

N.22S1
151/CL

CO 4486 of 2025

Arpee Builders & Promoters Pvt. Ltd.

v.

Macneill Properties LLP & Ors.

05.03.26
SI-12(ML)
Ct-06
(S.R.)

Mr. Abhrajit Mitra, Sr. Adv.
Mr. Satadeep Bhattacharyya
Mr. Uttam Sharma
Ms. Sreeparna Mitra
Ms Vrinda Kedia ... for the petitioner.

1. This revisional application is directed against an order dated December 9, 2025 passed by the learned Judge, Commercial Court at Alipore in Title Suit No.22 of 2022 (T.S. (Com) No.44 of 2022) whereby the petitioner's application under Order 7 Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (hereafter "the Code") has been rejected.
2. The petitioner is the defendant no.8 in a suit for eviction filed by the opposite party no.1.
3. Asserting that the suit was not maintainable before the Commercial Court inasmuch as the property in question was not exclusively used for the purpose of trade and commerce, an application under Order 7 Rule 10 of the Code had been filed by the petitioner. By the order impugned, such application has been turned down by the learned Commercial Court.
4. Mr. Mitra learned Senior Advocate appearing for the petitioner submits that the learned Commercial Court has exceeded its jurisdiction by rejecting the

petitioner's application for return of plaint and by continuing with the suit despite it being crystal clear that the dispute is not a commercial one. He invites the attention of this Court to Clause II(i) of the of the indenture of lease executed on March 31, 2021 annexed to the plaint to indicate that the subject property can be used for residential and/or commercial purpose. He has taken the Court through the plaint to demonstrate that there is no specific averment that the property has been exclusively used for commercial purpose since the date of agreement. He also cites ***Ambalal Sarabhai Enterprises Ltd. vs. K.S. Infraspace LLP. & Anr.*** reported at ***(2020) 15 SCC 585*** in support of his contentions.

5. On a preliminary assessment of the plaint together with Clause II(i) of the indenture of lease executed on March 31, 2021 (which forms an annexure to the plaint), this Court is of the *prima facie* view that the conclusion reached by the learned Commercial Court in turning down the petitioner's application for return of plaint may not be correct. To wit, while the plaint does not indicate that the property in question is being used exclusively for trade or commerce since the date of agreement, Clause II(i) of the lease deed suggests that the subject property may not be exclusively used for commercial

purposes. The petitioner has therefore made out an arguable case.

6. In such view of the matter, let copies of the revisional application along with notices be served upon the opposite parties intimating that this matter shall be taken up next after three weeks.
7. Mr. Mitra, learned senior advocate appearing for the petitioner submits that notices have already been served upon the opposite parties since the petitioner had received notice of caveat after filing of the revisional application. Affidavit of service filed in Court to that effect is taken on record. However since none has appeared on behalf of the opposite parties notice as directed may be served again.
8. The Court is informed that the next date fixed before the Commercial Court is March 13, 2026. The petitioner shall be entitled to pray for an adjournment before the learned Commercial Court on the date fixed.
9. List after three weeks as directed.

(Om Narayan Rai, J.)