IN THE HIGH COURT AT CALCUTTA

ORIGINAL SIDE

COMMERCIAL DIVISION

Present:

The Hon'ble Justice Krishna Rao

IA No. GA-COM 2 of 2024

In

CS (COM) No. 4 of 2023

T.E. Thomson & Company Limited

Versus

Swarnalata Chopra Nee Kapur & Anr.

Mr. Krishnaraj Thaker
Mr. Chayan Gupta
Mr. Rittick Chowdhury
Mr. Pourush Bandyopadhyay
Mr. Dwip Raj Basu
Mr. Soumyajit Mandal

... for the plaintiff.

Mr. Sarosij Dasgupta
Mr. Javed K. Sanwarwala
Ms. Madhurima Halder
Mr. S.A. Sanwarwala
Ms. Sadaf Aafrin

... for the defendant no.1.

Hearing Concluded On : 05.08.2024

Judgment on : 01.10.2024

Krishna Rao, J.:

1. The defendant no.1 has filed the present application being G.A. (Com) No. 2 of 2024 for dismissal of the suit against the defendant no.1. The plaintiff has filed the suit being C.S. (Com) No. 4 of 2023 praying for decree of eviction of the defendants, illegal sub-tenants inducted by the defendants and for mesne profits.

2. The defendant say that there is no pleading in the plaint pertaining to the date and other particulars of cause of action and in violation of the Order VI of the Code of Civil Procedure, 1908 and Chapter VII Rule 1 of the Original Side Rules of this Court. He submits that the defendant is continuing paying the monthly rent as fixed by the Rent Controller to the Kolkata Municipal Corporation as per direction passed by the High Court in WPO No. 2475 of 2022 dated 20th September, 2022. The defendant say that since the rent of the suit property is attached to the Kolkata Municipal Corporation by the order of the Court, the plaintiff cannot take action with respect to the property till such time the statutory dues of the plaintiff are cleared by the defendant no. 1.

3. The defendant says that lease of the suit property was given to 8 joint lessees and composite rent receipts were issued in the name of the joint lessees. When the plaintiff had filed an application before the Rent Controller for enhancement of rent, in the said application all the

lessees have been made party but in the present suit, the plaintiff has not made the other 6 lessees as party to the suit. If at all, the lessees have passed away, the legal heirs could be made as party to the suit. He submits that even if the plaintiff get decree in the present suit, such decree cannot be executed against the remaining 6 lessees or their legal heirs. The defendant has relied upon the judgement in the case of ***Trilokchand Kapoorchand vs. Basubai Vastimal Oswal and Others*** reported in ***AIR 1983 Bom 12*** wherein the Bombay High Court held that when a joint lease is given to two persons the landlord can neither terminate the tenancy of only one of the lessees nor can be file a suit for eviction only against one of the lessee. If be files such suit that would be a case of non-joinder of necessary party and it is well known that if the necessary party is not impleaded the suit has got to be dismissed.

4. Learned Counsel for the defendant submits that a careful reading of the intention and purport of Section 111(h) of the Transfer of Property Act, 1882 would show that a lease can be determined by a lessor or lessee on the expiration of a notice issued under Section 106 of the Transfer of Property Act, 1882. He submits that the statutory right, which is otherwise absent, has been given by way of Section 111(h) to both the parties. He submits that Section 106 cannot be read in isolation.

5. Learned Counsel for the defendant submits that Clause 6 of the Deed of Lease dated 31st January, 1969 clearly states that the leased property could be used for office, residence, trade, commerce, godown, hotel and

restaurant. Even if such leases have expired by efflux of time, the permitted use of the subject property, as defined in the said leases remains binding upon the parties. It is for this purpose, the plaintiff has disclosed the said leases in the plaint. He submits that the ingredients of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 are not satisfied and the suit filed by the plaintiff cannot be said to be a commercial dispute in any manner whatsoever.

6. Learned Counsel for the defendant submits that the notice of attachment issued by the Kolkata Municipal Corporation make no whisper that the property is a commercial or has been exclusively used for trade and commerce. He submits that the plaintiff has filed the suit before the Commercial Division but the plaintiff has not pleaded the specific Sub-Section 2(c) of the Act of 2015, the plaintiff has violated the mandatory direction contained in the Practice Procedure while instituting the suit.

7. Learned Counsel for the defendant submits that the defendant is depositing the rent with the Municipal Corporation every month without any default and the rent is attached with the Kolkata Municipal Corporation under Section 225 of the Kolkata Municipal Corporation Act, 1980, therefore, the plaintiff is not entitled to get any mesne profit.

8. Learned Counsel for the plaintiff submits that the defendant has not taken the ground of non-joinder of the parties in the present application. He submits that non-joinder of parties is not the ground

for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908. He submits that the plaintiff had filed an application under Section 17(6) of the West Bengal Premises Tenancy Act, 1997 before the Rent Controller at Kolkata and the defendant no.1 herein had contested the said application by filing written objection. In the order of the Rent Controller, the deaths of other lessees are recorded. He submits that on the death of the joint lessees, the interest does not devolve upon the heirs or the other surviving lessees.

9. Learned Counsel for the plaintiff submits that the lease agreement dated 31st January, 1969 expired in the year 1990 i.e. after the period of 21 years, thereafter no lease agreement has been entered between the parties The last paid rent receipt reflects that the suit property is used for the purpose of an office space. He submits that the plaintiff in paragraph 30 of the plaint pleaded that the subject matter of the suit is a commercial dispute as the last paid rent receipt relates to the suit property exclusively used for the trade and commercial purpose. He submits that the defendants in their written objection before the Rent Controller admitted that the suit property is used for commercial purpose.

10. Learned Counsel for the plaintiff submits that the payments made to the Kolkata Municipal Corporation by the defendants pursuant to the order of attachment are occupational charges and payments shall be adjusted form the mesne profit due and payable by the defendants. He submits that the plaintiff has not accepted any rent from the defendant

no.1 and the plaintiff has not issued any rent receipt after issuance of notice under Section 106 of the Transfer of Property Act, 1882.

11. The plaintiff has relied upon in the case of ***Nandita Bose vs. Ratanlal Nahata*** reported in ***(1987) 3 SCC 705*** and submitted that the question whether the plaintiff is entitled to a decree for mesne profits after the termination of tenancy is a matter which is to be decided in the suit. If it is decided that the plaintiff is not entitled to get mesne profit, the claim over and above, the monthly rent will have to be dismissed but the question whether the plaintiff is entitled to claim of mesne profit could not have been disposed of at a preliminary stage even before the trial is commenced.

The plaintiff relied upon the judgment in the case of ***Basu House Pvt. Ltd. Vs. M/s Daw Brothers (Agency Department)*** reported in ***2010 SCC OnLine Cal 1871*** and submitted that a claim for mesne profits is not de hors a claim for eviction and is so intricately connected with the claim for eviction that it can be made as part of the same suit. If by virtue of the claim on account of mesne profits, the suit could not have been carried to any Court other than this Court, it is not for the defendant to complain that this Court would not have the jurisdiction to entertain the suit, unless the claim for mesne profit is demonstrably overvalued.

12. Learned Counsel for the plaintiff submits that the judgment relied by the defendant in the case of ***Deepak Polymers Private Limited Vs.***

Anchor Investments Private Limited reported in ***2021 SCC OnLine Cal 4323***, is not binding precedent. He submits that in paragraph 5 of the said judgment, the Hon'ble Court framed the issues:

> *"**5.** The primary question which falls for consideration is whether a suit, primarily for recovery of possession of immovable property under Section 106 of the Transfer of Property Act, pertains to a "commercial dispute" under the Commercial Courts Act, 2015. The crux of the petitioners' agreement is that Section 2(1)(c)(vii) and the explanation to the said Section, read conjointly, indicate that a suit simpliciter for eviction does not have come within the purview of a commercial dispute."*

While deciding, the Hon'ble Court did not consider or deal with the Explanation provided in the said Section. He submits that the judgment of ***Deepak Polymers (supra)*** is sub-silentio on the scope, purport and effect of the Explanation to Section 2(1)(c) which expressly provides that a suit for recovery of possession of a property used exclusively for trade and commerce is a commercial dispute and is therefore not a binding precedent.

Learned Counsel for the plaintiff submits that from the true reading of the Explanation, it is clear that the Explanation has widened the scope of the main Section. In support of his case, has relied upon the judgment in the case of ***Manish Kumar Vs. Union of India & Another*** reported in ***(2021) 5 SCC 1*** and submitted that it must be remembered that the legislature speaks through the medium of the words it uses. The nomenclature, it gives to the device, cannot control the express language, which it employs. If, in effect, in a particular

case, an Explanation does widen the terms of the main provision, it would become the duty of the Court to give effect to the will of the legislature.

13. Learned Counsel for the plaintiff submits that the cause of action for filing the suit was not argued in the case of ***Deepak Polymers (supra)*** and thus the Court has no occasion to discuss or give any decision on the same. He submits that Cause of action has been defined to mean every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. The plaintiff has relied upon the judgment in the case of ***Church of Christ Charitable Trust and Educational Charitable Society vs. Ponniamman Educational Trust represented by its Chairperson/ Managing Trustee*** reported in ***(2012) 8 SCC 706*** and the judgment in the case of ***Om Prakash Srivastava vs. Union of India & Another*** reported in ***(2006) 6 SCC 207.***

14. Heard the Learned Counsel for the respective parties, perused the materials on record and the judgements relied by the parties. The defendant no.1 has relied upon the judgment passed by the Coordinate bench of this Court in the case of ***Deepak Polymers Private Limited Vs. Anchor Investments Private Limited*** reported in ***2021 SCC OnLine Cal 4323*** wherein the Hon'ble Judge held that:

> ***"25.*** *In view of Section 6 of the 2015 Act, a Commercial Court has jurisdiction to try all suits and applications relating to "commercial dispute" of a "specified value" arising out of the entire territory*

over which it has been vested with territorial jurisdiction. Since the relief sought in the present suits relate to an immovable property and/or rights therein, which are actually used for commercial purpose, the plaintiff has correctly determined the "specified value" in terms of Section 12(1)(c) of the 2015 Act, the opposite parties argue. The Act of 2015 has an overruling effect notwithstanding anything inconsistent therewith in any other law in terms of Section 21 thereof, contends learned counsel for the opposite parties. As such, no question of valuation on the basis of lease annual rent, as contemplated in the West Bengal Court Fees Act, 1970 and the Suit Valuation Act, 1887, arises in the present case.

26. *Reading the words of the legislature literally is the primary rule for construction of statutes. As such, learned counsel for the opposite parties defends the impugned orders on the premise that the Commercial Court has jurisdiction to entertain and decide the suits-in-question.*

27. *Upon hearing the rival contention of the parties and perusing their respective written notes of arguments, as well as on a plain and meaningful reading of the plaints of the aforesaid suits in their entirety, it is crystal-clear that the suits have been filed primarily for recovery of possession of immovable properties under Section 106 of the Transfer of Property Act, 1882. In all the plaints, it has been pleaded that notices were given under Section 106, which the defendants failed to comply with even after the expiry of fifteen (15) days thereafter. Hence, the first ingredient of the suits which stares in the face is that the suits are based on the statutory right conferred by Section 106 of the 1882 Act. The cause of action in each of the suits clearly arises by virtue of the rights conferred by Section 106. In the event the suits were for termination of lease on the ground of forfeiture for violation of any of the clauses of the lease agreements and/or for specific performance of the agreements or suits of like nature, the suits would definitely come within the purview of "commercial dispute" as defined in*

Section 2(1)(c) of the Commercial Courts Act, 2015.

28. *A plain reading of the said provision indicates that Section 2(1)(c) defines "commercial dispute" to be a dispute "arising out of" the subsequent sub-clauses, including several aspects. Sub-clause (vii) is the only basis of argument of the plaintiffs/opposite parties. The said sub-clause stipulates that a dispute arising out of "agreements relating to immovable property used exclusively in trade or commerce" come within the ambit of "commercial dispute". The judgments cited by the plaintiffs are distinguishable on their respective facts with the present case. Most of the cases, as mentioned above, pertain directly to agreements from various perspectives. Suits for specific performance of agreements, suits relating renewal clauses in agreements and other similar contexts gave rise to the proceedings which culminated in the said reports. Thus, the proceedings were "arising out of" the respective agreements.*

29. *What has been highlighted in the judgments placed by the opposite parties is that all suits arising out of agreements relating to immovable property used exclusively in trade or commerce, including eviction suits, would come within the ambit of the expression "commercial dispute" and shall be decided by the Commercial Courts in the event of the pecuniary jurisdiction, on the basis of valuation of the suits, being above the stipulated amount.*

30. *However, the cardinal question which has not been addressed but is pivotal to the present adjudication is the expression "dispute" which precedes the expression "arising out of" as appearing in Section 2(1)(c) of the 2015 Act. Reading sub-clause (vii) in conjunction with the starting words of Clause (c), it is seen that the expression "agreements relating to immovable property…." qualifies the term "dispute" arising out of such agreements.*

> ***31.*** *A "dispute" can only be determined by the cause of action of the suit and not the preceding backdrop. Even if Section 106 of the Transfer of Property Act deals with termination of the jural relationship of lessor and lessee, pre-supposing a prior lease agreement, the bundle of facts comprising the cause of action of the suit is the sole determinant of the "dispute" involved in the suit.*
>
> ***32.*** *In the event the suits, in the present case, had 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, it might have been argued that the suits pertains to disputes "arising out of" such agreements.*
>
> ***33.*** *However, the dispute itself, in the present case, arises out of refusal by the defendants to comply with the notices issued by the lessor under Section 106 of the Transfer of Property Act, 1882, which is based on a statutory right independent and irrespective of any clause of the lease agreements.*
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> ***34.*** *Hence, the suits squarely arise out of a statutory right conferred by Section 106 of the Transfer of Property Act, having no direct nexus with the lease agreements in respect of the immovable properties concerned. Thus, the pre-condition of the applicability of Section 2(1)(c)(vii), that is, the emanation of the dispute out of the lease agreement, is not satisfied in the present suits. Thus, the secondary question as to whether the immovable properties are used exclusively in trade or commerce, pales into insignificance."*

15. The defendant no.1 relied upon Clause 6 of the Deed of Lease dated 31st January, 1969 which reads as follows:

> *"**6.** To use the demised premised for the purpose of office, residence, trade, commerce, godown, hotel and restaurant."*

The defendant no.1 raised contention that the judgment of ***Deepak Polymers (supra)*** provides that a lessor, for determination of an immovable property, has to show that there has been any violation of the clauses of the contract and that refusal of a lessee to comply with the notice issued under Section 106 of the Transfer of Property Act, 1882 does not come within the purview of a commercial dispute.

Relying upon the Clause-6 of the Deed of Lease, the contention of the defendant is that the clause does not speaks about exclusively used for commercial purpose and thus Section 2(1(c)(vii) of the Commercial Courts Act, 2015 will not be applicable.

The defendant contended that till date, none of the High Courts or the Hon'ble Supreme Court has decided contrary to the principles held in the case of ***Deepak Polymers (supra)*** and thus the said judgment is also equally applicable in the present case. The contention of the defendant no.1 that the plaintiff has filed the suit for recovery of possession on the ground that the defendant has not complied with the notice issued under Section 106 of the Transfer of Property Act, 1882 which is based on a statutory right independent and irrespective of any clause of Deed of Lease.

The contention of the plaintiff is that while deciding the issue in the case of ***Deepak Polymers (supra)***, none of the parties brought to the notice of the Hon'ble Court with regard to the Explanation Clause of

Section 2(1)(c) of the Commercial Courts Act, 2015 which reads as follows:

> *"Explanation.- A Commercial dispute shall not cease to be a commercial dispute merely because-*
>
> > *a) It is also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;*
> >
> > *b) One of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions."*

In the case of ***Deepak Polymers (supra),*** it has held that the first ingredient of the suits which stares in the face is that the suits are based on the statutory right conferred by Section 106 of the Transfer of Property Act, 1882 and cause of action in each of the suits clearly arises by virtue of the rights conferred by Section 106.

It is also held in the case of ***Deepak Polymers (supra)*** that a plain reading of the provision indicates that Section 2(1)(c) defines "Commercial Dispute" to be a dispute "arising out of" the subsequent sub-clauses, including several aspects. Sub-Clause (vii) is the only basis of argument of the plaintiffs/opposite parties. The Hon'ble Judge has only considered Sub-Clause (vii) of Section 2 (1)(c) of the Act but has not taken note of Explanation of the said Section. Explanation Clause starts with - A commercial dispute shall not cease to be a commercial dispute because-

> "(a) *it also involves action for recovery of immovable property or for realization of monies out of immovable property given as security or involves any other relief pertaining to immovable property."*

In the present case though the plaintiff has issued notice under Section 106 of the Transfer of Property Act, 1882 but in the suit, the plaintiff has prayed for recovery of possession and mesne profit.

The Hon'ble Supreme Court in the case of ***Manish Kumar (supra)*** deals with the function of an Explanation which reads as follows:

> ***"293.*** *Before we address the argument with regard to the provisions of the Code, it is necessary to cull out the principles applicable in regard to the function of an Explanation.*
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> ***294.*** *A Bench of three learned Judges, in an off quoted judgment in S. Sundaram Pillai came to elaborately examine the scope of an Explanation. Incidentally, the Court had to deal with an Explanation which was appended to a proviso and, therefore, its judgment also deals with the principles applicable in regard to a proviso. On a conspectus of various decisions, this Court made a survey of the earlier case law. We may refer to paras 49, 50, 52 and, finally, its conclusions in para 53 as follows :*
>
> > *"49. The principles laid down by the aforesaid authors are fully supported by various authorities of this Court. To quote only a few, in Burmah Shell Oil Storage & Distributing Co. of India Ltd. v. CTO a Constitution Bench decision, Hidayatullah, J. speaking for the Court, observed thus :*
> >
> > *'20. Now, the Explanation must be interpreted according to its own tenor, and it is meant to explain clause (1)(a) of the Article and not vice versa. It is an error to explain the*

Explanation with the aid of the Article, because this reverses their roles.'

50. In Bihta Coop. Development Cane Mktg. Union Ltd. v. Bank of Bihar this Court observed thus :

'8. … The Explanation must be read so as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.'

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52. In Dattatraya Govind Mahajan v. State of Maharashtra Bhagwati, J. observed thus :

'9. … It is true that the orthodox function of an explanation is to explain the meaning and effect of the main provision to which it is an explanation and to clear up any doubt or ambiguity in it. … Therefore, even though the provision in question has been called an Explanation, we must construe it according to its plain language and not on any a priori considerations.'

53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is—

'(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

> *(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and*
>
> *(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.' "*

295. *It is important to actually understand the scope of an Explanation. We have already noticed the summary of the conclusions of this Court in S. Sundaram Pillai at para 53. It may give the impression that an Explanation, in those circumstances, does not widen the boundaries of the main provision to which it is an Explanation.*

296. *However, it is apposite that we hearken back to what this Court said on an earlier occasion. In a judgment rendered by four learned Judges in Hiralal Rattanlal v. State of U.P. this Court had, while considering the scope of an Explanation in a taxing statute viz. the United Provinces Sales Tax Act, 1948, had this to say : (Hiralal Rattanlal case, SCC pp. 224-25, paras 22 & 25)*

> *"22. It was next urged that on a true construction of Explanation II to Section 3-D, no charge can be said to have been created on the purchases of split or processed pulses. It was firstly contended that an Explanation cannot extend the scope of the main section, it can only explain that section. In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes.*

The other rules of construction of statutes are called into aid only when the legislative intention is not clear. Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so-called proviso has substantially altered the main section. In CIT v. Bipinchandra Maganlal & Co. Ltd. this Court held that by the fiction in Section 10(2)(vii) second proviso read with Section 2(6-C) of the Indian Income Tax Act, 1922 what is really not income is, for the purpose of computation of assessable income, made taxable income.

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25. On the basis of the language of the Explanation this Court held that it did not widen the scope of clause (c). But from what has been said in the case, it is clear that if on a true reading of an Explanation it appears that it has widened the scope of the main section, effect be given to legislative intent notwithstanding the fact that the legislature named that provision as an Explanation. In all these matters the courts have to find out the true intention of the legislature."

297. *Even though, in a later decision in S. Sundaram Pillai, this Court had adverted to this judgment when it came to culling out the propositions, the aspect about an Explanation, widening the scope of a provision, has not been expressly spelt out. It must be remembered that the legislature speaks through the medium of the words it uses. The nomenclature, it gives to the device, cannot control the express language, which it employs. If, in effect, in a particular case, an Explanation does widen the terms of the main provision, it would become the duty of the court to give effect to the will of the legislature."*

In the case of ***Ambalal Sarabhai Enterprises Ltd. vs. K.S. Infraspace LLP and Another*** reported in ***(2020) 15 SCC 585,*** the Hon'ble Supreme Court by referring the judgement of the Hon'ble Division Bench of Delhi High Court in the case of ***Jagmohan Behl vs. State Bank of Indore*** reported in ***2017 SCC OnLine Del 10706*** held that the dispute involved therein would constitute a commercial dispute and the expressions "arising out of" and "in relation to immovable property" should not be given narrow and restricted meaning and the expression would include all matters relating agreements in connection with the immovable properties. The said conclusion reached was in a circumstance where the immovable property in question was undoubtedly being used for a trade or commerce and it was held so when the claim in the suit is for recovery of rent or mesne profit, security deposit, etc. for the use of such immovable property.

16. The case of ***Deepak Polymers (supra)*** is sub silentio with regard to the Explanation of Section 2(1)(c) of the Commercial Courts Act, 2015 which expressly provides as mentioned in para 16 (supra). Now in the present case, the plaintiff has brought to the notice of this Court to the Explanation Clause.

In the case of ***Deba Prasad Datta vs. State of West Bengal*** reported in ***2011 SCC OnLine Cal 335,*** the Hon'ble Division Bench of this Court held that :

> ***"16.*** *In the event we would abide by the decision of Secretary of the Managing Committee, Kalinagar Girls' High School, Nadia v. Archana*

Ghosh (Saha) (supra), the entire issue can be resolved very easily and the order under appeal has to be forthwith set aside. Sitting in a coordinate Division Bench, we are bound by the ratio, thereof so also the Hon'ble Single Judge.

17. *The binding precedence of a Division Bench decision is required to be followed not only by the Single Judge but also by us in a coordinate Division Bench. This is the rule of stare decisis. But there are some exceptions. Those are doctrine of per inquirrium and sub silentio. In the instant case the Division Bench in Secretary of the Managing Committee, Kalinagar Girls' High School, Nadia v. Archana Ghosh (Saha) (supra) was in total oblivion of the Rule 8(5)(a) of the West Bengal Schools (Recruitment of Non-Teaching Staff) Rules, 2005 and came to a conclusion, which was bereft of appreciation of the said Rules.*

20. *Similarly, the Supreme Court in A-One Granites v. State of U.P., reported in 2001 (3) SCC 537, relying on its earlier decisions in State of U.P. v. Synthetics and Chemicals Ltd., 1991 (4) SCC 139 and Arnit Das v. State of Bihar, 2000 (5) SCC 488, has held that where a point "……having not been referred to, much less considered by this Court in the earlier appeals, it cannot be said that the point is concluded by the same and no longer res integra and accordingly this Court is called upon to decide the same."*

25. *Straight away, we would find the same being sub silentio having no impinging effect upon us as a successor Bench."*

In the case of ***Municipal Corporation of Delhi vs. Gurnam Kaur*** reported in ***(1989) 1 SCC 101,*** the Hon'ble Supreme Court held that:

"11. *Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case and to the learned Judge who agreed with him, we cannot concede that this Court is*

bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th Edn. explains the concept of sub silentio at p. 153 in these words:

> *A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.*

12. *In Gerard v. Worth of Paris Ltd. (k), the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a*

> *subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd., the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."*

In the case of ***D.J. Malpani & Ors vs. Commissioner of Central Excise, Nashik*** reported in ***(2019) 9 SCC 120*** held that:

> ***"27.*** *In this case, CESTAT decided against the assessee relying on Panchmukhi. The case of Panchmukhi was apparently decided not after a discussion on facts and law but because the counsel for the Revenue submitted that the matter is covered by the decision in TISCO Ltd. and the counsel for the assessee "was not in a position to dispute this legal position". The judgment in Panchmukhi has little precedential value. The point whether Dharmada involved in Panchmukhi and the surcharge held as price in TISCO Ltd. were identical and liable to be included in the transaction value passed sub silentio. Salmond on Jurisprudence, Twelfth Edn., p. 15 states that a decision held is not binding since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", therefore, would*

> *not be followed. The author also states that precedents sub silentio and without arguments are of no moment. This is enough reason for not treating the decision in Panchmukhi as a binding precedent."*

In the case of ***Shanti Conductors (P) Ltd. vs. Assam State Electricity Board* & Ors.** reported in ***(2016) 15 SCC 13,*** the Hon'ble Supreme Court held that :

> *"**49.** Since a reading of the Statement of Objects and Reasons of the Act makes it very clear that the Act has been enacted for the benefit of the small-scale and ancillary industries at large, the decision in Purbanchal Cables & Conductors (P) Ltd. does not correctly lay down the position of law with respect to the nature of the Act and its effect on its prospectivity as well.*
>
> ***50.** In my considered view, Purbanchal Cables & Conductors (P) Ltd. and other decisions of this Court referred to supra did not consider the important aspect of the matter, namely, as to whether the provisions of the Act are retroactive or not? They merely held that the provisions of the Act have no retrospective effect. Thus, the judgments have been rendered sub silentio on this aspect."*

17. In the application filed by the plaintiff before the Rent Controller at Kolkata under Section 17(6) of the West Bengal Premises Tenancy Act, 1997, one of the lessee, namely, Premlata Chopra has filed written objection in the said application stating as follows:

> *"**8.** With reference to paragraphs 5, 6 and 7 of the said application the Opposite Party No. 8 denies and disputes each and every statement, contention and allegation contained therein which are either not supported by facts or documentary evidence or riot borne out from the records. This Opposite Party states that the relationship between the applicant and the Opposite Parties as landlord and tenants under the provisions of West Bengal*

Premises Tenancy/Act came into existence on 1.02.1990 and 1.3.1990 when the Opposite Parties became tenants by holding over in respect of the aforesaid tenancies and since then relationship between the applicant and the Opposite Parties are guided by said Act. The entitlement of the applicant to have the rent increased is, therefore, also guided by the West Bengal Premises Tenancy Act, 1997 as amended up to date and more particularly by the provisions envisaged under Section 17(4A) thereof which applies in case of the Opposite parties where the tenancy subsist for the more than 20 years or more in respect of the premises constructed in or before the year 1984 and used for commercial purpose and as such the fair rent in this case shall be determined by adding the rent as on 1.7.1976 five times or by accepting the existing rent if such, rent is more than the increased rent determined under this Section."

18. In the rent receipts also the description of tenancy is mentioned as follows:

Description of Tenancy	***Area under tenancy (in sq. ft.)***
a. Office space on the ground floor of the front building (North-West side).	*2,328*
b. Office space on the entire ground floor in the backside building (North-East side).	*880*
c. Office space on the entire mezzanine floor of the front building, and	*7,700*
d. Car parking space on Ground floor, covering the passage on the North side & the back side (i.e. East), of the front building within the tenanted premises at 9A, Sidhu Kanu Dahar (previously Esplanade Row	

(East), Kolkata – 700 069.	
Total area under tenancy	*10,908*

19. Section 2(1)(c)(vii) and Explanation of the Commercial Courts Act, 2015 reads as follows:

> ***"2.(1)*** *In this Act, unless the context otherwise requires,-*
>
> ***(c) "commercial dispute"*** *means a dispute arising out of—*
>
> *(vii) agreements relating to immovable property used exclusively in trade or commerce;*
>
> *Explanation.- A Commercial dispute shall not cease to be a commercial dispute merely because-*
>
> *c) It is also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;*
>
> *d) One of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions."*

20. In the case of ***Jagmohan Behl (supra),*** the Hon'ble Division Bench of Delhi High Court held that:

> ***"8.*** *Learned single Judge by the impugned order dated 1st March, 2016, referring to Section 2(1)(c)(vii) of the Act has held that the suit has to be transferred to the district court as it does not relate to a commercial dispute for no right under an agreement relating to immoveable property was sought to be enforced, inasmuch as the suit only seeks recovery of rent and mesne profits. It would be a suit under Section 9 of the Act and not pursuant to an agreement.*

10. *The explanation in the present case has to be read as part and parcel of clause (vii), for the language of the explanation shows the purpose, and the construction consistent with the purpose which should be placed on the main provision. The main provision, therefore, has to be construed and read in the light of the explanation and accordingly the scope and ambit of sub-clause (vii) to clause(c), defining the expression "commercial dispute", has to be interpreted. The explanation harmonises and clears up any ambiguity or doubt when it comes to interpretation of the main provision. In S. Sundaran Pillai v. V.R. Pattabiraman (1985) 1 SCC 591, it was observed that explanation to a statutory provision can explain the meaning and intendment of the provision itself and also clear any obscurity and vagueness to clarify and make it consistent with the dominant object which the explanation seems to sub-serve. It fills up the gap. However, such explanation should not be construed so as to take away the statutory right with which any person under a statute has been clothed or to set at naught the working of the Act by becoming a hindrance in the interpretation of the same.*

11. *Clause (c) defines the "commercial dispute" in the Act to mean a dispute arising out of different sub-clauses. The expression "arising out of" in the context of clause (vii) refers to an agreement in relation to an immoveable property. The expressions "arising out of" and "in relation to immoveable property"[1] have to be given their natural and general contours. These are wide and expansive expressions and are not to be given a narrow and restricted meaning. The expressions would include all matters relating to all agreements in connection with immoveable properties. The immoveable property should form the dominant purpose of the agreement out of which the dispute arises. There is another significant stipulation in clause (vii) relating to immoveable property, i.e., the property should be used exclusively in trade or commerce. The natural and grammatical meaning of clause (vii) is that all disputes arising out of agreements relating to immoveable property when the immoveable property is exclusively used for trade and commerce would qualify as a commercial dispute. The immoveable property must be used*

exclusively for trade or business and it is not material whether renting of immoveable property was the trade or business activity carried on by the landlord. Use of the property as for trade and business is determinative. Properties which are not exclusively used for trade or commerce would be excluded.

12. *The explanation stipulates that a commercial dispute shall not cease to be a commercial dispute merely because it involves recovery of immoveable property, or is for realisation of money out of immoveable property given as security or involves any other relief pertaining to immoveable property, and would be a commercial dispute as defined in sub-clause (vii) to clause (c). The expression "shall not cease", it could be asserted, has been used so as to not unnecessarily expand the ambit and scope of sub-clause (vii) to clause (c), albeit it is a clarificatory in nature. The expression seeks to clarify that the immoveable property should be exclusively used in trade or commerce, and when the said condition is satisfied, disputes arising out of agreements relating to immoveable property involving action for recovery of immoveable property, realization of money out of immoveable property given as security or any other relief pertaining to immoveable property would be a commercial dispute. The expression "any other relief pertaining to immoveable property" is significant and wide. The contours are broad and should not be made otiose while reading the explanation and sub-clause (vii) to clause (c) which defines the expression "commercial dispute". Any other interpretation would make the expression "any other relief pertaining to immoveable property" exclusively used in trade or commerce as nugatory and redundant.*

13. *Harmonious reading of the explanation with sub-clause (vii) to clause (c) would include all disputes arising out of agreements relating to immoveable property when used exclusively for trade and commerce, be it an action for recovery of immoveable property or realization of money given*

in the form of security or any other relief pertaining to immoveable property.

18. *Lease of immoveable property is dealt with under the Transfer of Property Act in Chapter V thereof. The said enactment vide section 105 defines what is lease, lessor, lessee and rent and vide section 107 stipulates how leases are made and can be terminated. Leases can be both oral or in writing. Noticeably, sub-clause (vii) to clause (c) in Section 2 of the Act does not qualify the word "agreements" as referring to only written agreements. It would include oral agreements as well. The provisions of the Transfer of Property Act deal with the effect of non-payment of rent, effect of holding over and most importantly the determination of the leases or their termination. It cannot be disputed that action for recovery of immoveable property would be covered under sub-clause (vii) to clause (c) when the immoveable property is exclusively used in trade or commerce. Read in this manner, we do not think that claim for recovery of rent or mesne profit, security deposit etc., relating to immoveable property which was used exclusively in trade or commerce should not be treated as a commercial dispute in view of the language, ambit and scope of sub-clause (vii) to clause (c) to Section 2 of the Act. These would qualify and have to be regarded as commercial disputes. The use of expression"any other relief pertaining to immoveable property" would mean disputes relating to breach of agreement and damages payable on account of breach of agreement would be covered under sub-clause (vii) to clause (c) to Section 2 of the Act when it is arising out of agreement relating to immoveable property exclusively used in trade and commerce.*

21. In the present case by way of two registered Deeds of Lease dated 31st January, 1969, the plaintiff had granted lease to Anuradha Devi (Since Deceased), Radhika Devi (Since Deceased), Kishori Devi (Since Deceased), Sudama Devi (Since Deceased), Premlata Chopra (Since Deceased), Raj Mohini Chopra (Since Deceased), Swarnalata Chopra,

the defendant No.1 and Roma Chopra, the defendant no. 2 herein as joint lessees with respect to various spaces in the property for non-residential/ commercial use i.e.:

> *"a) Office space on the Ground Floor of the front building (North- Western side) measuring about 2,328 Sq. Ft.; b) Office space on the Ground Floor at the back building (North-Eastern side) measuring about 880 Sq. Ft. and c) Office space on the entire Mezzanine Floor of the front building measuring 7,700 Sq. Ft., in all totaling to 10,908 Sq. Ft. at 9A, Sidhu Kanu Dahar (previously Esplanade Row East), P.S. - Hare Street, Kolkata 700 069.*
>
> *3. That apart, the lessees are also occupying car parking spaces on the Ground Floor covering the entire passages on the Northern side and the Eastern side of the front building (measuring 2,000 Sq. Ft.) and a partial tin shed area (measuring 1,200 Sq. Ft.) also on the Southeastern Side of the front building within the tenanted premises at 9A, Sidhu Kanu Dahar (previously, Esplanade Row (East)), Kolkata - 700 069. Therefore, there is a total area of 3,200 Sq. Ft. at the said premises which is also under the occupation of the defendants.*
>
> *4. The said Deeds of Lease were for a period of 21 years commencing on and from 1st February, 1969 and 1st March, 1969 respectively. The said Deeds of Lease had expired by efflux of time on 31st January, 1990 and 28th February, 1990 respectively."*

As per rent receipts, the defendant is paying rent for the office spaces as mentioned in paragraph 19 (supra).

22. Section 106 of Transfer of Property Act, 1882, reads as follows :

> ***"106. Duration of certain leases in absence of written contract or local usage.—***
>
> *(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable*

property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property."

Section 106 does not give any statutory right to sue. The materials facts on which the right is founded i.e., the agreement for tenancy would have to be considered by the Court. In the case of ***A.B.C. Laminart (P) Ltd. –vs- A.P. Agencies*** reported in ***(1989) 2 SCC 163,*** the Hon'ble Supreme Court explained the meaning of cause of action which reads as follows:

*"**12.** A cause of action means every fact, which, if traverse d, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In oth er words, it is a bundle of facts which taken with the l aw applicable to them gives the plaintiff a fight to reli*

> *ef against the defendant. It must include some act done by t he defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actu al infringement of the fight sued on but includes all t he material facts on which it is founded. It does not compri se evidence necessary to prove such facts, but every fa ct necessary for the plaintiff to prove to enable him to obta in a decree. Everything which if not proved would give t he defendant a fight to immediate judgment must be part of t he cause of action. But it has no relation whatever to t he defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by t he plaintiff."*

23. While dealing the suit filed after issuance of notice under Section 106 of the Transfer of Property Act, 1882, the Court has to look into the contract between the parties as in provisions of Section 106 relating to tenure and termination of the lease apply only subject to contract between the parties. If the contract relating to immovable property used for trade and commerce would come under the provisions of commercial dispute. If the suit is solely based on Section 106 of the Transfer of Property Act, 1882, the defendant could not take defence relying upon the agreement between the parties.

The purpose of the provision under Section 106 of the Transfer of Property Act, 1882 is to terminate the relationship of the lessor and lessee before the lessor sues for possession. He has no right of entry till the tenancy is disrupted. Further, the idea is that every lessee must have some reasonable notice before he is asked to vacate the premises. In the case of ***Samir Mukherjee –vs- Davinder K. Bajaj & Ors.*** reported in ***(2001) 5 SCC 259***, the Hon'ble Supreme Court held that:

"5. *Section 106 lays down a rule of construction which is to apply when the parties have not specifically agreed upon as to whether the lease is yearly or monthly. On a plain reading of this section it is clear that the legislature has classified leases into two categories according to their purposes and this section would be attracted to construe the duration of a valid lease in the absence of a contract or local law or usage to the contrary. Where the parties by a contract have indicated the duration of a lease, this section would not apply. What this section does is to prescribe the duration of the period of different kinds of leases by legal fiction — leases for agricultural or manufacturing purposes shall be deemed to be lease from year to year and all other leases shall be deemed to be from month to month. Existence of a valid lease is a prerequisite to invoke the rule of construction embodied in Section 106 of the Transfer of Property Act.*

6. *Section 107 prescribes the procedure for execution of a lease between the parties. Under the first para of this section a lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent can be made only by a registered instrument and remaining classes of leases are governed by the second para, that is to say all other leases of immovable property can be made either by a registered instrument or by an oral agreement accompanied by delivery of possession.*

7. *In the case in hand we are concerned with an oral lease which is hit by the first para of Section 107 of the Transfer of Property Act. Under Section 107 parties have an option to enter into a lease in respect of an immovable property either for a term less than a year or from year to year, for any term exceeding one year or reserving a yearly rent. If they decide upon having a lease in respect of any immovable property from year to year or for any term exceeding one year, or reserving a yearly rent, such a lease has to be only by a registered instrument. In the absence of a registered instrument no valid lease from year to year or for a term exceeding one year or reserving a yearly rent can be created. If the lease is not a valid lease*

within the meaning of the opening words of Section 106 the rule of construction embodied therein would not be attracted. The above is the legal position on a harmonious reading of both the sections.

8. *In Ram Kumar Das Section 106 was considered by a Bench of four Judges of this Court. This Court held that this Section 106 lays down the rule of construction which is to be applied when there is no period agreed upon between the parties and in such cases duration has to be determined by reference to the object for the purpose for which tenancy is created. It was also held that the rule of construction embodied in this section applies not only to express leases of uncertain duration but also to leases implied by law which may be inferred from possession and acceptance of rent and other circumstances. It was further held that it is not disputed that a contract to the contrary as contemplated by Section 106 of the Transfer of Property Act need not be an express contract; it may be implied, but it certainly should be a valid contract. On the facts of the case, the Court held (at AIR p. 27, para 13) that*

> *"the difficulty in applying this rule to the present case arises from the fact that a tenancy from year to year or reserving an yearly rent can be made only by registered instrument, as laid down in Section 107 of the Transfer of Property Act".*

14. *In Jagat Taran Berry v. Sardar Sant Singh the Delhi High Court considered the views expressed by different High Courts and correctly took the view that there is no conflict between Sections 106 and 107 of the Act and for application of Section 106 a valid year-to-year lease shall be deemed to exist only when it is created by a registered instrument; non-existence of a registered instrument to create such a lease will by itself exclude Section 106."*

In the case of ***Park Street Properties Pvt. Ltd. –vs- Dipak Kumar Singh & Anr.*** reported in ***(2016) 9 SCC 268,*** the Hon'ble Supreme Court held that:

> ***"17.*** *A perusal of Section 106 of the Act makes it clear that it creates a deemed monthly tenancy in those cases where there is no express contract to the contrary, which is terminable at a notice period of 15 days. The section also lays down the requirements of a valid notice to terminate the tenancy, such as that it must be in writing, signed by the person sending it and be duly delivered. Admittedly, the validity of the notice itself is not under challenge. The main contention advanced on behalf of the respondents is that the impugned judgment and order is valid in light of the second part of Section 107 of the Act, which requires that lease for a term exceeding one year can only be made by way of a registered instrument.*
>
> ***18.*** *At this stage, it will also be useful to examine Clause 6 of the agreement dated 7-8-2006, which reads as under:*
>
> > *"6. Default.— In the event of any default on the part of the tenants in making payment of the rent for 3 consecutive months or in the event of any breach of any of the terms and conditions herein contained and on the part of the tenants to be performed and observed and the landlord shall be entitled to serve a notice on call upon the tenants to make payment of the rent and to remedy for the breach of any of the remaining terms and conditions herein contained and if within a period of 30 days, the tenants shall fail to remedy the breach, the landlord shall be entitled to determine or terminate the tenancy."*
>
> *Thus, in terms of Clause 6 of the agreement, the landlord was entitled to terminate the tenancy in case there was a breach of the terms of the agreement or in case of non-payment of rent for*

three consecutive months and the tenants failed to remedy the same within a period of thirty days of the receipt of the notice. The above said clause of the agreement is clearly contrary to the provisions of Section 106 of the Act. While Section 106 of the Act does contain the phrase "in the absence of a contract to the contrary", it is a well-settled position of law, as pointed out by the learned Senior Counsel appearing on behalf of the appellant that the same must be a valid contract.

20. *Thus, the question of remanding the matter back to the trial court to consider it afresh in view of the fact that the same has been admitted in evidence, as the High Court has done in the impugned judgment and order, does not arise at all. While the agreement dated 7-8-2006 can be admitted in evidence and even relied upon by the parties to prove the factum of the tenancy, the terms of the same cannot be used to derogate from the statutory provision of Section 106 of the Act, which creates a fiction of tenancy in the absence of a registered instrument creating the same. If the argument advanced on behalf of the respondents is taken to its logical conclusion, this lease can never be terminated, save in cases of breach by the tenant. Accepting this argument would mean that in a situation where the tenant does not default on rent payment for three consecutive months, or does not commit a breach of the terms of the lease, it is not open to the lessor to terminate the lease even after giving a notice. This interpretation of Clause 6 of the agreement cannot be permitted as the same is wholly contrary to the express provisions of the law. The phrase "contract to the contrary" in Section 106 of the Act cannot be read to mean that the parties are free to contract out of the express provisions of the law, thereby defeating its very intent. As is evident from the cases relied upon by the learned Senior Counsel appearing on behalf of the appellant, the relevant portions of which have been extracted supra, the contract between the parties must be in relation to a valid contract for the statutory right under Section 106 of the Act available to a lessor to terminate the tenancy at a notice of 15 days to not be applicable."*

24. The Commercial Courts Act, 2015 has not specified any dispute arising out of the agreement relating to the immovable property used exclusively in trade of commerce which could qualify as commercial dispute in terms of Section 2(1)(c) of the Act. In the Explanation of Section 2(1)(c) it is mentioned that *"A commercial dispute shall not ceased to be a commercial dispute merely because – (a) it also involves action for recovery of immovable property or for realization of moneys out of immovable property given as security or involves any other reliefs pertaining to immovable property"*.

In the case of ***Deepak Polymers (supra),*** the Hon'ble Judge has not considered the Explanation Clause of Section 2(1)(c) of the Commercial Courts Act, 2015 and scope, purports and effect of Section 106 of the Transfer of Property Act, 1882.

25. The judgment passed by the Coordinate Bench of this Court in ***Deepak Polymers (supra),*** is binding upon this Court but considering the fact that in the case of ***Deepak Polymers (supra),*** the Explanation Clause of Section 2(1)(c) of the Commercial Courts Act, 2015 has not considered and only relying upon Section 106 of the Transfer of Property Act, 1882, the Hon'ble Judge has come to the conclusion that refusal by the defendants to comply with the noticed issued by the lessor under Section 106 of the Transfer of Property Act, 1882 which is based on statutory right independent and irrespective of any clause of the lease agreements and thus the suit squarely arising out of a statutory right conferred by Section 106 of the Transfer of Property Act,

1882, having no direct nexus with the lease agreements in respect of the immovable properties concerned. Thus, the pre-condition of applicability of Section 2(1)(c)(vii), that is, the emanation of the dispute out of the lease agreement, is not satisfied in the present suit.

26. This Court with great respect of the Hon'ble Judge dissent the order passed in ***Deepak Polymers (supra),*** in the said case, the Explanation Clause of Section 2(1)(c) of the Commercial Courts Act, 2015 and the judgment passed in the case of ***Samir Mukherjee (supra)*** and ***Park Street Properties Private Limited (supra)*** were not brought to the notice of the Hon'ble Judge.

Taking into consideration of the judicial decorum, the matter is referred to the Hon'ble Chief Justice to constitute Special Bench to decide the following issues:

a. *Whether after issuance of notice under Section 106 of the Transfer of Property Act, 1882, the defendant or the parties cannot rely the agreement/ or Lease Deed as the case may be?*

b. *Whether only on the basis of the case initiated under Section 106 of the Transfer of Property Act, 1882, it can be said that Court cannot look into the agreement between the parties and thus the suit cannot be treated as commercial suit in terms of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015?*

c. *Whether if the Explanation Clause of Section 2(1((c) of the Commercial Courts Act, 2015 taken into consideration along with Section 106 of the Transfer of Property Act, 1882, the suit can be treated as commercial suit in terms of the lease agreement/ rent agreement entered between the parties?*

27. The Registrar, Original Side of this Court is directed to place the record of the suit being **C.S. (COM) No. 4 of 2023** along with the connected application being **G.A. (COM) No. 2 of 2024** before the Hon'ble Chief Justice for constitution of Special Bench.

(Krishna Rao, J.)