

IN THE HIGH COURT AT CALCUTTA
(COMMERCIAL APPELLATE DIVISION)
ORIGINAL SIDE

Before:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Smita Das De

IA No. GA-COM/2/2024
In CS (COM) NO. 4 of 2023

T.E. Thomson & Company Limited
Vs.
Swarnalata Chopra Nee Kapur & Anr.

For the plaintiff : Mr. Krishnaraj Thaker, Sr. Adv.
Mr. Chayan Gupta, Adv.
Mr. Rittick Chowdhury, Adv.
Mr. Pourush Bandopadhyay, Adv.
Mr. Dwip Raj Basu, Adv.

For the defendants : Mr. Ranjan Bachawat, Sr. Adv.
No.1 Mr. Javed K. Sanwarwala, Adv.
Mr. Sarosij Dasgupta, Adv.
Mr. Shariq A. Sanwarwala, Adv.
Mr. Sagnik Bose, Adv.
Ms. Sadaf Aafrin, Adv.

Amicus Curie. : Mr. Anindya Kumar Mitra, Sr. Adv.

Hearing concluded on : 14th May, 2025

Judgment on : 18th June, 2025

Soumen Sen, J.

1. In view of divergence of opinion between two Hon'ble Judges on the scope of the Commercial Courts Act, 2015 (in short 'CC Act') to try and decide an eviction suit on expiry of the lease period, the following questions have been referred by the Hon'ble Justice Krishna Rao in ***T.E.Thomson & Company Limited vs. Swarnalata Chopra Nee Kapur and another***,¹ for a decision on 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 on the agreement/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 the 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?

2. We are not required to decide on the merits of the matter and confine ourselves to the questions raised. Frequently, the questions, as referred to by Hon'ble Justice Krishna Rao, have arisen before the Commercial Courts in the Districts and also in this Court. We requested Mr. Anindya Kumar Mitra, learned Senior Counsel to assist this Court in answering these questions.

¹ 2024 SCC Online Cal 8985

3. Mr. Anindya Kumar Mitra, the learned Senior Counsel has submitted that in deciding the issue the court is required to take into consideration the phrase 'arising out of' and 'relating to' immovable property used exclusively in trade or commerce. The said two phrases are of wide amplitude and should receive a purposive interpretation in the light of the object of the CC Act. Mr. Mitra has referred to the following decisions to make us familiar with the judicial interpretation of such phrases whenever such phrases had come up for consideration:

- i) ***Mansukhlal Dhanraj Jain & Ors. vs. Eknath Vithal Ogale***,² (paragraphs 11, 14 to 16)
- ii) ***State of Orissa vs. State of A.P.***,³

4. Mr. Mitra submits that the explanation to Section 2(1)(c) brings out the legislative intent and has to be read along with Section 2(1)(c). The said explanation makes it clear that a commercial dispute could also involve an action for recovery of immovable property, amongst others, as mentioned in the explanation. Mr Mitra has referred to the decision of the Hon'ble Supreme Court in ***The Bengal Immunity Company Limited v. the State of Bihar & Ors.***,⁴ and particularly paragraph 286 to show the scope and width of an explanation in interpreting a section.

5. Mr. Mitra submits that section 106 of the Transfer of Property Act only lays down a rule of construction of the lease agreement. The lease is

² 1995 (2) SCC 665

³ 2006 (9) SCC 591

⁴ AIR 1955 SC 661

created by Section 105 of the Transfer of Property Act. The duration of a lease depending upon the nature of the lease and mode of its termination are what is stated in Section 106. In this regard he has referred to the decision in ***Jagat Taran Berry v. Sardar Santh Singh***,⁵.

6. Mr. Mitra submits that even a suit for recovery of immovable property after termination of the monthly tenancy by 15 days' notice under Section 106 of the Transfer of Property Act would require the court to determine the jural relationship between the parties which necessarily involves reference to an agreement of lease, express or implied and the validity of the notice of termination. Mr. Mitra submits that the law in this regard has been settled in various decisions of the Hon'ble Supreme Court and in this regard Mr. Mitra has relied upon ***M/s Payal Vision Ltd. v. Radhika Choudhury***;⁶ paragraphs 5 and 7 and ***K.M. Manjunath v. Erappa***,⁷ paragraph 8. The lease agreement is required to be considered for deciding the nature and character of the jural relationship of the landlord and tenant for the purpose of ascertaining whether the lease is for manufacturing or agricultural purpose upon which the validity of notice under section 106 of the Transfer of Property Act is required to be decided. The court cannot ignore the lease agreement while deciding a suit filed after issuance of a notice under section 106 of the Transfer of Property Act, 1882. It is submitted that the recovery of immovable property can be by filing a suit and in this regard

⁵ AIR 1980 Delhi 7

⁶ 2012(11) SCC 405

⁷ 2022 SCC Online SC 2316

the procedure under the Code of Civil Procedure, 1908 is to be followed. The procedure would be in accordance with the rules of procedure contained in the schedule to the Code of Civil Procedure.

7. It is submitted that the explanation clause is very relevant for the purpose of deciding the scope of Section 2(1)(c)(vii) in deciding whether it is a commercial dispute or not. In terms of the explanation, merely because a claim for recovery of immovable property is made, the character of the dispute would not change and it shall still be considered to be a suit for recovery of an immovable property used exclusively for trade and commerce. Mr. Mitra has emphasized that the court is required to find out if the dispute is arising out of an agreement relating to immovable property used exclusively in trade or commerce. It is submitted that if the agreement is in relation to an immovable property and the dispute arose in relation to that immovable property and such property is used exclusively in trade or commerce it is immaterial whether the claim for recovery of the immovable property is by reason of termination under Section 106 of the Transfer of Property Act.

8. Mr. Mitra submits that the relevant date for the purpose of ascertaining whether the immovable property is used exclusively in trade or commerce should be the date of filing of the suit. However, the learned amicus curie has fairly submitted that it is not the issue to be decided in this reference.

9. Mr. Mitra submits that apart from it being a commercial dispute relating to an immovable property used exclusively for trade or commerce, it

has to be of a specified value as mentioned in the Commercial Courts Act. To summarise the Court is only to see if the four tests are satisfied namely (i) it should be a dispute arising out of an agreement relating to immovable property, (ii) the immovable property is used exclusively in trade or commerce (iii) the dispute shall be a specified value and (iv) it has arisen within the jurisdiction of the Commercial Court established in the state.

10. Mr. Mitra has submitted that the answer to question (a) should be in the negative so as the answer to question (b). The answer to question (c) should be in the affirmative.

11. Mr. Krishnaraj Thakker, the learned Senior Counsel appearing on behalf of the plaintiff has adopted the submission of the amicus curiae. It is submitted that the scope of explanation has been enlarged in ***Manish Kumar v Union of India & Anr***,⁸ in which the Hon'ble Supreme Court while referring to ***S. Sundaram Pillai v V.R. Pattabiraman***,⁹ has in paragraph 297 expanded the scope of explanation by, inter alia, observing "*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.*" The learned Senior Counsel has also drawn our attention to paragraph 294 to show that the purpose of an explanation is to harmonize and clear up any ambiguity and apart from its orthodox function to explain the meaning and effect of the main provision to which it is an explanation and to clear up any doubt or ambiguity, it needs to be construed according to its plain language

⁸ 2021 (5) SCC 1

⁹ 1985 (1) SCC 591

and not on any a priori consideration. Paragraph 53 from the judgment in **S. Sundaram Pillai** (*supra*) has been emphasized and reiterated in which the Court observed thus-

*“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.”
*(emphasis Supplied)**

12. Mr. Thakker submits that in the instant case the Court may not be required to go beyond the interpretation to an explanation as offered in **S. Sundaram Pillai** (*supra*) beyond **(a)**, **(b)** and **(c)** and if the court is of the opinion that some gap in an enactment is left, sub-clause **(d)** can also be taken into consideration as it would advance the object of the Act. It is submitted that the explanation in the instant case is only clarificatory and it clothed the Court with the jurisdiction to even pass a decree for eviction. The

cause of action in the suit is not merely the notice under Section 106 of the Transfer of Property Act. The decision of the Hon'ble Division Bench of the Delhi High Court in **Jagmohan Behl Vs. State Bank of Indore**¹⁰ has correctly interpreted the explanation clause along with Section 2(1)(c)(vii) in arriving at a finding that the suit is a commercial suit and to be adjudicated under the CC Act and in this regard reliance has been place upon paragraphs 9 to 13 of the said decision.

13. Mr Thakker has referred to the decision of the Hon'ble Supreme Court in **Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educationa Trust**,¹¹ paragraphs **13** to **15** to argue that in order to succeed in the suit the plaintiff would be required to prove every fact that is necessary for the plaintiff to prove to enable him to get a decree which is not merely restricted to a notice under Section 106 of the Transfer of Property Act. Mr Thakker has emphasized on the following sentences in paragraph **13** of the said judgment in which it was observed-

“13. the cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary of the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.” (emphasis supplied)

¹⁰ 2017 SCC Online Del 10706

¹¹ 2012 (8) SCC 706

14. Mr. Thakker submits that it is necessary for the plaintiff to prove that there exists a monthly tenancy or a lease for manufacturing or agricultural purpose and in spite of service of notice as contemplated under section 106 which is variable depending upon the nature of the agreement and duration of the lease the defendant had refused to vacate the premises in question. It was by reason of the failure of the defendant to deliver possession after the expiration of the notice period which could be 15 days in case of monthly tenancy or 6 months' notice in case of manufacturing or agricultural lease that the plaintiff had filed the suit for recovery of possession. The proof of valid notice would presuppose a jural relationship between the parties. Mr Thakker has submitted that ***Deepak Polymers Private Limited vs. Anchor Investments Private Limited***,¹² 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.

15. Mr. Thakker has referred to the following observations in ***Deepak Polymers*** (*supra*) of the learned single judge to the effect that suits squarely arising out of a statutory right conferred by Section 106 of the Transfer of Property Act would have no direct nexus with the lease agreement and hence for enforcement of such statutory right the Commercial Courts Act would have no manner of application and such suit is required to be heard as a non-commercial suit:

¹² 2021 SCC OnLine Cal 4323

“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 of the 1882 Act.”

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.

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.

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.”

16. Mr. Thakker submits that such finding is not binding as in **Deepak Polymers** (*supra*) what would constitute a cause of action for filing a suit for eviction, not merely restricted to Section 106 Transfer of Property Act, has not been argued.

17. Mr. Thakker has submitted that in a suit for eviction of tenant, the plaintiff landlord would have to plead and prove that it was the owner of the suit property, the agreement by which the defendant was inducted as a

tenant in the suit property, breach if any on the part of the defendant of the agreement for tenancy and lastly determination of tenancy by notice. Therefore, cause of action cannot be limited to the termination notice under section 106. Further, section 106 of the Transfer of Property Act merely stipulates the duration of the lease and prescribes the procedure of termination of lease in absence of any contract to the contrary. Section 106 does not confer any statutory right. The legislative intent behind Section 106 of the Act of 1882 shall be evident from 181st Report of the Law Commission of India "Amendment to Section 106 of the Transfer of Property Act, 1882" dated 9th May, 2002 which states that Section 106 of the Act of 1882 determines the mode and manner of termination. It has been held in a catena of decisions by the Supreme Court that Section 106 is a mere rule of construction and not a legal right to file suit. In this regard Mr. Thakker has relied upon the decisions referred by the learned amicus curie with regard to Section 106 of the Transfer of Property Act. Mr. Thakker submits that in **Deepak Polymers** (*supra*) it was not considered that Section 106 is merely a rule of construction. The observation in **Deepak Polymers** (*supra*) that "a dispute can only be determined by the cause of action of the suit and not the preceding backdrop" is in teeth of the ratio laid down by the Supreme Court in paragraph 12 of **A.B.C Laminart (P) Limited & Anr. vs. A.P Agencies**,¹³ which is relied upon in paragraph 14 in **Church of Christ** (*supra*) where the Supreme Court has inter alia held "It is not limited to the actual infringement

¹³ 1989 (2) SCC 163

of the right sued on but includes all the material facts on which it is founded". Thus, even if it is conceded that the eviction suit is based on the purported statutory right under Section 106 although Section 106 does not give any statutory right to sue, the material facts on which the right is founded that is, the agreement for tenancy would have to be considered by the Court. Relying upon the aforesaid decision it has been submitted 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. In other words, a bundle of facts, which is necessary for the plaintiff to prove in order to succeed in the suit.

18. While dealing with a suit filed after issuance of a notice issued under Section 106 of the Act, the Court has to look into the contract between the parties as the provisions of section 106 relating to tenure and termination of the lease apply only subject to contract between the parties. Therefore the contract between the parties has to be looked into and if it is a contract relating to immovable property used exclusively in trade or commerce, any dispute arising therefrom would be a commercial dispute. **Deepak Polymers** (*supra*) has not considered Section 106 in its entirety and is therefore, with respect, per incuriam.

19. If an eviction suit is held to be a suit solely based on Section 106, the defendant would not have any defence to plead by relying of the agreement between the parties or other surrounding facts. This interpretation

would thus lead to absurdity and anomaly which the legislature had never intended.

20. Mr. Thakker has referred to the following observation of the learned Single Judge to show that in **Deepak Polymer** (*supra*) has curved out few exceptions where the dispute arising out an agreement relating to immovable property used for commercial purpose can be decided by the Commercial Court:

“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.”

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.”

21. The Commercial Courts Act has not specified the disputes arising out of agreements relating to immovable property used exclusively in trade or commerce which would qualify as a 'commercial dispute' defined in section 2 (1) (c) of the Act. When the Legislature has not limited the disputes to forfeiture for violation of any of the clauses of the lease agreements or specific performance of the agreements or renewal clauses and has in fact, widened the scope of disputes by the Explanation, the findings to the contrary in **Deepak Polymer** (*supra*) are in ignorance of the provisions of the Commercial Courts Act and are therefore, with respect, per incuriam.

22. Mr. Ranjan Bachawat learned senior counsel appearing on behalf of the defendants has submitted that in order to determine the issue it is essential to understand the case of the plaintiff as stated in the plaint. It is submitted that the plaint refers to two registered deeds of lease both dated 31st January 1969. Both of them claimed to have expired on 31st January 1990 and 28th February 1990. Thereafter the plaintiff treated the lease as a monthly lease, and determined the same by a common notice dated 30th March 2023 issued under Section 106 of the Transfer of Property Act, 1882 (hereinafter referred to as the "TPA").

23. The defendants did not comply with the said notice dated 30th March 2023. Hence the suit was filed for eviction with other consequential reliefs. The defendants filed an application for rejection of the plaint inter alia, on the ground that the plaint does not disclose any cause of action, it suffers from non-joinder of necessary parties, the suit is barred by law and the plaint

has been grossly overvalued to invoke the jurisdiction of the Commercial Division of this Hon'ble Court as the plaintiff is not entitled to any mesne profit due to attachment of rent by the Calcutta Municipal Corporation.

24. It is submitted that these points however have not yet been decided by the learned Single Judge. The learned Single Judge has only considered the argument of the defendant that the dispute in the suit is not a commercial dispute within the meaning of Section 2(1)(c) of the Commercial Courts Act, 2015 and could not have been filed in the commercial division.

25. Mr. Bachawat has submitted that the said argument is made in view of the decision of Justice Sabyasachi Bhattacharya in **Deepak Polymers** (supra) which had decided the issue and held that “*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) i.e., the emanation of the dispute out of the lease agreement, is not satisfied in the present suits.*”

26. It is submitted that the findings in **Deepak Polymers** (supra) can be summarized below:

- a. The dispute in the Suits involved in the said Judgment arises out of refusal of Defendant to comply with notice under section 106. The dispute is based on a statutory right, independent of any clause in the Lease deed.

- b. A Suit, filed after expiry of a lease by efflux of time, under Section 106 of the Transfer of Property Act, 1882, is not a proceeding arising out of the Lease agreement. Hence the pre-condition for applicability of Section 2 of Commercial Courts Act, 2015, i.e, dispute arising out of lease agreement is not satisfied.
- c. Cause of action in such suits arises by virtue of rights conferred under Section 106 of the Transfer of Property Act, 1882. Section 106 gives the right to sue and without such statutory notice, there would be no legal right to sue on expiry of the lease and the suit would fail.

27. However, in the instant case the Hon'ble Justice Krishna Rao, inter alia, held that **Deepak Polymers** (*supra*) did not consider the explanation to Section 2(1)(c) of Commercial Courts Act, 2015 and is a judgment sub-silentio. In view thereof it is not a binding precedent. The learned Single Judge discussed the scope with the ambit of the explanation in understanding the said section and was of the view that the Explanation contained in Section 2(1)(c) of the Commercial Courts Act, 2015, "arising out of" and "in relation to immovable property", should not be given a narrow and restricted meaning, and the expression would include all matters relating to agreements in connection with the immovable properties. It is submitted that the Hon'ble Single Judge was, however, not sure about the issue of sub-silentio, and therefore, instead of ignoring the judgment in **Deepak Polymers** (*supra*) had made the present reference.

28. Hence according to Mr. Bachawat it is now to be decided in the reference as to whether **Deepak Polymers** (supra) lays down the correct proposition of law and should have been followed or whether it is sub silentio and ought not to have been followed. It is submitted that the ratio of **Deepak Polymers** (supra) has not been properly appreciated in **T.E Thomson & Company** (supra). The ratio of the judgment in **Deepak Polymers** (supra) is that upon expiry of a lease by efflux of time, the lessor acquires the statutory right to obtain possession upon issue of a valid notice under Section 106 of the Transfer of Property Act, 1882. No provision of the lease deed needs to be looked as in such a suit dispute is arising out of failure of the lessee to deliver possession of the property after expiry of the period of the notice under section 106 of the Transfer of Property Act, 1882. Hence such a dispute is not a dispute arising out of an agreement relating to immovable property but is a dispute arising out of statutory rights under the Transfer of Property Act, 1882.

29. The judgment in **Deepak Polymers** (supra) provides that a lessor, for determination of an immovable property, has to show that there exists a valid notice under Section 106 of the Transfer of Property Act, 1882, and that the lessee refused to comply with such a valid notice issued under Section 106, and such a dispute does not come within the purview of a commercial dispute. The ratio of the judgment is that, if the suit is framed on the basis of Section 106 of the Transfer of Property Act, 1882, then, there cannot be any

necessity of adjudication of any dispute arising out of the agreement in relation to an immoveable property, held exclusively for trade or commerce.

30. The defendants have also placed reliance on the judgment passed by the Hon'ble Justice Krishna Rao in several other matters in which His Lordship has relied upon the ratio in **Deepak Polymers** (supra) and dismissed similar suits filed in the commercial division on the ground that such disputes were not commercial disputes, as would be evident from the following judgements:

- i. Jaspal Singh Chandhok V. Sandeep Poddar¹⁴ - pr. 26, 29**
- ii. Soumitra Sen & Ors. V. IOCL,¹⁵ - pr.15-17**
- iii. Harish Chandra Jaiswal Vs. Ram Chandra Shaw and Ors.¹⁶ – Para 14-20**
- iv. Jayanta Krishna Datta and Anr. Vs. Indian Oil Corporation Limited¹⁷ – Para 28-32**
- v. Subhas Kumar and Ors. v. Mani Square Limited¹⁸ pr. 8 and 15**

31. The ratio in **Deepak Polymers** (supra) has also been followed by other single benches including in **Messers Madhav Mukund Finance Pvt. Ltd. v. Messers Exterior Interior Limited¹⁹**

32. The plaintiff is unable to cite any judgment to show that a contrary judgment has been rendered which distinguished Deepak Polymers (supra).

¹⁴ 2023 SCC Online Cal 361

¹⁵ 2023 SCC Online Cal 2470

¹⁶ 2024 SCC OnLine Cal 6806

¹⁷ 2023 SCC OnLine Cal 6421

¹⁸ 2024) SCC Online Cal 5360

¹⁹ C.S. No. 88 of 2015 dt. 24th July, 2024

Moreover the judgment passed, in the case of Deepak Polymers (*supra*) was in fact, challenged before the Hon'ble Supreme Court, in several Special Leave Petitions, being SLP(C) No. 11418/2021, SLP(C) No. 11470/2021, SLP(C) No.11464/2021, SLP(C) No. 11468/2021, and SLP(C) No. 11495/2021, wherein, as recorded in a common Order, on a *prima facie* reading, the Hon'ble Supreme Court did not find any infirmity or error in the said Judgment and refused to stay the operation of the same. Such SLPs, upon admission, were thereafter converted into Civil Appeals, one of them, being Civil Appeal No. 4659 of 2021 (***Armstrong Investment Private Limited v. Sri Sandip Bazaz HUF***) was ultimately dismissed as withdrawn with liberty to pursue such other remedy as may be available to the appellant in accordance with law. However, it is submitted that the SLP in ***Deepak Polymers*** (*supra*) is pending.

33. Mr. Bachawat has referred to the SLP and Civil Appeal Orders passed by the Hon'ble Supreme Court, which arose from the ***Deepak Polymers*** (*supra*). It is submitted that it is well settled that if a civil appeal is dismissed or withdrawn after the same has been admitted at the SLP stage, the same is tantamount to a decision on merits. It is also pertinent to mention that there is no stay of the Judgment in ***Deepak Polymers*** (*supra*) by the Hon'ble Supreme Court, at any stage.

34. Mr. Bachawat has submitted that the view expressed in ***Deepak Polymers*** (*supra*) can be supported and has been the law as enunciated in

Park Street Properties Private Limited v Dipak Kumar Singh and Anr.²⁰, paragraph 20. It is submitted that in the aforesaid decision it has been clearly stated that a statutory provision of Section 106 of the Act, creates a fiction of tenancy in the absence of a registered instrument creating the same. The cause of action for a suit for eviction under Section 106 of the TPA is only upon service of a notice under Section 106 of the said Act upon expiry of lease by efflux of time. All that the plaintiff would be required to prove in such a suit would be to prove service of notice. The service of such notice to quit gives a cause of action to the plaintiff only when the defendant refuses to quit and vacate the premises. Mr. Bachawat has contended that it is akin to a partition suit where fresh cause of action arises from each demand for partition which has also been noticed in ***MEC India Pvt Ltd. v. Lt. Col. Inder Maira & Ors.***²¹ paragraph 64 which is reproduced below:

“64. This is how a suit for ejectment differs from a Title Suit for Possession. The 'cause of action' for such a suit is the termination of the tenancy with the expiry of a particular tenancy month. The termination for any subsequent month would be a separate and a distinct cause of action. The elapsing of each tenancy month, and service of a fresh quit notice gives a fresh cause of action. It is somewhat akin to a partition suit, where each demand for partition operates a fresh cause of action.”

35. It is thus submitted that refusal to give possession on determination of tenancy by efflux of time would give right to a cause of action under Section 106 of TPA. In such a situation there is no requirement

²⁰ (2016) 9 SCC 268

²¹ 1999 SCC Online Del 422

to refer to a lease deed and/or the agreement and the suit can be decreed without looking into such document. In the present case, the plaint has been filed on the basis that lease has expired and notice under Section 106 served. Hence, lease deed need not be looked at to decide start/expiry of the tenure. A right to sue accrues when a cause of action arises. However, for accrual of a right to sue, there must an existence of a substantive right that is asserted in the suit and such right must have been infringed or threatened to be infringed. The right and its infringement or threat of infringement constitutes the cause of action and gives rise to a "right to sue." In support of the aforesaid submission Mr. Bachawat has referred to the decision of the Hon'ble Supreme Court in ***State of Punjab & Ors. v. Gurdev Singh***²² paragraphs 6 and 7.

36. Mr. Bachwat has submitted that the right to sue would mean right to seek relief by initiation of legal proceedings and such right accrued only when the cause of action arises that is a right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed. It is submitted that the right in the instant case is created on expiry of the notice to quit. The notice to quit does not become effective automatically till in the period prescribed in the notice or in the statute i.e. Section 106 expires. On expiry thereof the lease becomes inoperative and the lessor acquires right to have the tenant evicted. It is only when he fails to

²² 1991 (4) SCC 1

deliver possession the lessor would be entitled to have the tenant evicted and take possession by due course of law.

37. Mr. Bachawat submitted that the aforesaid decisions have clearly stated the law as summarized above. It is thus contended that both ***Park Street Properties*** (*supra*) and ***Vasantkumar Radhakisan Vora v. Board of Trustee of the Port of Bombay***,²³ have emphasized that the right under Section 106 is a statutory right which fructifies into an enforceable right or right to sue only when there is a failure on the part of the tenant to quit the premises on expiry of the notice period. In view thereof it is submitted that there is no requirement to look into any agreement or lease deed. The only requirement in law would be to prove valid notice and service of such notice in an action under Section 106 after expiry of the lease by efflux of time. The adequacy of a notice under Section 106(1) TPA is sufficient to get a decree of eviction by termination of tenancy under the TPA has also been judicially recognized in ***Gulam Mohmad Khan v. Gulam Nabi Channu Miya***²⁴ and ***Prasanta Ghosh & Anr. v Pushkar Kumar Ash & Ors.***²⁵

38. The attention of the court is drawn to paragraphs 9, 10 and 11 of ***Prasanta Ghosh*** (*supra*) in which is it stated:

“9. It is now well-settled law that in a case where a tenancy is governed by the Transfer of Property Act, all that the landlord is required to prove is that notice in terms of section 106 of the Transfer of Property Act has been duly served upon the tenant-defendant.

²³ 1991 (1) SCC 761

²⁴ 2009 (6) Mh. L.J. 954

²⁵ 2005 SCC Online Cal 556; 2006(2) CHN 277

10. We have gone through the copy of the notice placed before us and we find that the said notice complies with the provisions of section 106 of the Transfer of Property Act by terminating the tenancy with the expiry of Falgun 1406 B.S. and the said notice was given well in advance on February 04, 2000. Therefore, the said notice conforms to the provisions of section 106 of the Transfer of Property Act and service of such notice has been proved.

11. Once it is established that prior to institution of the suit a valid notice in terms of section 106 of the Act was duly served upon the tenant-defendants, there was no necessity for the learned Courts below to consider whether the grounds mentioned in the plaint had really existed. Therefore, all those findings on the grounds mentioned in the plaint were superfluous.”

39. It is submitted that Section 106 TPA on a careful reading would show that a lease can be determined by lessor or lessee on expiration of a notice by efflux of time. It is submitted that in view of the aforesaid decisions and clear exposition of law as well as the statutory mandate of Section 106 a suit of this nature can be adjudicated only on the basis of a valid service of notice to quit under Section 106 of TPA without any reference to any lease deed or lease agreement. The suit cannot be considered to be a commercial suit in view of the explanation to Section 2(1)(c) of the Commercial Courts Act, 2015. In view of the fact that the suit has been filed primarily for recovery of possession of immovable properties under Section 106 of TPA, the learned Senior Counsel has referred to paragraph 27 of Deepak Polymers (supra) it has been observed:

“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 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.” (emphasis supplied)

40. It was argued that the aforesaid passage clearly deals with and takes care of the explanation provided in the said section and as such it cannot be said that it is sub silentio as regards the explanation portion. It is further submitted that in paragraph 27 of **Deepak Polymers** (*supra*) exceptions have been carved out only on consideration of explanation provided under Section 2(1)(c) of the Commercial Courts Act, 2015. It is also settled a position of law that while adjudicating a case, all arguments advanced by the parties need not be explicitly dealt with by the court, and consideration of the entire facts and law is sufficient for a proper adjudication. In addition to the aforesaid it is submitted that in **Deepak**

Polymers (*supra*) the learned Single Judge was deciding only one issue namely, entitlement of instituting a Commercial Suit, which involves a recovery proceeding involving an immoveable property, arising out of a notice issued under Section 106 of the Transfer of Property Act. Such issue was decided in the said Judgment, and there was no other issue on which this Hon'ble Court remained silent. Hence, the proposition of 'sub-silentio' is not applicable in the present case. In order to argue the point of sub-silentio, the plaintiff ought to have shown at least two issues, one of which remained unanswered in the judgment in **Deepak Polymers** (*supra*). However, since, in **Deepak Polymers** (*supra*), only one issue was urged and adjudicated, the principle of sub-silentio cannot be argued by the plaintiff, while distinguishing the same. The learned Counsel has referred to the following decisions in support of his submission:

- i. **Municipal Corporation of Delhi vs. Gurnam Kaur** ²⁶ - **paragraph 11 and 12.**
- ii. **Yashovardhan Birla vs. Deputy Commissioner of Income Tax & Ors.**²⁷, **paragraphs 10 and 11.**

41. In any event, in Civil Appeal No.11418 of 2021 (**Armstrong Investment Private Limited vs Sri Sandip Bazaz Huf**) heard along with SLPs which included Deepak Polymers (*supra*). The Hon'ble Apex Court in admitting the SLP by an order dated July 30, 2021, observed that "Prima

²⁶ (1989) 1 SCC 101

²⁷ 2016 SCC Online Bombay 9779

facie, we do not find any error in the impugned orders by the High Court...". It is submitted that the SLP in **Deepak Polymers** (*supra*) is pending.

42. The learned Senior Counsel has referred to the following observations in **T.E. Thomson** (*supra*) to submit that the observation made in the said paragraphs completely disregard, the observation made in paragraph 27 in **Deepak Polymers** (*supra*) wherefrom it was appeared that Hon'ble Justice Sabyasachi Bhattacharyya was conscious of the explanation and it curved out few reliefs from the preview of action initiated under Section 106 of the Transfer of Property Act.

"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, 882, 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?"

43. Mr. Bachawat has referred to paragraph 27 in **Deepak Polymers** (supra) to demonstrate that the aforesaid finding is factually incorrect and the judgment in **Deepak Polymers** (supra) cannot be held to be a judgment sub silentio and per incuriam.

44. It is submitted that in **Deepak Polymers** (supra) the Hon'ble Justice Bhattacharyya was conscious of the explanation for which His

Lordship has observed that in the event the suits were filed for recovery of possession on the ground of forfeiture or contravention of any of the terms of the terms and conditions of the agreements in question, it might have been argued that the suit pertains to "disputes arising out of such agreements.

45. However, in respect of disputes arising out of refusal of defendant to comply with notices issued under Section 106 of Transfer of Property Act, 1882, it is based on a statutory right independent and irrespective of any clause of the agreement. Such suits squarely arise out of a statutory rights under Section 106 of Transfer of Property Act, 1882, having no direct nexus with the lease agreement. Thus, the pre-condition of applicability of Section 2(1)(c)(vii), i.e., the emanation of the dispute out of the lease agreement is not satisfied in the present suit.

46. It is submitted that in **Deepak Polymers** (*supra*) it was held that suits based on statutory rights conferred under Section 106 of the TPA cannot be considered to be a "commercial dispute" within the meaning of the Commercial Courts Act 2015. The cause of action in each of such suits arises by way of rights conferred by Section 106 of the TPA. The judgments relied upon by the plaintiffs and the amicus curiae to contend that all "disputes arising out of immovable property used exclusively in trade and commerce" would come within the ambit of "commercial disputes are distinguishable, on their respective facts, as they related to disputes/proceedings arising out of agreements. Those judgments also did not address the effect of the word

"dispute", which precedes the expression "arising out of" in Commercial Courts Act, 2015.

47. It is submitted that the views expressed in **Deepak Polymers** (*supra*) is based on a settled principle of law and the judgment in **T.E. Thomson** (*supra*) is contrary to and diametrically opposite to the view taken by the Hon'ble Supreme Court in **Ambalal Sarabhai** (*supra*) case and is also contrary to the legislative intent of the Commercial Courts Act, 2015 as taken note of **Ambalal Sarabhai** (*supra*).

48. The judgment in **T.E. Thomson** (*supra*) is based entirely on the incorrect basis of the judgment in **Ambalal Sarabhai** (*supra*) and proceeds to approve the judgment of Delhi High Court in **Jagmohan Behl** (*supra*) that Section 2(1)(c) of the Commercial Courts Act should be widely construed.

49. It is submitted that in **Ambalal Sarabhai** (*supra*) the Hon'ble Supreme Court has expressly opined the view of the decision of the Hon'ble Division Bench of the Gujarat High Court view in **Vasu Healthcare (p) Ltd. Vs Gujarat Akruti Tcg Biotech Ltd**²⁸. Section 2(1)(c) of the Commercial Courts Act, 2015, should be narrowly construed. The wide construction approach of **Jagmohan Behl** (*supra*) was not accepted by the Hon'ble Supreme Court, which held that a wide construction would be contrary to the intent of the legislature. In this regard Mr. Bachawat has referred to paragraph 10, 11, 13, 31, 36 and 41 of **Ambalal Sarabhai** (*supra*). Moreover, the judgment in **Jagmohan Behl** (*supra*) is of little relevance in the present

²⁸ 2017 SCC online Guj 583: AIR 2017 Guj 153

case as it was not a suit for eviction but was a suit for realisation of money arising out of an agreement relating to immovable property which was admittedly used exclusively trade and commerce. **Jagmohan Behl** (*supra*) was based on the facts of the case where the property was undoubtedly used in trade and commerce and the suit was for recovery of rent for the use of such property, as is noted by the Supreme Court in paragraph 10 of **Ambalal Sarabhai** (*supra*). It was not concerned with a suit for possession on refusal of the defendant to comply with a notice under Section 106 of Transfer of Property Act, 1882.

50. It is submitted that the judgment in **Jagmohan Behl** (*supra*) at most, may be an authority only for the proposition that the expression "any other relief pertaining to immovable property in the explanation to Section 2(1)(c)(vii) of the Commercial Courts Act, 2015, will include in its ambit "disputes relating to breach of agreement and damages payable on account of breach of agreement" as mentioned in para 18 of that judgment. It is thus submitted that even assuming that the **Jagmohan Behl** (*supra*) can be relied on, it must be restricted to suits arising out of "disputes relating to breach of agreement and damages payable on account of breach of agreement" and not to suits for possession post notice under Section 106. This is the ratio of Jagmohan Behl and it cannot be applied to a case of determination of lease under Section 106, upon expiry of the lease. Hon'ble Justice Bhattacharya in fact accepted the above proposition that Section 2(1)(c)(vii) would be applicable to suits arising out of disputes relating to breach of agreement and

made it clear in para 27 of Deepak Polymers Judgment, that Section 2(1)(c)(vii) of the Commercial Courts Act, 2015, would be applicable to suits arising out of disputes relating to breach of agreement but would not cover cases where the suit arises out of failure to comply with notice under Section 106 of Transfer of Property Act, 1882.

51. It is clear from the judgement that Hon'ble Justice Bhattacharya was cautious and restricted his finding only to cases where the suit arises out of failure to comply with notice under Section 106 of Transfer of Property Act, 1882.

52. The explanation to Section 2(1)(c)(vii) is referred to in Paragraph 5 of the **Deepak Polymers** (supra), to the extent it was necessary to the purpose of that case. No further discussion was necessary in the facts of that case and it had no bearing on the outcome of the case.

53. As accepted by the Learned Amicus appointed in this matter, the Explanation to Section 2(1)(c) merely clarifies that the nature of the relief claimed in the suit will not be a factor in deciding whether the suit is a commercial suit or not if it otherwise falls within the definition in Section 2(1)(c) of the Commercial Courts Act, 2015.

54. If the judgment in **Deepak Polymers** (supra) is sub-silentio as argued by the plaintiff, the Hon'ble Judge was free to disregard it and there was no need to refer the same to Larger Bench. This would appear from the judgements cited by the plaintiff itself which was quoted in Paragraph 16 of the **T. E. Thomson** (supra).

55. It is submitted that in **T.E. Thomson** (*supra*) there is no finding that Section 106 does not give a statutory right to sue. It is a stray sentence based on no reasoning or authority.

56. Mr. Bachawat has referred to Section 69(2) of the Partnership Act and submits that the decision in **Haldiram Bhujiawala & Anr. v. Anand Kumar Deepak Kumar & Anr.**²⁹ and **Shiv Developers v. Aksharay Developers & Ors.**,³⁰ have clearly distinguished a statutory right and a contractual right. The learned Senior Counsel has referred to **Haldiram** (*supra*) and more particularly paragraphs 9, 10 and 12 of the decision to argue that a right arising out of a contract and a common law right or a statutory right are different.

57. In the context of **T.E. Thomson** (*supra*) it is submitted that right to evict a tenant upon expiry of lease is not a right arising out of a contract but a common law or a statutory right under Transfer of Property Act, 1882. Hence the fact that the plaint referred to a lease and its expiry does not make any difference and the suit will not be barred under Section 69(2) of Partnership Act, 1932 as the same merely records a historical fact. In such a case, the partnership firm cannot be said to be enforcing a right arising out of a contract. The later decision in **Shiv Developers** (*supra*) in paragraph 24 following the ratio in **Haldiram** (*supra*) has held that a suit where plaintiff seeks common law remedies as also statutory rights of injunction and declaration under Specific Relief Act, 1963 and also TPA, 1882, such a suit

²⁹ 2000 (3) SCC 250

³⁰ 2022 (13) SCC 772

shall not be considered to be a suit for enforcement of rights arising out of a contract. The decision of the Bombay High Court in **Central Bank of India & Anr. v. M/s. Sagdeo Towers**,³¹ has reiterated the same principles in paragraphs 7, 8 and 9 in which it has been clearly held that once a suit is for enforcement of right under Transfer of Property Act, 1882, it cannot be said to have arisen out of any express term of contract. The suit is based purely on statutory obligation. It is well settled that the statutory right under Section 106 is independent of any clause in lease deed and that the parties cannot derogate from or contract out of the statutory provisions of Section 106. Thus such a suit does not and cannot be a dispute arising out of a lease agreement. Further, Section 106 is only applicable when there is no period agreed upon between the parties. In **T.E. Thomson** (*supra*) it was held that while the lease agreement can be admitted in evidence and even be relied on to prove the tenancy, it can't be used to derogate from the statutory terms of Section 106. The parties cannot contract out of the statutory provisions of Section 106.

58. Mr Bachawat has referred to the observation in **Park Street Properties** (*supra*) where it was held that the statutory right under Section 106 is independent of any clause in lease deed and cannot be a dispute arising out of a lease agreement. It is also well settled that Section 106 will only apply when there is no period agreed upon between the parties and it

³¹ 2007 (4) Mh.L.J.

will not apply where the parties by a contract have indicated the duration of the lease.

59. A question may arise as to whether a claim for mesne profit, which may arise in a suit for possession, would be a claim in reference to an agreement relating to an immoveable property held exclusively for trade or commerce, and hence would fall within Section 2(1)(c)(vii) of the Commercial Courts Act, 2015. Such a claim cannot be a claim arising out of Section 2(1)(c) of the Commercial Courts Act, 2015 as, (i) a claim for mesne profit is a claim on account of damages; and, (ii) such a claim for mesne profit only arises post termination or expiry of lease, and as such, the same cannot be a claim arising out of any agreement. Such a claim only arises when there is no subsisting agreement between the parties. In light of the above, it is submitted that the view of Hon'ble Justice Bhattacharya, as expressed in the **Deepak Polymers** (*supra*) should be preferred over the views of Hon'ble Justice Rao, as expressed in **T. E. Thomson** (*supra*), for the reasons discussed hereinabove.

60. In reply, Mr. Thakker has submitted that judgment in **Jagmohan Behl** (*supra*) has addressed the said issue in para 9 to 13 and held that a narrow and restricted meaning ought not to be given the phrases as "arising out of and "in relation to" read with the Explanation are of widest amplitude and would include all matters in connection with immovable properties being used in trade and commerce. As the property before the Delhi High was actually being used in trade and commerce, the issue of the stage at which

user of the property in question is to be determined did not arise for consideration before the Delhi High Court whereas this was precisely the issue before the Hon'ble Supreme Court in **Ambalal Sarabhai** (*supra*). It is only in the context of user actually used and/or being used "as opposed to" likely to be used/to be used that the Supreme Court held that a restricted meaning should be given to the term "used" in Section 2 (1) (c) (vii) and the expansive meaning given to the provision and explanation in general by the Delhi High Court would not apply. The Supreme Court did not disapprove of **Jagmohan Behl** (*supra*) in **Ambalal Sarabhai** (*supra*). The Explanation to the said sub section did not arise for consideration of the Supreme Court in **Ambalal Sarabhai** (*supra*).

61. Mr. Thakker has referred to paragraphs 296 to 310 of the judgment in **Manish Kumar** (*supra*) in which the Hon'ble Supreme Court whilst considering the scope and effect of an explanation to Section 11 of the Insolvency and Bankruptcy Code has held that the law has not stood still.

62. It is submitted that in **Haldiram** (*supra*), **Shiv Developers** (*supra*) and **Central Bank of India** (*supra*) are clearly distinguishable on facts. In all the aforesaid judgments the issue was whether the bar to sue under Section 69 of the Partnership Act would apply to the particular suits. None of the judgments cited by the defendants are on interpretation of the Commercial Courts Act. It is well settled that a judgment is an authority only for what it decides and not what flows from the decision or what can be deduced therefrom.

63. A bare perusal of Section 2 (1) (c) of the Commercial Courts Act would show that the Legislature intended to define certain jural relationships/transactions as commercial and the disputes arising out of such jural relationships/transactions as commercial disputes. The purpose of such classification is to set up an exclusive and dedicated Court system with a special codified law in the form of the Act of 2015 to receive, try and determine commercial disputes. The classification of the dispute is on the basis of the jural relationship between the parties out of which the dispute emanates and not the statute under which it is to be decided. A fortiori, a commercial dispute would not cease to be a commercial dispute merely because it is to be decided by application of any particular law. Accepting the contention of the defendants would lead to an absurd situation where all specified disputes would cease to be commercial disputes merely because the determination of the merits thereof is to be done on the basis of a particular statute.

64. Mr. Thakker by way of illustration has referred to section 2(1)(c)(i) of the Commercial Courts Act, 2015 to show that “a dispute” arising out of Section 2(1)(c)(i) i.e., “ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents” may involve reference to Sale of Goods Act and Contract Act. Similar sub-section (v) relating to “carriage of goods” may involve reference to the Carriage of Goods by Sea Act, 1925, Carriers Act, 1865 and Railways Act, 1989 in case of carriage of goods.

“Partnership agreements” under sub-section (xv) are to be governed by the Partnership Act, 1932. Section 2(1)(c)(xvii) i.e., “intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits” are to be read in the light of provisions of the Trademarks Act, Copyright Act etc.

65. It is submitted that if the argument of Mr. Bachawat is to be accepted then suits enforcing the remedies for infringement or passing off under the Trademarks Act would cease to be commercial disputes in spite of being statutorily defined to be commercial disputes. The application of a particular statute for instance, Transfer of Property Act or Premises Tenancy Act, Securities Contracts (Regulation) Act of Sale of Goods Act cannot take place in a vacuum without taking into consideration and determining the jural relationship between the parties. In fact, Section 106 starts with the words "In the absence of a contract to the contrary" and does not supersede the contract between the parties as argued by the defendants. Also, Section 106 would not apply if there is no jural relationship of landlord and tenant between the parties.

66. In responding to the submission that **Deepak Polymers** (*supra*) was a judgment *sub silentio* it has been submitted that it cannot be disputed that there is no discussion on the purport, scope or effect of the Explanation in **Deepak Polymers** (*supra*). The judgment in **Deepak Polymers** (*supra*) is therefore passed *sub silentio* on this very vital issue and

Hon'ble Justice Rao was not bound to follow it. However, it will be clear from paragraphs 25 and 26 of **T. E. Thomson** (supra) that Hon'ble Justice Rao did not give a divergent opinion with a Co-ordinate Bench in the interest of "judicial decorum". This approach is not unusual and cannot be faulted. Even the Hon'ble Supreme Court refers matters of consequence to a Larger Bench for eg. **NBCC -Vs.- State of West Bengal** ³² as would appear from paragraphs 53 to 56 of the report. It is therefore submitted that the reference be answered by affirming the view of Hon'ble Justice Rao in **T. E. Thomson** (supra).

67. In order to answer the questions, we need to refer to Section 6 of the Commercial Courts Act, 2015 (in short "the Act of 2015"). The said section 6 reads as follows:

"6. Jurisdiction of Commercial Court.—*The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction."*

68. The expression 'relating to' mentioned in section 6 is of wide import. In order to decide whether a suit involves a commercial dispute, we may have to refer to a definition of 'commercial dispute' as given in Section 2(1)(c) of the Act of 2015.

2. Definitions.—(1) In this Act, unless the context otherwise requires,—
.....
(c) "Commercial Dispute" means a dispute arising out of —
..... (emphasis supplied)

³² (2025) 3 SCC 440

69. The instant matter is in relation to a suit concerning an immovable property. Hence for the present purpose, the discussion is confined to sub-clause (vii) of Section 2 (1)(c) of the Act of 2015. The said sub-clause (vii) of 2 (1)(c) reads as follows:-

“2(1)(c)(vii)- agreements relating to immovable property used exclusively in trade or commerce”.

70. Section 6 read with the aforesaid clause of the Act of 2015 would confer jurisdiction on the Commercial Court to decide a dispute arising out of an agreement relating to immovable property used exclusively in trade or commerce. The expression used “exclusively in trade or commerce” has not been referred to the Special Bench and hence we are not expressing any view on the said expression. The expressions “relating to” and “arising out of” are of wide import and considered to be same and similar to the expression “concerned with” or “connected with” the dispute, as would appear from the decision of the Hon’ble Supreme Court in **Mansukhlal Dhanraj Jain & Ors.** (*supra*) where in paragraphs 11, 14 to 16 the scope and ambit of these expressions were considered. It is stated thus:-

“11. In order to resolve the controversy posed for our consideration, it will be appropriate to note the relevant statutory provision having a direct bearing on this question. Section 41(1) of the Small Cause Courts Act reads as under:

“41. (1) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force but subject to the provisions of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a

landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of the licence fee or charges or rent thereof, irrespective of the value of the subject-matter of such suits or proceedings.”

.....

14. So far as the first condition is concerned, a comprehensive reading of the relevant averments in the plaints in both these cases leaves no room for doubt that the plaintiffs claim relief on the basis that they are licensees on monetary consideration and the defendants are the licensors. The first condition is clearly satisfied. Then remains the question whether the third condition, namely, that the suits must relate to the recovery of possession of immovable property situated in Greater Bombay is satisfied or not. It is not in dispute that the suit properties are immovable properties situated in Greater Bombay but the controversy is around the question whether these suits relate to recovery of possession of such immovable properties. The appellants contended that these are suits for injunction simpliciter for protecting their possession from the illegal, threatened acts of the respondents/defendants. Relying on a series of decisions of this Court and the Bombay High Court, Guttal, J., Pendse, J. and Daud, J. had taken the view that such injunction suits can be said to be relating to the possession of the immovable property. Sawant, J. has taken a contrary view. We shall deal with these relevant decisions at a later stage of this judgment. However, on the clear language of the section, in our view, it cannot be said that these suits are not relating to the possession of the immovable property. It is pertinent to note that Section 41(1) does not employ the words "suits and proceedings for recovery of possession of immovable property". There is a good deal of difference between the words "relating to the recovery of possession" on the one hand and the terminology "for recovery of possession of any immovable property". The words 'relating to' are of wide import and can take in their sweep any suit in which the grievance is made that the defendant is threatening to illegally recover possession from the plaintiff-licensee. Suits for protecting such possession of immovable property against the alleged illegal attempts on the part of the defendant to forcibly recover such possession from the plaintiff, can clearly get covered by the wide sweep of the words "relating to recovery of possession" as employed by Section 41(1). In this connection, we may refer to Blacks' Law Dictionary, Super Deluxe 5th Edition. At

page 1158 of the said Dictionary, the term 'relate' is defined as under:

"to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with; 'with to'."

It cannot be seriously disputed that when a plaintiff-licensee seeks permanent injunction against the defendant-licensor restraining the defendant from recovering the possession of the suit property by forcible means from the plaintiff, such a suit does have a bearing on or a concern with the recovery of possession of such property. In the case of *Renusagar Power Co, Ltd. v. General Electric Co.* a Division Bench of this Court had to consider the connotation of the term 'relating to', Tulzapurkar, J. at page 471 of the report (SCC pp. 703-04, para 25) has culled out propositions emerging from the consideration of the relevant authorities. At page 471 proposition 2 has been mentioned as under: (SCC p. 704, para 25) "Expressions such as 'arising out of' or 'in respect of' or 'in connection with' or 'in relation to' or 'in consequence of' or 'concerning' or 'relating to' the contract are of the widest amplitude and content and include even questions as to the existence, validity and effect (scope) of the arbitration agreement."

15. In *Doypack Systems (P) Ltd. v. Union of India*, another Division Bench of this Court consisting of Sabyasachi Mukherji (as he then was) and G.L. Oza, JJ. had an occasion to consider this very question in connection with the provisions of Sections 3 and 4 of the *Swadeshi Cotton Mills Co. Ltd. (Acquisition and Transfer of Undertakings) Act, 1986*. Sabyasachi Mukherji, J. speaking for the Court, has made the following pertinent observations in paras 49 and 50 of the report: (SCCp. 329)

"The words 'arising out of' have been used in the sense that it comprises purchase of shares and lands from income arising out of the Kanpur undertaking. We are of the opinion that the words 'pertaining to' and 'in relation to' have the same wide meaning and have been used interchangeably for among other reasons, which may include avoidance of repetition of the same phrase in the same clause or sentence, a method followed in good drafting. The word 'pertain' is synonymous with the word 'relate', see *Corpus Juris Secundum*, Vol. 17, page 693. The expression 'in relation to' (so also 'pertaining to'), is a very broad expression which presupposes another subject-matter. These are words of comprehensiveness which might have both a direct significance as well as an indirect

significance depending on the context, see *State Wakf Board v. Abdul Azeez'*, following and approving *Nitai Charan Bagchi v. Suresh Chandra Paul*, *Shyam Lal v. M. Shyamlal* and 76 *Corpus Juris Secundum* 621. Assuming that the investments in shares and in lands do not form part of the undertakings but are different subject-matters, even then these would be brought within the purview of the vesting by reason of the above expression s. In this connection reference may be made to 76 *Corpus Juris Secundum* at pages 620 and 621 where it is stated that the term 'relate' is also defined as meaning to bring into association or connection with. It has been clearly mentioned that 'relating to' has been held to be equivalent to or synonymous with as to 'concerning with' and pertaining to'. The expression 'pertaining to' is an expression of expansion and not of contraction."

16. It is, therefore, obvious that the phrase "relating to recovery of possession" as found in Section 41(1) of the Small Cause Courts Act is comprehensive in nature and takes in its sweep all types of suits and proceedings which are concerned with the recovery of possession of suit property from the licensee and, therefore, suits for permanent injunction restraining the defendant from effecting forcible recovery of such possession from the licensee-plaintiff would squarely be covered by the wide sweep of the said phrase. Consequently in the light of the averments in the complaints under consideration and the prayers sought for therein, on the clear language of Section 41(1), the conclusion is inevitable that these suits could lie within the exclusive jurisdiction of Small Cause Court, Bombay and the City Civil Court would have no jurisdiction to entertain such suits.
(emphasis supplied)

71. The aforesaid decision was in connection with the jurisdiction of Small Causes Court under section 41 quoted in paragraph 11 of the said judgment. The suit was for injunction protecting possession and not for recovery of possession. Still it was held to be, "related to and/or arising out of" suit for recovery of possession which was within the jurisdiction of the Small Causes Court.

72. The expression “arising out of” has received judicial interpretation to include matters arising under as well as matters connected with as held in the decision of the Supreme Court in **State of Orissa vs. State of A.P.**³³. In **State of Orissa** (*supra*) a suit was filed by the state of Orissa against the State of Andhra Pradesh claiming this suit relates to a dispute regarding the boundaries between the States of Orissa and Andhra Pradesh. The State of Orissa which is the plaintiff claims that certain villages which fell within the territory of Orissa were being trespassed upon by the State of Andhra Pradesh. The State of Andhra Pradesh raised certain preliminary objections including inter alia, the objection that the suit was not maintainable before this Court in its original jurisdiction by virtue of the proviso to Article 131 of the Constitution of India. Proviso to Article 131 reads as follows:

“Article 131. Original jurisdiction of the Supreme Court - Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

(a) *Between the Government of India and one or more States;*

(b) *between the Government of India and any State or States on one side and one or more other States on the other; or*

(c) *between two or more States,*

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

[Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, named or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after

³³ (2006) 9 SCC 591

such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.”

The said proviso was considered in paragraphs 16 and 17 of the report. It was stated thus:-

16. The words "arising out of" used in the proviso to Article 131 have a been construed to have a wider meaning than "arising under". (See Antonis P Lemos, All ER at p. 703 and Doypack Systemns (P) Lid. v. Union of India.

17. The phrase may, therefore, include not only the matters "arising under" but also matters "connected with" an instrument of the kinds mentioned. Disputes, therefore, connected with an instrument similar to the instruments mentioned in the proviso would be beyond the scope of enquiry b by this Court.”
(emphasis supplied)

73. As very aptly put by Mr. Mitra, learned senior counsel the criteria therefore for determining whether a suit falls within the scope of Section 2(1)(c)(vii) as defined in the Act of 2015 would be as follows:-

- (i) Whether the dispute is arising out of (i.e. connected with) an agreement related to (i.e concerned with or connected with) immovable property used exclusively in trade and commerce?
- (ii) Any suit relating to (i.e. connected or concerned with) commercial dispute as above will fall within the jurisdiction of such commercial court as would have territorial jurisdiction over the suit.

If we decide (i) in the affirmative, the dispute then would be a commercial dispute, even if recovery of possession of immovable property or realization of money out of immovable property given as security or it involves any other relief pertaining to immovable property as classified by Explanation (a) under Section 2 (1)(c) of the Act of 2015.

74. In respect of (ii) explanation appended to section 2(1)(c) would apply which reads as follows:

“Explanation.—A commercial dispute shall not cease to be a commercial dispute merely because—

(a) it 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;

The explanation is in clear and plain language indicating legislative intent that a commercial dispute shall not cease to be commercial dispute, even if it also involves three categories mentioned in the explanation.

75. An explanation is an inseparable part of a statute as observed by the Hon’ble Supreme Court in ***The Bengal Immunity Company Limited*** (*supra*) in paragraph 286 which reads as follows:

“286. But then, it is contended that whatever the form in which the Explanation may be couched, it could not be extended beyond Art. 286(1)(a) and projected into Art. 286(2), and that unless that was done, it was not possible to hold that the sales falling within the Explanation are taken out of the purview of Art. 286(2). In my opinion, this argument proceeds on a misconception of the real reasoning on which the conclusion that the Explanation and Art. 286 (2) relate to two different subjects is based.

In view of the insistence with which this contention was pressed by the appellant, it seems desirable to examine the position in some detail. To start with, the two relevant provisions to be considered are Article 286(1) (a) with the Explanation and Article 286 (2). Omitting what is not material, they would run follows:

286. (1) “No law of a State shall impose a tax on a sale, where it takes place outside that State.

Explanation: A sale in the course of inter-State trade is inside that State in which goods are actually delivered for consumption.

(2). No law of a State shall impose tax on a sale in the course of inter-State trade”.

The argument of the appellant that Art. 286(2) is comprehensive and includes all sales in the course of inter-State trade and that therefore the sales covered by the Explanation fall within its purview, takes into account only Article 286 (2) and the Explanation, and it would have been unassailable if the question had to be decided on a construction only of these two provisions. But that, however, is not the position. An explanation appended to a section or clause gets incorporated into it, and becomes an integral part of it, and has no independent existence- apart from it. There is, in the eye of law, only one enactment, of which both the section and the Explanation are two inseparable parts. They move in a body if they move at all".

When, therefore, the question is whether sales falling within the Explanation are comprised within Article 286 (2), what has to be construed is that Article in relation to, not merely the Explanation taken in isolation but to Article 286 (1) (a) read with the Explanation. If the matter is thus considered, the resultant position might thus be stated. Article 286 (1) (a) confers on States power to tax sales inside their territory. Article 286 (2) prohibits them from taxing sales in the course of inter-State trade.

Explanation to Article 286 () (a) enacts that sales in the course of inter-State trade in which goods are delivered for consumption in a State shall be deemed to have taken place inside that State. The combined effect of all these provisions is that States can tax sales in the course of inter-State trade if they fall within the Explanation. This conclusion is reached, it will be seen, not by reading the Explanation into Article 286 (2) as a sort of exception but giving to all the provisions the status of independent enactments and determining what, on a construction of the language, their respective spheres of operation are."

[Emphasis supplied]

76. As rightly argued by Mr. Mitra, that while interpreting section 2 (1)(c), the explanation appended thereto cannot be ignored as explanation is an integral part of the enactment and is inseparable.

77. We accept the submission of Mr. Mitra that the explanation is in clear and plain language indicating legislative intent that a commercial dispute shall not cease to be commercial dispute, even if it involves three

categories of reliefs mentioned in the explanation. Since relief of recovery of possession of immovable property would not be relevant to decide whether a dispute is a commercial dispute, the question, whether notice under Section 106 of the Transfer of Property Act, 1882 is a statutory right or not, is not necessary because that would not change a commercial dispute into non-commercial dispute.

78. Insofar as notice under section 106 of the Transfer of Property Act is concerned, it is well settled that section 106 of the Transfer of Property Act lays down a rule of construction of the lease agreement which is silent on its duration and reference may be made to the decision of the Delhi High Court in **Jagat Taran Berry** (*supra*),³⁴ and the Hon'ble Supreme Court in **Samir Mukherjee vs. Davinder K Bajaj & Ors**,³⁵ paragraphs 5 to 8 and 14.

79. It would be apposite to refer to paragraph 7 of the Delhi High Court in **Jagat Taran Berry** (*supra*) where the interplay between sections 106 and 107 as explained in **Sati Prasanna Mukherjee and other v. Md. Fazel**,³⁶, was accepted and quoted with approval. In **Sati Prasanna Mukherjee** (*supra*) it was said:-

“Under section 106, Transfer of Property Act if the lease is for manufacturing purpose it will be deemed to be a lease from year to year. A lease from year to year under S. 107, Transfer of Property Act, can be made only by a registered instrument. In this case there is admittedly no registered instrument and it is a case of holding over

³⁴ AIR 1980 Delhi 7

³⁵ (2001) 5 SCC 259

³⁶ AIR 1952 Calcutta 320

under oral arrangement. Although S. 106, Transfer of Property Act provides that a lease for manufacturing purpose will be "deemed" to be a lease from year to year that does not in my view exclude such lease from the operation and requirement of S. 107, Transfer of Property Act. A lease which under the law is "deemed" to be a lease from year to year is in my view nonetheless "a lease from year to year" under Section 107 of the Act and must therefore satisfy the statutory requirement of registration subject of course to the provision of S. 53A Transfer of Property Act. No question of S. 53A of the Act arises here nor has any Issue been raised on that point. I am therefore unable to hold that there is a lease for manufacturing purpose in this case and answer Issue No. 1 in the negative."

(emphasis supplied)

80. If the document in question does not specify any particular period of tenancy and is completely silent in this regard, Section 106 Transfer of Property Act would immediately attract. The said section lays down a rule of construction for determining the duration of lease where the period is silent nor fixed by any local law or usage. It says that a lease of immovable property for any purpose other than agricultural or manufacturing shall be deemed to be a lease for month to month terminable on the part of either lessor or lessee by 15 days' notice expiring with the end of the month of tenancy. There is a presumption for construing a lease which is not for agricultural or manufacturing purpose as one form month to month.

81. The dispute in the aforesaid case was whether 15 days' notice period is applicable for termination of unwritten lease agreement.

82. In ***Ram Kumar Das vs Jagdish Chandra Deo Dhabal Deb and anr.***,³⁷ the Hon'ble Supreme Court considered the relative scope of sections

³⁷ AIR 1952 SC 23; 1951 SCC 1111

106 and 107 of the Transfer of Property Act. It was observed and held as under :-

“22. The section lays down a rule of construction which is to be applied when there is no period agreed upon between the parties. In such cases the duration has to be determined by reference to the object or purpose for which the tenancy is created. 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 is conceded that in the case before us the tenancy was not for manufacturing or agricultural purposes. The object was to enable the lessee to build structures upon the land. In these circumstances, it could be regarded as a tenancy from month to month. unless there was a contract to the contrary. The question now is, whether there was a contract to the contrary in the present case ?”

[emphasis supplied]

83. In **Samir Mukherjee** (*supra*), it has been reiterated that Section 106 pre-supposes a period of tenancy agreement and lays down the rules of construction of an agreement of lease express or implied, which does not mention duration of the lease agreement. Duration is ascertained in accordance with rules of construction prescribed by Section 106 of the T.P. Act. By referring to the lease agreement for ascertaining the object and purpose of the lease agreement, whether it is for agricultural or manufacturing purpose or any other purpose. The existence of a valid lease is a prerequisite to invoke the rule of construction embodied in Section 106.

84. Under Section 107 of the Act 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 executed 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. This is the legal position on a harmonious reading of both the sections.

85. The views of the Calcutta High Court in ***Sati Prasanna Mukherjee*** (*supra*) was approved.

86. In the facts of the case, the Supreme Court observed that when the rent reserved is an annual rent, the presumption would arise that the tenancy was an annual tenancy unless there is something to rebut the presumption. However, the difficulty in applying this rule in the said case arose from the fact that a tenancy from year to year or reserving a yearly rent can be made only by registered instrument, as laid down in section 107 of the Transfer of Property Act and clearly held to be mandatory in ***Debendra Nath Bhowmick v. Syama Prosanna Bhowmick***.³⁸ In ***Debendra Nath Bhowmick*** (*supra*) Mr Justice Woodroffe said:

“Then assuming that this case is governed by the Transfer of Property Act I should like to notice the agreement that because an annual rent was mentioned the tenancy must be taken to be a yearly one. The lease was not for agricultural or manufacturing purposes and therefore must, in the absence of a contract to the contrary, be deemed to be a tenancy from month to month. It is said

³⁸ 1906 SCC OnLine Cal 83

here that there was such contract, for yearly tenancy is to be implied from the mention of an annual rent. But when section 106 speaks of a contract I think it means a valid contract. But in the present case there is no such contract and under section 107 a lease such as is argued for in this appeal can only be created by a registered instrument and there is none here. The notice was therefore sufficient so far as the tenancy is concerned." (emphasis supplied)

The aforesaid judgment has been approved in **Ram Kumar Das** (supra) in paragraph 24.

87. The decision in **Park Street Properties** (supra) is an authority for the proposition that a document which is required to be registered, if unregistered is not admissible in evidence under Section 49 of the Registration Act. In absence of a registered instrument no valid lease from year to year or for a term exceeding one year or reserving a yearly rent could be created. However, dehors the instrument parties can create a lease as envisaged in the second paragraph of Section 107 TPA. It is observed in paragraph 9, 10, 17 and 19 that Section 106 TPA, 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. In the absence of a registered instrument, the courts are not precluded from determining the factum of tenancy from the other evidence on record as well as the conduct of the parties. While Section 106 TPA does contain the phrase "in the absence of a contract to the contrary", it is a well-settled position of law, that the same must be a valid contract. As an unregistered lease deed for a period of more than one year is not a valid lease within the meaning of the opening words of Section 106 TPA, the rule of construction embodied therein would not be

attracted. Thus, in the absence of registration of such a document, what is deemed to be created is a month-to-month tenancy, the termination of which is governed by Section 106 TPA.

88. In the aforesaid decision **Samir Mukherjee** (*supra*) was relied upon and **Ram Kumar Das** (*supra*) was referred. It would be clear from the said judgment that reference to the lease agreement was made in paragraph 18 while considering the jural relationship of the parties and validity of the notice.

89. The three Judge Bench decision in **Anthony v. K. C Ittoop & Sons**³⁹ was relied upon wherein it has been observed in paragraphs 13 and 16 as hereunder:

“13. *When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed.*

16. *Taking a different view would be contrary to the reality when parties clearly intended to create a lease though the document which they executed had not gone into the processes of registration. That lacuna had affected the validity of the document, but what had happened between the parties in respect of the property became a reality. Non-registration of the document had caused only two consequences. One is that no lease exceeding one year was created. Second is that the instrument became useless so far as creation of the lease is concerned. Nonetheless the presumption that a lease not*

³⁹ (2000) 6 SCC 394

exceeding one year stood created by conduct of parties remains un rebutted.” (emphasis supplied)

90. Paragraph 20 of the **Park Street Properties** (supra) has also made it clear that the lease agreement is a vital document which is to be looked into and an eviction proceeding cannot merely proceed only on the basis of a notice under Section 106 of the Transfer of Property Act. The said paragraph, *inter alia*, reads as under:

“20..... 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 determinate the tenancy at a notice of 15 days to not be applicable.”
(emphasis supplied)

91. The aforesaid paragraph makes it clear that the contract between the parties has to be a valid contract which is only possible if the contract is placed and considered in the said proceeding.

92. To summaries, a bare reading of section 106 of the Transfer of Property Act will clearly indicate that the reference has to be made to the lease agreement itself for determining the purpose of the lease. If it is for agricultural or manufacturing purpose, then it will be a lease from year to year, and if not, and for any other purpose, it will be a lease deemed to be from month to month. The period of notice terminating the lease will depend

upon the purpose for which the lease has been given. Thus reference to agreement of lease cannot be avoided.

93. A monthly tenancy is a tenancy from month to month. It is a result of an agreement between the parties implied from their conduct of payment of rent. It is of indefinite duration and continues from month to month until determined. The enunciation of law by Justice Karia in ***The Utility Articles Manufactuering Co. (Original Defendant) v. The Raja Bahadur Motilal Bombay Mills Ltd.***⁴⁰ is illuminatory as it has lucidly laid down the nature of periodical tenancies in the following words:

“The judgment of Mr. Justice Salter in Queen's Club Gardens Estates, Ltd. v. Bignell, [[1924] 1 K.B. 117 at p. 134.] clearly lays down the nature of these periodical tenancies. It is clear that such periodical tenancies do not come to an end by the efflux of time, for the simple reason that the time is not limited by the original lease itself. It commences with the month, and without any further action on the part either of the lessor or lessee continues till either party determines it by giving one month's notice. It is again material to note that the tenancy during the second and third or fifteenth month is not a new tenancy. It is always considered as a part of the original tenancy. It will be wrong to contend that when the tenancy commenced, the term was one month or two months, if without any action on the part of any party it (the original tenancy) continued, say for fifty years, if no one gave a notice terminating the tenancy before that. It may thus continue for an almost indefinite time, but might be brought to an end by either

⁴⁰ ILR 1943 Bom 553: AIR 1943 Bom 306

party, without the consent of the other party. I therefore agree that s. 110 is, in terms, inapplicable to periodical tenancies, and in this case the monthly tenancy was a periodical tenancy.

That leaves the question what was the agreement between the parties, apart from the meaning sought to be imposed on the wording of the letter by reading s. 110? It seems to me clear that the parties had arranged on July 30 for a lease which was to commence on August 1. The provision that rent was to be paid at the expiry of each month, and the provision for one clear month's notice to determine the lease contained in the letter indicate that the month contemplated was the English calendar month. Any other argument will open up difficult questions about the duration of the month, or when the notice would come to an end. For instance, why should it not be considered a lunar month? It seems to me, therefore, that the clear intention of the parties was to treat this as a tenancy commencing on August 1, and the whole argument raised on behalf of the appellants is based on what I should say an inadvertent use of the word "from" in this letter." (emphasis supplied)

94. Justice Gentle in **Usharani Debi v. The Research Industries Ltd.** ⁴¹ upon noticing the view expressed by the Chief Justice Beaumont in the **Utility Articles Manufacturing Co.** (*supra*) observed:

“**15.** Reference was made in the course of the argument to a decision of Sir John Beaumont, C.J., and Kania, J., of the Bombay High Court, sitting on appeal from a decision of Chagla, J., in the Ordinary Original Civil Jurisdiction of that Court,— the

⁴¹ 1945 SCC OnLine Cal 51: (1945-46) 50 CWN 461

case is *The Utility Articles Manufacturing Co. v. The Raja Bahadur Motilal Bombay Mills, Ltd.* [I.L.R. [1943] Bom. 553.] . A description of the nature of a monthly tenancy, which I have ventured to express above, appears in the course of the judgment of the learned Chief Justice at p. 563 of the Report. With/his observations I respectfully agree, except that I would prefer, in place of the words: “A monthly tenancy, that is, a tenancy subject to a month's notice, creates in the first instance a tenancy for two months certain,” words to the effect that, “a monthly tenancy is one which cannot be determined before the expiry of two months.” A monthly tenancy, in my view, is not a tenancy which commences or begins in one month and on its expiry a fresh tenancy is created in the following month or months, but is one tenancy for an unstated period which is determinable by one or other of the parties giving a notice to quit.”

(emphasis supplied)

95. The learned amicus curie has referred to the aforesaid decisions for better understanding at the nature of tenancy envisaged under Section 106 of the Transfer of Property Act.

96. Suit for recovery of possession upon termination of monthly tenancy by a notice under section 106 as submitted by Mr. Mitra, learned senior advocate involves two main questions for determination

- (i) Whether there is jural relationship of the landlord and tenant between the plaintiff and the defendant? This involves reference to agreement of tenancy express or implied.
- (ii) If so, whether the notice of termination of jural relationship of landlord and tenant is valid?

97. In this regard we may refer to paragraphs 5 and 7 of the judgment of the Hon'ble Supreme Court in **M/s Payal Vision Ltd** (*supra*) in which it was observed and held as under:-

5. Mr Rai submitted that the defendant had no doubt disputed the title of e the appellant-plaintiff and alleged that the land underlying the superstructure had vested in the Gram Sabha but any such contention was not available to her in view of Section 116 of the Evidence Act, 1872 that estopped a tenant from denying the title of the landlord. Relying upon the decisions of this Court in Karam Kapahi v. Lal Chand Public Charitable Trust and Charanjit Lal Mehra v. Kamal Sroj Mahajan. Mr Rai argued that the High Court ought to have refused any interference with the decree passed by the court below especially when no triable issue arose for determination by the trial court.

7 In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the plaintiff landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act. So long as these two aspects are not in dispute the court can pass a decree in terms of Order 12 Rule 6 CPC,....."

[emphasis supplied]

As observed in paragraph 8 in **K. M. Manjunath** (*supra*) in a suit for eviction filed by the landlord the material questions would be whether there was jural relationship of landlord – tenant between the parties and whether tenancy was validly terminated.”

98. Thus, a suit involving termination of tenancy by a notice under section 106 of the T.P. Act would primarily involve determination of existence of jural relationship of landlord and tenant, by reference to the lease agreement, express or implied. Termination of tenancy under Section 106 is

not the only question for consideration of the Court in a suit for recovery of possession, where tenancy has been determined by a 15 days' notice under section 106 of the T.P. Act. A notice of termination of tenancy under Section 106 of the T.P. Act for termination of lease from month to month implies existence of lease agreement. It does not create a right to get recovery of possession. The mode or manner of termination of the agreement of lease or the relief claimed quo termination of the agreement is not the criterion to decide the jurisdiction of the commercial court. The only requirement is that the dispute should arise out of an agreement involving an immovable property used exclusively in trade or commerce. Merely the fact that it is a dispute involving an immovable property would not be sufficient unless it is used exclusively in trade or commerce.

99. A suit is required to be filed after termination of the jural relationship of landlord and tenant because under the settled law of the land, even a trespasser cannot be evicted without recourse to due process of law. The validity of notice under section 106 of T. P. Act if raised will have to be determined by referring to the lease agreement. The period of the notice is dependent upon the nature and character of the lease. The nature of the jural relationship between landlord and tenant will be decided by referring to lease agreement.

100. Relief cannot be the determinative factor in deciding the character of the suit. The jurisdiction to entertain a claim is an important factor. Relief is allowed or disallowed depending upon the merits of the case.

The relief for possession would not change the character of the suit if it is otherwise a commercial suit involving a commercial dispute within the meaning of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015. Whether a suit is a commercial suit within the meaning of Section 2(1)(c)(vii) has to be determined in conjunction with Section 6 of the Commercial Courts Act, 2015 as the commercial courts shall have jurisdiction to try all suits and/or application relating to commercial disputes of a specified value arising out of the entire territory of the State over which it has been vested territorial jurisdiction. The commercial dispute in the present case is a dispute arising out of an agreement relating to immovable property. The commercial courts is only required to find out at the initial stage for the purpose of jurisdiction whether it is a dispute arising out of an agreement relating to immovable property used exclusively in trade or commerce. In deciding the said jurisdiction, the explanation is relevant as a commercial dispute would not cease to be a commercial dispute, merely because it also involves action for recovery of immovable properties and other reliefs mentioned in the said explanation clause. We are not concerned whether the property in question is used exclusively in trade or commerce or is to be used or is being used which are the matters that may be decided at the trial of the suit. Moreover, it appears that from the pleadings that the defendant has made a plea of holding over. However, we are not required to go into such question.

101. The basic approach of the court is not to find out whether it is enforcement of a statutory right. The argument of Mr. Bachawat that the

principle of Section 69(2) of the Partnership Act would also apply in answering the reference was not argument made before Hon'ble Justice Rao. In any event Section 69 (2) of the Partnership Act as rightly pointed out by Mr. Anindya Mitra, learned amicus curie is drastically different from the dispute with which we are presently concerned. The word "dispute" is not synonymous to a "cause of action". A cause of action would arise where there is an infringement of a right and it gives rise to a relief. A relief does not control a cause of action. A cause of action may give rise to various reliefs. The right to sue may arise out of a contractual right or a statutory right. However, for the purpose of deciding as to whether a commercial court would decide the commercial dispute, the reference to any statutory right or a contractual right is immaterial. As rightly pointed out Mr. Thakker various commercial disputes mentioned under Section 2(1)(c) of the Commercial Courts Act, 2015 are to be established by reference to certain statutes as for example, dispute arising out of 2(1)(c)(xvii) which relates to intellectual property rights. All that is required to be seen as a threshold test is whether the dispute is in relation to a "commercial dispute" as defined in Section 2(1)(c) of the Commercial Courts Act 2015. The explanation to the said section is only clarificatory and it permits the commercial court to adjudicate a dispute arising out of agreements relating to immovable property used exclusively in trade or commerce if it also involves actions for recovery of immovable property amongst others as mentioned in the explanation. In other words, if an action is brought for recovery of immovable property used

exclusively in trade or commerce by necessary implication it would be a dispute arising out of an agreement relating to immovable property. Over and above it would be held and considered to be a “commercial dispute” within the meaning of Section 2(1)(c) of the Commercial Courts Act, 2015 provided it is of a specified value and has arisen in the territory of the State or within the territory of the commercial courts established in the State.

102. Section 69(2) of the Partnership Act is a penal provision. It is a disabling clause and it was held to be so in **Haldiram** (*supra*) in paragraph 21 which reads as follows:

“21. The above Report and provisions of the English Acts, in our view, make it clear that the purpose behind Section 69(2) was to impose a disability on the unregistered firm or its partners to enforce rights arising out of contracts entered into by the plaintiff firm with the third-party defendants in the course of the firm's business transactions.” (emphasis supplied)

103. The expression “arising from” a contract was considered in **Raptakos Brett & Co. Ltd. v Ganesh Property**⁴² paragraphs 22 and 23 which is stated below:

“22. The net effect of this discussion, therefore, is that the plaint as framed by the plaintiff-respondent is based on a composite cause of action consisting of two parts. One part refers to the breach of the covenant on the part of the defendant when it failed to deliver vacant possession to the plaintiff-lessor on the expiry of the lease after 15-3-1985 and thereafter, all throughout, and thus it was guilty of breach of

⁴² 1998 (7) SCC 184

Covenants 14 and 17 of the lease. The second part of the cause of action, however, is based on the statutory obligation of the defendant-lessee when it failed to comply with its statutory obligation under Section 108(q) read with Section 111(a) of the Property Act. So far as this second part of the cause of action is concerned, it cannot certainly be said that it is arising out of the erstwhile contract.

23. However, one contention of learned Senior Counsel for the appellant is required to be noted so far as this second part of the cause of action is concerned. It was submitted that Section 108(q) of the Property Act itself provides that it is subject to the contract or local usage to the contrary and that Section 4 of the Property Act lays down that the chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872. Our attention, in this connection, was also invited to Section 1 of the Indian Contract Act, 1872 which provides that:

“Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.”

We fail to appreciate how these provisions are of any assistance to the learned Senior Counsel for the appellant. Section 108 of the Property Act lays down that in the absence of a contract to the contrary, the rights and liabilities of the lessor and lessee would be those which are covered by the rules mentioned in that section. Consequently it must be held that as compared to what is laid down by this section by way of rights and liabilities to the lessor and lessee, if the contracting parties have not provided anything to the contrary to such statutory rights and liabilities in their contract, then these statutory rights and liabilities would prevail. But if any contrary provision is mentioned in the contract

qua such rights and liabilities, then because of Section 4 of the Property Act, such a contrary provision in the contract will get saved on the combined operation of Section 4 of the Property Act and Section 1 of the Indian Contract Act, 1872. But that would also be subject to the rider that such an inconsistent contract should not be inconsistent with the provisions of the Indian Contract Act. Thus in the absence of any contrary provision in the contract, Section 108 will operate on its own. If there is any contrary provision in the contract, it will prevail over the provision in Section 108, provided such contrary provision in the contract is not inconsistent with the main provision of the Indian Contract Act. The combined operation of Section 108 and Section 4 of the Property Act and Section 1 of the Indian Contract Act can be better visualised by illustrations. Clause (b) of Part (A) of Section 108 deals with the statutory rights of a lessor to put the lessee in possession of the property leased at the lessee's request. That is the mandate of the aforesaid statutory provision. This statutory right of the lessee and the corresponding liability of the lessor can be subject to a contract to the contrary. If under the contract of lease, the parties have agreed to a stipulation that the lessor will put the lessee in possession after a period, say, three or four months within which the lessor will effect necessary repairs to the premises by way of whitewash, etc., then the statutory right of the lessee to be put in possession on the extent of the lease as per the said sub-section (b) would get curtailed or superimposed by the contractual right of the lessor to wait for the aforesaid period of delay and it will simultaneously cut across the statutory right of the lessee to be put in possession on the latter's request. Such a contrary provision in the contract will in its turn be saved by Section 4 of the Property Act read with Section 1 of the Contract Act as it in its turn is not inconsistent with any of the provisions of the present Indian Contract Act. We may take another illustration. Part B of Section 108 deals with the rights and liabilities of

the lessee. When we turn to clause (q) thereof, we find that there is a statutory obligation of the lessee on the determination of the lease to put the lessor in possession of the property. There can still be a contract between the parties at the time of entering into lease or even thereafter that on the determination of the lease, the lessee will be given six months' time to remove his fixtures and to vacate the premises and when such a locus poenitentiae is given to the lessee under the contract by the lessor, the statutory obligation of the lessee flowing from Section 108(q) immediately to put the lessor in possession of the property on the determination of the lease would get superseded and postponed by six months as stipulated in the contract. This will be a contract contrary to what is statutorily provided under Section 108(q). It is such a contract to the contrary which would be saved by Section 4 of the Property Act as such a contract to the contrary is expressly saved by Section 108 and it also cannot be said to be consistent with any of the provisions of the Indian Contract Act. Hence Section 1 of the Contract Act also will not hit the said contract to the contrary. Thus on a conjoint reading of the statutory scheme of Section 108 and Section 4 of the Property Act and Section 1 of the Contract Act, it must be held that in the absence of such contrary legally permissible contracts, the statutory rights and liabilities of the lessors and lessees as laid down under Section 108 of the Property Act, especially Section 108(q) in the present case, would remain fully operative by force of the statute itself. It is not the contention of either side that there was any contract to the contrary which permitted the lessee to continue in possession after the determination of the lease by the efflux of time even for a day more. In this connection, we may usefully refer to a decision of this Court. While interpreting the phrase "contract to the contrary" as found in Section 108 of the Property Act, this Court in the case of Madan Lal v. Bhai Anand Singh [(1973) 1 SCC 84] speaking through Shri Beg, J., held that if the tenant on the determination of the lease wants to show that he is

not bound to hand over the vacant possession forthwith to the landlord as he has paid the market value of the construction put in by him on the leased premises, there should be an express term to the contrary in the contract of tenancy which would override Section 108(q) obligation and as in the case before this Court, there was no such express term to the contrary in the lease deed, it was held that the obligation under Section 108(q) had to be complied with by the tenant. In this connection, the following pertinent observations were made in para 4 of the Report as under: (SCC pp. 86-87)

“If this had really been the intention of the parties, there was nothing to prevent them from inserting such a term in the deed so as to make that intention explicit. It appears to us that the more natural construction of the clause is that rights of ownership, including the right to take possession of the building, would become vested in the lessor at the expiry of the period of the lease, and that 50% of the market value of the building, which was to be paid in any case, became a condition attached to this ownership of the building when it vested in the lessee. The lessor was, in any case, to pay 50% of the market value of the structure, and, in the event of a sale, the payment of this amount became a first charge on the proceeds of sale. It is also significant that it is not mentioned in the deed that a purchaser of the cinema house, who would presumably prefer to obtain possession so as to be able to run it, could not get possession of it until the market value was ascertained or 50% of it was paid. Possession of a cinema house after the expiry of a building lease involving the passing of ownership of the building on such expiry is, after all, an important matter. In view of Section 108(q) of the Transfer of Property Act the burden of proving ‘a contract to the contrary’ was on the lessee; and, something to indicate an agreement to the contrary should be there, on such a matter

involving a valuable right before this burden could be held to have been duly discharged.”

On the facts of the present case it has to be held that there is no further locus poenitentiae given to the tenant to continue to remain in possession after the determination of the lease by the efflux of time on the basis of any such contrary express term in the lease. Consequently, it is the legal obligation flowing from Section 108(q) of the Act which would get squarely attracted on the facts of the present case and once the suit is also for enforcement of such a legal right under the law of the land available to the landlord, it cannot be said that the enforcement of such right arises out of any of the express terms of the contract which would in turn get visited by the bar of Section 69 sub-section (2) of the Partnership Act. Consequently it has to be held that when para 2 of the plaint in *addition made a reference to the right of the plaintiff to get possession under the law of the land, the plaintiff was seeking enforcement of its legal right to possession against the erstwhile lessee flowing from the provisions of Section 108(q) read with Section 111(a) of the Property Act which in turn also sought to enforce the corresponding statutory obligation of the defendant under the very same statutory provisions.* So far as this part of the cause of action is concerned, it stands completely outside the sweep of Section 69 sub-section (2) of the Partnership Act. The net result of this discussion is that the present suit can be said to be partly barred by Section 69 sub-section (2) so far as it sought to enforce the obligation of the defendant under clauses 14 and 17 of the contract of lease read with the relevant recitals in this connection as found in para 2 of the plaint. But it was partly not barred by Section 69 sub-section (2) insofar as the plaintiff based a part of its cause of action also on the law of the land, namely, the Transfer of Property Act whereunder the plaintiff had sought to enforce its statutory right under Section 108(q) read with Section 111(a) of the Property Act. Enforcement of that right had nothing

to do with the earlier contract which had stood determined by the efflux of time. The first point for determination, therefore, has accordingly to be held partly in favour of the plaintiff and partly in favour of the defendant. As the decree for possession is passed on the basis of both parts of causes of action, even if it is not supportable on the first part, it will remain well sustained on the second part of the very same cause of action. (emphasis supplied)

104. The suit was held to be maintainable as the suit was based on infringement of statutory rights under the Trade Marks Act. It is also based upon the common law principles of tort applicable to passing off actions. The suit is not for enforcement of any right arising out of a contract entered into by or on behalf of the unregistered firm with third parties in the course of the firm's business transactions. The suit is therefore not barred by Section 69(2). (See. **Haldiram** (*supra*) paragraph 27).

105. The issue was further considered with reference to **Raptakos Brett** (*supra*) and *Haldiram* (*supra*) in **Shiv Developers** (*supra*) in paragraph 16 in which it was held as follows:

“16. *In our view, the questions arising in this matter could be directly answered with reference to the principles enunciated by this Court in Raptakos Brett & Co. Ltd. v. Ganesh Property [Raptakos Brett & Co. Ltd. v. Ganesh Property, (1998) 7 SCC 184] , which have further been explained and applied by this Court in Haldiram Bhujawala [Haldiram Bhujawala v. Anand Kumar Deepak Kumar, (2000) 3 SCC 250] and Purushottam [Purushottam v. Shivraj Fine Arts Litho Works, (2007) 15*

SCC 58] . We may take note of the principles vividly expounded in *Haldiram Bhujiawala* [*Haldiram Bhujiawala v. Anand Kumar Deepak Kumar*, (2000) 3 SCC 250] that to attract the bar of Section 69(2) of the 1932 Act, the contract in question must be the one entered into by firm with the third-party defendant and must also be the one entered into by the plaintiff firm in the course of its business dealings; and that Section 69(2) of the 1932 Act is not a bar to a suit filed by an unregistered firm, if the same is for enforcement of a statutory right or a common law right.” (emphasis supplied)

106. It was clarified in ***Haldiram*** (*supra*) in paragraph 23 to 25 that the bar must apply to a suit for enforcement of right arising from a contract entered into by the unregistered firm with a third party in course of business dealings with such third party. If the rights sought to be enforced does not arise from a contract to which the unregistered firm is a party or is not entered into in connection with the business of the unregistered firm with the third party the bar of Section 69 (2) will not apply.

107. In ***Central Bank of India*** (*supra*) paragraphs 22 to 25 of ***Haldiram*** (*supra*) were relied upon to return a finding that the cause of action for the suit is based purely on the statutory obligation of the petitioners/defendants under Section 108(q) read with Section 111(h) of the TPA. In ***Central Bank of India*** (*supra*) the cause of action for filing the suit arose after issuance of notice dated 7th July, 2000 and when pursuant to the said notice petitioner/defendant did not vacate the suit premises upon expiry of the period of notice. A notice under Section 106 of the TPA was issued.

108. The reference of the aforesaid three decisions in our considered opinion is misplaced given the facts and circumstances of the case and the issues involved. In the instant case we are only concerned with understanding the jurisdiction of a commercial court in relation to the dispute canvassed, if it can be tried by the Commercial Division of this court.

109. Since extensive arguments have been made with regard to the interpretation of the phrase “arising out of” and “in relation to” immovable property as interpreted in **Ambalal** (*supra*) we would like to refer to few of the paragraphs relied upon by the parties.

“10. Be that as it may, the learned Senior Advocates on both sides have sought to rely on the legal position decided by the various High Courts in the absence of the pronouncement of this Court. The learned Senior Advocate in that regard have referred to the various decisions on the same point. However, we do not find it appropriate to refer to each of them and over burden this order since we notice that the High Court in fact has referred to various decisions while deciding the instant case and has thereafter arrived at its conclusion. The discussion as made by the High Court with reference to the various decisions is also justified. In that view, we would refer to the decision of a Division Bench in Jagmohan Behl v. State Bank of Indore [Jagmohan Behl v. State Bank of Indore, 2017 SCC OnLine Del 10706] relied on by the learned Senior Advocate for the appellant. In that regard, it is noticed that in the said case on taking note of the provision contained in Section 2(1)(c)(vii) of the CC Act, 2015 it is held that the dispute involved therein would constitute a commercial dispute and the expression “arising out of” and “in relation to

immovable property” should not be given the 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.

11. On the other hand, the learned Senior Advocate for the respondents has relied on the decision of a Division Bench of the Gujarat High Court in *Vasu Healthcare (P) Ltd. v. Gujarat Akruti TCG Biotech Ltd.* [*Vasu Healthcare (P) Ltd. v. Gujarat Akruti TCG Biotech Ltd.*, 2017 SCC OnLine Guj 724 : AIR 2017 Guj 153] wherein a detailed consideration has been made and the conclusion reached therein by taking note of an earlier decision is that on a plain reading of Section 2(1)(c) of the CC Act, 2015 the expression “used” must mean “actually used” or “being used”. It is further explained that if the intention of the legislature was to expand the scope, in that case the phraseology “likely to be used” or “to be used” would have been employed. The verbatim consideration therein is as hereunder: (SCC OnLine Guj para 33)

“33. Therefore, if the dispute falls within any of the Section 2(c) the dispute can be said to be “commercial dispute” for which the Commercial Court would have jurisdiction. It is required to be noted that before the learned Commercial Court the original plaintiff relied upon Sections 2(c)(i), 2(c)(ii) and 2(c)(xx) of the Commercial Courts Act only. The learned counsel appearing on behalf of the original plaintiff has candidly admitted and/or conceded that the case shall not fall within Sections 2(c)(i); 2(c)(ii) or 2(c)(xx) of the Commercial

Courts Act. It is required to be noted that before the learned Commercial Court it was never the case on behalf of the original plaintiff that the case would fall within Section 2(c)(vii) of the learned Commercial Court. Despite the above we have considered on merits whether even considering Section 2(c)(vii) of the Commercial Courts Act, the dispute between the parties can be said to be “commercial dispute” within the definition of Section 2(c) of the Commercial Courts Act or not? Considering Section 2(c)(vii), “commercial dispute” means a dispute arising out of the agreements relating to immovable property used exclusively in trade or commerce. As observed hereinabove, at the time of filing of the suit and even so pleaded in the plaint, the immovable property/plots the agreements between the parties cannot be said to be agreements relating to immovable property used exclusively in trade or commerce. As per the agreement between the party after getting the plots on lease from the GIDC, the same was required to be thereafter developed by the original Defendant 1 and after providing all infrastructural facilities and sub-plotting it, the same is required to be given to other persons like the original plaintiff. It is the case on behalf of the original plaintiff that as the original Defendant 1 has failed to provide any infrastructural facilities and develop the plots and therefore, a civil suit for specific performance of the agreement has been filed. There are other alternative prayers also. Therefore, it cannot be said that the agreement is as such relating to immovable property used exclusively in trade or commerce. It is the case on behalf of the original plaintiff that as in clause (vii) of Section 2(c), the phraseology used is not “actually used” or “being used” and therefore, even if at

present the plot is not used and even if it is likely to be used even in future, in that case also, Section 2(c)(vii) shall be applicable and therefore, the Commercial Court would have jurisdiction. The aforesaid has no substance. As per the cardinal principle of law while interpreting a particular statute or the provision, the literal and strict interpretation has to be applied. It may be noted that important words used in the relevant provisions are “immovable property used exclusively in trade or commerce”. If the submission on behalf of the original plaintiff is accepted in that case it would be adding something in the statute which is not there in the statute, which is not permissible. On plain reading of the relevant clause it is clear that the expression “used” must mean “actually used” or “being used”. If the intention of the legislature was to expand the scope, in that case the phraseology used would have been different as for example, “likely to be used” or “to be used”. The word “used” denotes “actually used” and it cannot be said to be either “ready for use” or “likely to be used”; or “to be used”. Similar view has been taken by the Bombay High Court (Nagpur Bench) in Dineshkumar Gulabchand Agrawal [Dineshkumar Gulabchand Agrawal v. CIT, 2003 SCC OnLine Bom 1289 : (2004) 267 ITR 768] and it is observed and held that the word “used” denotes “actually used” and not merely “ready for use”. It is reported that SLP against the said decision has been dismissed [Dineshkumar Gulabchand Agrawal v. CIT, 2004 SCC OnLine SC 13] by the Hon'ble Supreme Court.” (emphasis in original)

13. The learned Senior Advocate for the appellant would however, contend that a strict interpretation as in the case of taxing statutes would not be appropriate in the instant case where the issue relates to jurisdiction. In that regard, the learned Senior Advocate has referred to the Statement of Objects and Reasons with which the Commercial Courts Act, 2015 is enacted so as to provide speedy disposal of high value commercial disputes so as to create the positive image to the investors world about the independent and responsive Indian legal system. Hence, he contends that a purposive interpretation be made. It is contended that a wider purport and meaning is to be assigned while entertaining the suit and considering the dispute to be a commercial dispute. Having taken note of the submission we feel that the very purpose for which the CC Act of 2015 has been enacted would be defeated if every other suit merely because it is filed before the Commercial Court is entertained. This is for the reason that the suits which are not actually relating to commercial dispute but being filed merely because of the high value and with the intention of seeking early disposal would only clog the system and block the way for the genuine commercial disputes which may have to be entertained by the Commercial Courts as intended by the lawmakers. In commercial disputes as defined a special procedure is provided for a class of litigation and a strict procedure will have to be followed to entertain only that class of litigation in that jurisdiction. If the same is strictly interpreted it is not as if those excluded will be non-suited without any remedy. The excluded class of litigation will in any event be entertained in the ordinary civil courts wherein the remedy has always existed.

14. In that view it is also necessary to carefully examine and entertain only disputes which actually answers the definition

“commercial disputes” as provided under the Act. In the instant case, as already taken note neither the agreement between the parties refers to the nature of the immovable property being exclusively used for trade or commerce as on the date of the agreement nor is there any pleading to that effect in the plaint. Further the very relief sought in the suit is for execution of the mortgage deed which is in the nature of specific performance of the terms of Memorandum of Understanding without reference to nature of the use of the immovable property in trade or commerce as on the date of the suit. Therefore, if all these aspects are kept in view, we are of the opinion that in the present facts the High Court was justified in its conclusion arrived through the order dated 1-3-2019 [K.S. Infraspace LLP v. Ambalal Sarabhai Enterprises Ltd., 2019 SCC OnLine Guj 1926] impugned herein. The Commercial Court shall therefore return the plaint indicating a date for its presentation before the Court having jurisdiction.

37. A dispute relating to immovable property per se may not be a commercial dispute. But it becomes a commercial dispute, if it falls under sub-clause (vii) of Section 2(1)(c) of the Act viz. “the agreements relating to immovable property used exclusively in trade or commerce”. The words “used exclusively in trade or commerce” are to be interpreted purposefully. The word “used” denotes “actually used” and it cannot be either “ready for use” or “likely to be used” or “to be used”. It should be “actually used”. Such a wide interpretation would defeat the objects of the Act and the fast tracking procedure discussed above.

38. On 3-11-2017, a Memorandum of Understanding was executed between the appellant-plaintiff, respondent-defendant and Ketan Bhailalbhai Shah, second respondent. As per the terms of MoU, parties executed a deed of conveyance of the land.

A mortgage deed was executed simultaneously along with the MoU with respect to the part of the land admeasuring 15,000 sq ft in favour of the plaintiff. It was understood between the parties that Respondent 1 would apply for change of land use permission for the land in question on signing of the MoU. Mortgage deed was executed by Respondent 1 in favour of the appellant in order to ensure performance of obligations under the MoU. But the said mortgage deed was not presented for registration.

39. It appears that the trial court has proceeded under the footing that the parties to the suit more particularly, the appellant-plaintiff seems to be carrying on business as estate agent and to manage land, building, etc. and the very object as enumerated in Memorandum and Articles of Association of the appellant-plaintiff company established that the property in question is being used exclusively in trade or commerce rather in the business of the plaintiff. As rightly pointed out by the High Court, there is nothing on record to show that at the time when agreement to sell came to be executed in 2012, the property was being exclusively used in trade and commerce so as to bring dispute within the ambit of sub-clause (vii) of Section 2(1)(c) of the Act. Merely because, the property is likely to be used in relation to trade and commerce, the same cannot be the ground to attract the jurisdiction of the Commercial Court.” (emphasis supplied)

110. The narrow and restrictive meaning was confined to the user of the property exclusively for trade or commerce and there has to be a finding of fact that the land is, in fact, in present time, being used for commercial purpose. The aforesaid decision in paragraph 14 has made it clear that “neither the agreement between the parties refers to the nature of the

immovable property being exclusively used for trade or commerce as on the date of the agreement nor is there any pleading to that effect in the plaint. Further the very relief sought in the suit is for execution of the mortgage deed which is in the nature of specific performance of the terms of Memorandum of Understanding without reference to nature of the use of the immovable property in trade or commerce as on the date of the suit.”

111. It was further clarified in paragraph 37 where it has been emphasized that the agreement must be relating to immovable property used exclusively in trade or commerce and also it would be the duty of the commercial court to find out as to whether at the time when the agreement was concluded, the property was being used exclusively in trade or commerce so as to bring the dispute within the ambit of sub-section (vii) of Section (2)(1)(c) of the Act. It only determines the date of the cause of action to decide the jurisdiction of the commercial court. In our respectful view, the said judgment, is not an authority for the proposition that if a right emanates from a statute it cannot be considered to be a commercial dispute within Section (2)(1)(c) of the Act. Merely because the commercial court may be required to refer to Section 106 TPA and the lease is determinable by service of notice under Section 106 Section TPA, with a prayer for recovery of possession if the breach had occurred by not delivering the possession upon expiry of the notice period, would denude the commercial court of its jurisdiction to try and determine such suit.

112. The judgment of the Division Bench of Delhi High Court in **Jagmohan Behl** (supra)⁴³ is relevant. The facts are fairly similar. In this case, the Trial Court had held that the suit did not relate to commercial dispute. No right under the agreement relating to immoveable property was sought to be enforced in this suit. The suit was only for recovery of rent and mesne profits. The trial court's judgment was set aside by the Division Bench, and it was held to be a commercial suit after referring to the relevant sections, including the Explanation under Section 2(1)(c) of the Commercial Courts Act, 2015. The observation and findings of the Division Bench as are relevant for the present purpose are reproduced below:

“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.

9. In order to appreciate the controversy, we would first reproduce the relevant definition clause, i.e. 2(1)(c)(vii), as also the explanation thereto:— “Definitions.- (1) In this Act, unless the context otherwise requires- (c) “commercial dispute” means a dispute arising out of- (vii) agreements relating to immoveable property used exclusively in trade or commerce; Explanation.-A commercial dispute shall not cease to be a commercial dispute merely because- (a) It also involves action for recovery of immoveable property or for realisation of monies out of immoveable property given as security or involves any other relief pertaining to immoveable 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;”

⁴³ 2017 SCC Online Del 10706: MANU/DE/2930/2017 : 2017 DHC - DB

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 subserve. 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.

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.” (emphasis supplied)

113. The aforesaid judgment has been recently followed in **Kartar Singh Kochhar v. ICICI Bank Limited**⁴⁴ in which in paragraphs 22 to 24 it was observed:

“Petitioner strongly relies on Deepak Polymers Private Limited v. Anchor Investments Private Limited, 2021 SCC OnLine Cal 4323. In the above matter, though the suit was for possession of a property let out for commercial purpose, learned Single Judge of Calcutta High Court observed that if a suit is 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 agreement, it could be said to be a dispute “arising out of” such agreement. However, observing that, the dispute therein had arisen out of refusal by the defendants to

⁴⁴ 2024 SCC Online Del 6987

comply with the notice issued by the lessor under Section 106 of the Transfer of Property Act, 1882, which was based on a statutory right, independent and irrespective of any clause of the lease agreements. Thus, it was held that such suit would 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. Resultantly, it was held that the precondition of the applicability of Section 2(1)(c)(vii), that is, the emanation of the dispute out of the lease agreement, was not satisfied. It is argued that since the SLP challenging the above order was eventually withdrawn, the above findings cannot be ignored. However, mere withdrawal of SLP would not, ipso facto, make it a binding precedent.

23. *Moreover, the bare definition and the Explanation say it all.*

24. *The Explanation, as already extracted above, stipulates 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 realisation of monies out of immoveable property given as security or involves any other relief pertaining to immovable property. Therefore, in my humble opinion, no advantage can be dug out from Deepak Polymers Private Limited (supra) as it seems that the kind attention of said Court was never drawn to the wordings used in said Explanation.*”
(emphasis supplied)

114. The observation in the aforesaid decision that SLP was withdrawn is factually incorrect as only one of the SLPs was withdrawn as noticed in paragraph 31 above.

115. Section 106 is a substantive piece of legislation. It cannot be considered to be a standalone provision for the purpose of deciding the mutual rights of the parties. It only lays down the procedure to be followed in terminating the lease. It does not provide a remedy. The remedy is provided in the Code of Civil Procedure read with the schedule. However, the Commercial Courts Act, 2015 has carved out few disputes and classified them as commercial disputes to be exclusively decided by the Commercial Division subject to the fulfilling the requirement of specified value.

116. Section 2(1)(c) defines a “commercial dispute” which means “a dispute arising out of” a class of matters mentioned therein. A dispute in simple terms would mean a controversy – something which has been questioned. It is not the same thing as a cause of action or a mere incurring of a liability. A dispute may mean an argumentative contention and difference of opinion. It can be a dispute of law as well as of fact. It can be a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. (see **Black’s Law dictionary, 6th Edn.**)

117. A dispute of a commercial nature arises out of an agreement and is resolved with reference to such an agreement with the possible exception where the issue arises as to whether there is a concluded contract.

The dispute cannot arise in vacuum. The construction of the lease agreement is essential to understand the validity of the notice under Section 106 of the TPA. Hence one cannot disregard the agreement even when it is determined under Section 106 of the TPA as settled by the catena of decision of the Hon'ble Supreme Court few of which we have referred earlier.

118. We have been reminded by Mr. Anindya Kumar Mitra, Senior Advocate that “no one is wiser than a statute” a submission made by late Dr. Atul Chandra Gupta, a legal doyen of the Calcutta Bar, almost sixty years ago before a Division Bench in interpreting a statute. This is in the context of the relevance of the explanation in interpreting Section 2(1)(c)(vii) of the Commercial Court Act. In harmonising the section with the explanation it is imperative to understand the legislative intent.

119. A commercial dispute is thus determined under Section 2(1)(c)(vi) of the Act of 2015. Explanation clarifies that a dispute shall not cease to be a commercial dispute, merely because this is an action for recovery of possession of immovable property.

120. Right to file a suit is governed by the Code of Civil Procedure, 1908 (Section 26 of CPC), The suit is to be filed in accordance with the Rules of procedure contained in the Schedule of the Code of Civil Procedure, 1908.

121. In the instant case as rightly pointed out by the learned amicus curiae the instant suit involves a lease of immovable property by holding over under Section 116 of the T. P. Act. In this case, there were two separate Deeds of Lease between the plaintiff and the joint lessees, and the period of

such lease expired by efflux of time on January 30, 1990 and February 28, 1990 respectively. But thereafter, the lessee continued to pay rent and the lessor continuously accepted such rent even after expiry of the lease till December 24, 2010, when the plaintiff suddenly stopped issuing rent receipts. But even thereafter the plaintiff continued to encash the rent cheques till March 2011. These facts would appear from the light of dates and notes of argument submitted by the defendant No.1. The effect of holding over is renewal of the original lease from year to year, or from month to month, according to the purpose for which property has been leased, as laid down in Section 116 of the T. P. Act. Since the lease in this case was not granted for manufacturing or agricultural purpose, the lease after termination of the original lease would be a lease from month-to-month by reason of Section 106 of the T. P. Act. We only referred to these facts to show that reference to lease agreement is necessary.

122. In view of the aforesaid discussion we accept the submission of Mr. Anindya Kumar Mitra, the learned Amicus Curie and answer the questions in the manner following:

Q. (a) Whether after issuance of notice under Section 106 of the Transfer of Property Act, 1882, the defendant or the parties cannot rely on the agreement/lease deed as the case may be?

Answer- The lease agreement is to be looked into and considered for deciding the nature and character of jural relationship of landlord and tenant between the parties, that is to say, whether the lease

agreement is for manufacturing or agricultural purpose, upon which will depend validity of notice under Section 106 of T P Act. The answer is in the negative.

Q.(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?

Answer - This question is included by necessary implication in question (a) and is answered in the negative.

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

Answer- Yes. Explanation clause is an integral part and parcel of the Section 2(1)(c)(vii) of the said Act and has to be taken into consideration for deciding whether it is a commercial dispute or not. Explanation is very relevant because it reflects legislative intent that a commercial dispute will not cease to be commercial dispute, even if recovery of immoveable property is claimed, which will not change the

character of a dispute if it has been held to be commercial dispute under Section 2(1)(c) (vii) of the said Act.

123. The reference is thus disposed of on the basis of the aforesaid answers.

124. We record our appreciation for the assistance received from Mr. Anindya Kumar Mitra, Senior Advocate assisted by Mr. Satrajeet Sen, Advocate, Mr. Ranjan Bachwat, Senior Advocate and Mr. Krishnaraj Thakker, Senior Advocate.

I agree

(Soumen Sen, J.)

(Smita Das De, J.)