commercial Courts Act, 2015 are required to be given a strict interpretation and not a liberal interpretation.

Therefore, from the above discussion, it is imbibed that the contention of the defendant no. 8's learned Advocate is inasmuch as there is no agreement between the plaintiff and the defendants including the defendant no. 8 then in view of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015, which mandates for having an agreement to institute a suit for recovery a commercial property, the instant suit itself ousts the jurisdiction of this Court. In other words, the relief, if any, as sought for in the instant suit by the plaintiff is a statutory relief which can not be adjudicated by this Court being constituted under the Commercial Courts Act, 2015.

In counter argument, learned Advocate appearing for the plaintiff has submitted that indisputably, the suit premises is an immovable property used exclusively in trade and commerce and the disputes as delineated in the instant suit should be considered to be arisen out of two agreements being a lease deed dated 07.01.1960 executed by the proforma defendant no. 20 in favour of the defendant no. 1 as rectified by the deed of rectification dated 12.01.1961 and also a lease deed dated 31.03.2021 executed by the proforma defendant no. 20 in favour of the plaintiff.

Learned Advocate has further stated that in the registered deed of lease dated 31.03.2021 in favour of the plaintiff, in exercise of rights arising out of which, the plaintiff can dispossess the defendants or so it contends such registered lease is an agreement capable with a demise/transfer. As such, the disputes of the plaintiff curved out in the plaint in context arises out of such registered deed of lease and therefore, the same squarely comes within the preview of Section 2(c) of the CCA, 2015. As regards, learned Advocate has relied on Clause III(e) of the said deed dated 31.03.2021 as exposted in page no. 55 of the plaint.

Learned Advocate for the plaintiff has also referred to Clause 15 of the lease deed dated 07.01.1960 being the page no. 33 of the plaint and submitted that the said lease dated 07.01.1960 executed by the proforma defendant no. 20 in favour of the defendant no. 1, the erstwhile lessee of the suit premises, also foists an obligation upon the defendant no. 1 and/or any other person or entity claiming through or under him to deliver up vacant and peaceful possession of the suit premises.

In consonance with the aforesaid, learned Advocate for the plaintiff has also submitted that the definition of “commercial dispute” under Section 2(1)(c) of the CCA, 2015 does not make it expressly or by necessary implication mandatory that there should be an agreement of the plaintiff with each of the defendant in the suit. All it says is that the dispute/claim filed by the plaintiff should arise out of an agreement in relation to an immovable property used

exclusively in trade and commerce. Once the aforesaid criteria are met, such dispute becomes a commercial dispute. To buttress his submission, learned Advocate has taken resort to the Explanation to Section 2(1)(c) of the CCA, 2015, which also indicates that once it is a commercial dispute, even if one claims recovery of possession of the immovable property in question, it would continue to remain a commercial dispute.

In that learned Advocate for the plaintiff has relied on the decision of the Hon'ble Supreme Court of India reported in **(1997) 1 SCC 496**.

In support of his submission, learned Advocate for the plaintiff has further relied on the decisions of the Hon'ble Supreme Court of India reported in **(2007) 4 SCC 343**, **(1998) 2 SCC 70** and **(2003) 1 SCC 557** and also the decisions of the Hon'ble Apex Court reported in **(2004) 3 SCC 137** and **(1982) 3 SCC 487**.

Now, the issues which are to be assimilated herein are that whether the dispute in question in the instant suit is a commercial dispute, whether the disputes have arisen out of an agreement between the plaintiff and the defendants including the defendant no. 8 and whether the relief claimed for in the instant suit is a statutory relief.

Before relegating on the aforesaid issues, it is to be stated that it is now a well settled proposition of law that while considering an application for rejection and/or return of the plaint, the plaint has to be read as a whole upon giving meaning to every paragraph

which has been averred by the plaintiffs entitling it to judgment and it is further settled proposition of law that the court should determine the cause of action of the plaint in context by scrutinizing the averments made in the plaint read in conjunction with the documents annexed to it.

Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 reads as “*agreements relating to immovable property used exclusively in trade or commerce*”.

Therefore, it is to stated that in terms of Section 2(1)(c)(vii) of the CCA, 2015 it is necessary that the disputes forming the subject matter of such suit arises out of an agreement relating to immovable property used exclusively for trade or commerce.

On pondering into the plaint in context specifically in paragraph nos. 13 to 24 thereof, it demonstrates that the plaintiff has sought to exercise its legal right under the lease deed dated 31.03.2021 to recover possession of the suit premises from the defendant no. 1 and/or the other occupants claiming under it including the defendant no. 8. More so, the plaintiff has specifically pleaded that its cause of action has arisen on 31.03.2021 being the date on which the suit premises was demised by the proforma defendant no. 20 in favour of the plaintiff. As regards, it is needed to set out the paragraph no. 24, which is as follows: “*The cause of action for the instant suit arose on 31.03.2021 when the defendant no. 20 demised the suit premises in favour of the plaintiff with the right to evict the occupants thereof the same arose at the suit*”

premises being premises no. 225C, Acharya Jagadish Chandra Bose Road, Kolkata 700 020, police station Ballygunge, within the jurisdiction of this Learned Court”.

Therefore, so far as the averments of the plaint are concerned, the plaintiff has made out a case based on the agreements as aforesaid. Now, whether such agreements have at all given such power to plaintiff to seek such relief against the defendant, which needs to be determined and for that, this Court at first, has perused the Clause III(e) of the lease deed dated 31.03.2021 (at page no. 55 of the plaint) which reads as “.....*the lessee shall be entitled to demand sue for and obtain and recover vacant and/or peaceful possession from all occupants including Orient Beverages Ltd. Or person of persons claiming through it*”. Thus, from the aforesaid, it appears that the right of the plaintiff to sue for and demand vacant and peaceful possession emanates and/or arises from a covenant contained in an agreement relating to immovable property used exclusively in trade and commerce.

Now, on further perusal of the Clause 15 of the lease deed dated 07.01.1960 (at page no. 33 of the plaint), it appears that the said Clause recognizes the obligation on the part of the defendant no. 1 “*to surrender, deliver and yield up unto the lessors undisturbed possession of the demised portions of the said premises including the building and/or constructions.....*” Thus, the earlier lease deed executed by the proforma defendant no. 20 in favour of the defendant no. 1, the erstwhile lessee of the suit premises also foists

an obligation upon the defendant no. 1 and/or any other person or entity claiming through or under him to deliver up vacant and peaceful possession of the suit premises.

Therefore, from the above discussion, it is prima facie considered that the disputes canvassed in the present suit arises from the agreement relating to immovable property used exclusively in trade and commerce.

In respect of another issue with respect to resorting to statutory relief, this Court has perused the ratio of the decisions of the Hon'ble High Court in *Deepak Polymers'* case (*supra*), wherein the Hon'ble Court held that the disputes leading to institution of a suit for recovery of possession which arises out of a notice of eviction under Section 106 of the T.P. Act, cannot be treated as 'commercial dispute' within the meaning of the CCA, 2015. However, the Hon'ble Division Bench of the Hon'ble High Court at Calcutta in the case of **T.E. Thomson & Company Limited Vs. Swarnalata Chopra Nee Kapur & Anr** revolves around the significant question of law concerning the jurisdiction of commercial courts to entertain suits for eviction based on lease agreements once the lease has expired and possession is sought under Section 106 of the Transfer of Property Act, 1882. The core issue addressed by the Hon'ble Division Bench of the Calcutta High Court was whether such eviction suits can be treated as "commercial disputes" under Section 2(1)(c)(vii) of the Commercial Courts Act, 2015, when the immovable property in question is used exclusively for trade or

commerce. The Hon'ble Division Bench held that "a rigid dichotomy between statutory and contractual rights is misleading in the context of eviction suits under the Transfer of Property Act. The Court emphasized that Section 106 of the T.P. Act is merely a rule of construction to determine the tenure and method of termination of lease, and not an independent source of cause of action to the exclusion of the underlying lease agreement. The Hon'ble Division Bench observed that the phrase "relating to" in Section 2(1)(c)(vii) of the Commercial Courts Act is of wide import and includes all matters connected with commercial use of immovable property, including eviction proceedings following lease expiry. The explanation to Section 2(1)(c) reinforces this by expressly clarifying that the nature of relief (e.g. recovery of possession) does not detract from the commercial character of the dispute if the agreement pertained to commercial use" and further held that "parties can rely on the lease agreement even after issuance of notice under Section 106 of the T.P. Act. A suit initiated under Section 106 T.P. Act does not preclude examination of the lease agreement, and such a suit may qualify as a commercial dispute. Considering the explanation to Section 2(1)(c) of the Commercial Courts Act along with Section 106 T.P. Act the suit can indeed be treated as a commercial suit. The Court thus affirmed that such eviction disputes are within the jurisdiction of commercial courts where the property in question is used exclusively for trade or commerce".

However, in the instant case on perusal of the plaint it appears that no notice under Section 106 of the T.P. Act, 1882 has been issued by the plaintiff at any point of time. More so, at the cost of repetition, it is stated that the disputes in question have arisen out of the lease agreement in respect of the immovable property which appears to be used exclusively for the commercial purpose. Hence, in my considered view, the disputes raised in the plaint in context comes within the arena of stipulations of the Commercial Courts Act, 2015.

Therefore, in view of foregoing discussion, this Court opines that the instant application being I.A. No. 04 of 2023 deserves to be rejected and is, accordingly, rejected on contest without any order as to costs.

Hence, the I.A. No. 04 of 2023 is hereby **disposed off**.

Fix the matter on **13.01.2026 at 10:40 a.m.** for filing affidavit in opposition, if any, to the application being I.A. No. 32 of 2024 by the contesting defendants.

I.A. No. 42 of 2025

Plaintiff has filed an application praying for extension of *ad interim* order of injunction dated 02.01.2023. Let the same be registered as I.A. No. 42 of 2025.

Prayer is considered and allowed.

Let the order of *ad interim* injunction is extended till the next date as fixed.

Let the I.A. No. 42 of 2025 be **disposed off**.

Parties to act on the basis of the downloaded copy of the order sheet from the website/E-court App.

Dictated and corrected by me,

Sd/-

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

Sd/-

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