

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**C.O. No.759 of 2021
With
IA No: CAN 1 of 2021
With
CAN 2 of 2021**

**Deepak Polymers Private Limited
Versus
Anchor Investments Private Limited**

With

**C.O. No. 765 of 2021
Sri Sandip Bazaz HUF
Versus
Armstrong Investment Private Limited
With
C.O. No. 757 of 2021**

**Shri Niwas Daga
Versus
Armstrong Investment Private Limited
With
C.O. No. 761 of 2021**

**Laxmi Niwas Daga
Versus
Meenakshi Tea Company Limited
With
C.O. No. 763 of 2021**

**Smt Sonal Bazaz
Versus
Armstrong Investment Private Limited**

For the petitioners in all
the revisional applications

:

Mr. Aniruddha Chatterjee,
Mr. Arijit Chakraborty,
Mr. Tapas Saha,
Mr. Pranit Bag,
Mr. Diprav Deb

For the respondent
in all the revisional applications : Mr. Rajarshi Dutta,
Mr. VVV Sastri,
Mr. Nischay Mall,
Ms. Shivika Tiwari

Hearing concluded on : 11.06.2021

Judgment on : 24.06.2021

Sabyasachi Bhattacharyya, J:-

1. All the revisional applications are heard analogously in view of the issue involved being the same. Each of the revisional applications under Article 227 of the Constitution arise out of suits for eviction under Section 106 of the Transfer of Property Act, 1882, which is evident from the cause of action pleaded in each of the plaints.
2. The primary relief sought in the suits is recovery of possession from the respective defendants. Ancillary reliefs regarding *mesne profits* etc., have also been sought.
3. By the impugned orders, the court below rejected applications filed by the defendants/petitioners under Order VII Rule 10 of the Code of Civil Procedure for return of the plaint to be presented before an appropriate forum, on the ground that the Commercial Court, in which the suits were instituted, does not have jurisdiction to hear the said suits.

4. Such applications were dismissed on similar reasoning by the orders impugned in all the revisional applications.
5. The primary question which falls for consideration is whether a suit, primarily for recovery of possession of immovable property under Section 106 of the Transfer of Property Act, pertains to a “commercial dispute” under the Commercial Courts Act, 2015. The crux of the petitioners’ argument is that Section 2(1)(c)(vii) and the explanation to the said Section, read conjointly, indicate that a suit simpliciter for eviction does not come within the purview of a commercial dispute.
6. That apart, the petitioners argue that the *mesne profits* have been claimed at arbitrary, inflated rates merely to increase the valuation of the suit, to bring it within the purview of the Commercial Courts Act, 2015.
7. Learned counsel for the petitioners argues that an order passed in a proceeding where the Court lacks inherent jurisdiction would render the order null and void. For such proposition, learned counsel cites the following judgments:

(a) *Amit Suresh Bhatnagar Vs. Nageshwar Steels – A Partnership Firm* (R/Special Application No.11639 of 2017);

(b) *State of Gujarat Vs. Union of India* [2018 SCC OnLine Guj 1515]; and

(c) *L. Chandra Kumar Vs. Union of India and Others* [(1997) 3 SCC 261].

8. On maintainability of the application under Article 227 in the context of the bar contemplated in Section 8 of the 2015 Act, learned counsel for the petitioners argues that the power of judicial review under Articles 226 and 227 of the Constitution cannot be fettered by such a statutory bar. It is also argued that if a statute curtails the right of a party to approach the High Court under Article 226/227 or the Supreme Court under Article 32 of the Constitution, such provision would be rendered *ultra vires*.
9. For the above propositions, learned counsel relies on the following judgments:
 - (a) *L. Chandra Kumar Vs. Union of India and Others* [(1997) 3 SCC 261]; and
 - (b) *Salini Shyam Shetty and Another Vs. Rajendra Shankar Patil* [(2010) 8 SCC 329].
10. Learned counsel for the petitioners next contends that there are no specific pleadings in the complaints to suggest that the property was exclusively being used in trade and commerce and no document disclosing that the matter would fall within the ambit of “commercial dispute” has been annexed to any of the complaints. In such context, learned counsel places reliance on *Ambalal Sarabhai Enterprises Vs. K.S. Infra Space LLP & Another*, reported at 2019 SCC OnLine SC 1311 and *Mrs. Soni Dave Vs. M/s. Trans Asian Industry Exposition Private Limited*, reported at AIR 2016 Del 186 and at 2016 SCC OnLine Delhi 4282.

- 11.** “Godown”, the petitioners contend, is a place for storage or a warehouse for goods, as per the 6th Edition of the Second Volume of the Advance Law Lexicon by P. Ramanatha Aiyar. Storage of goods cannot necessarily be equated with trade or commerce, particularly, in the absence of any reference in the agreement and/or pleading of “actual use” of the property-in-dispute exclusively for trade or commerce.
- 12.** The petitioners argue that Section 12 of the 2015 Act provides the procedure for determination of specified value, but does not determine the jurisdiction of the Court, being merely restricted to the mode of valuation. For the purpose of court fees and jurisdiction, it is submitted, the Court will be guided by the provisions of the Court Fees Act and the Suit Valuation Act. Reliance is placed on *Laxmi Narayan Vs. Navneet & Others* [2017 SCC OnLine Del 7863] for the said proposition. Unless the dispute comes within the purview of “commercial dispute”, mere valuation in terms of Section 12 of the 2015 Act would not be a determinant of the jurisdiction of court, it is argued.
- 13.** The present suits pertain purely to a tenancy dispute and, as per the Court Fees Act, the valuation of the suit should have been based on the rental amount for 12 months. Such amount, in the present case, having not crossed the threshold value for the Commercial Court to assume jurisdiction, that is, Rs.30 lakh, the Trial Court, it is

contended, acted without jurisdiction in entertaining the suits and refusing to return the complaints.

14. Learned counsel appearing for the plaintiffs/opposite parties in all the matters, on the other hand, contends that a suit for recovery of possession in respect of an immovable property used for the purpose of trade and commerce is squarely a “commercial dispute” as defined in the 2015 Act.
15. Learned counsel for the opposite parties cites the bar under Section 8 of the 2015 Act, which stipulates that, notwithstanding anything contained in any other law for the time being in force, no civil revisional application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction and any such challenge, subject to the provisions of Section 13, shall be raised only in an appeal against the decree of the Commercial Court. An analogy is sought to be drawn by counsel between Section 16 of the Arbitration and Conciliation Act, 1996 and Section 8 of the Act of 2015 in this regard.
16. The *non-obstante* clause in Section 8 restricts the superintending jurisdiction of this Court, it is contended, and this Court is required to exercise self-restraint in an application under Article 227 of the Constitution which is intended, according to the petitioners, to circumvent the bar to revisional applications against interlocutory orders passed by Commercial Courts, as contemplated in Section 8 of the Commercial Courts Act, 2015.

17. Learned counsel places reliance on *Shri Balaji Industrial Products Limited Vs. AIA Engineering Limited and Others*, reported at *MANU/RH/2035/2017* and also in *2018 (3) WLN 411 (Raj)*, to stress the argument that the jurisdiction of the High Court under Article 227 of the Constitution is limited only to seeing that the subordinate court functions within the limits of its authority and does not extend to correction of mere errors of fact by examining the evidence and re-appreciating it. Resort cannot be taken to Article 227 to circumvent the legislative intent to eschew challenges to interlocutory orders during the pendency of proceedings as provided for under the Act of 2015, where revisions are prohibited and challenges in miscellaneous appeals confined to orders of the Commercial Court *a la* orders which are appealable under Order XLIII Rule 1, Code of Civil Procedure.
18. Placing reliance next on *Vaijanath Dayanad Kale and Others Vs. Nerkar Properties LLP and Others* [2020 SCC OnLine Bom 906], the opposite parties argue that, under Order VII Rule 10 of the Code of Civil Procedure, the Court is to consider the question of initial jurisdiction, depending on the case pleaded by the plaintiffs, which has to be determined on the averments made in, as also documents produced with, the plaint. Since it has been clearly pleaded in each of the complaints that the immovable properties, in respect of which reliefs has been sought, are exclusively for trade and commerce, the court below was justified in dismissing applications of the defendants/petitioners under Order VII Rule 10 of the Code of Civil Procedure.

19. For the proposition that the High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decisions under Article 227 of the Constitution and it must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law of justice, where grave injustice would be done unless the High Court interferes, learned counsel for the opposite parties cites *Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi* [(1995) 6 SCC 576].
20. The petitioners also rely on the first proviso to Section 115(1) of the Code of Civil Procedure to indicate that, unless the order, if made in favour of revisionist, would have finally disposed of the suit or proceedings, the revisional jurisdiction of superior courts cannot be invoked. Hence, no interference is warranted by the High Court even in the exercise of its power under Article 227 of the Constitution in such cases, it is contended.
21. Learned counsel for the opposite parties argues that, to come within the ambit of “commercial dispute” as defined in Section 2(1)(c)(vii) of the 2015 Act, the only test is whether the immovable property is used for commercial purpose. In the present case, admittedly the suit properties are godowns and there are specific pleadings in the plaint indicating that the said properties are used for trade and commerce.
22. By placing reliance on *Jagmohan Behl Vs. State Bank of Indore*, [2017 SCC OnLine Delhi 10706], learned counsel argues that all materials relating to agreements in connection with immovable properties would

fall within the purview of the expression “arising out of” in the context of sub-Clause (vii). Such expressions as “arising out of” and “in relation to immovable property” have to be given their natural and general contours, since those are wide and expansive expressions and cannot be given a narrow and restricted meaning.

- 23.** Learned counsel for the opposite parties further contends that Section 106 of the Transfer of Property Act pre-supposes an agreement between a lessor and a lessee. Section 107 of the Act provides even for a lease by an oral agreement accompanied by delivery of possession. As such, the present suits relate to the lease agreements which, in turn, are in respect of immovable properties used for the purpose of trade and commerce.
- 24.** Citing *Vivekananda and Ors. Vs. Indian Oil Corporation*, reported in *MANU/TN/9904/2019*, learned counsel for the opposite parties submits that the Madras High Court, in an application for summary judgment, made observations in respect of Order XIII-A of the 2015 Act and applied the procedure of summary judgment in view of the dispute in the suit having been emanated from a lease deed between a lessor and a lessee. The facts of the case indicate that the suit was initiated for specific performance and had relied on clauses of the lease agreement pertaining to renewal of the lease.
- 25.** In view of Section 6 of the 2015 Act, a Commercial Court has jurisdiction to try all suits and applications relating to “commercial dispute” of a “specified value” arising out of the entire territory over

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

- 26.** Reading the words of the legislature literally is the primary rule for construction of statutes. As such, learned counsel for the opposite parties defends the impugned orders on the premise that the Commercial Court has jurisdiction to entertain and decide the suits-in-question.
- 27.** Upon hearing the rival contention of the parties and perusing their respective written notes of arguments, as well as on a plain and meaningful reading of the complaints 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 complaints, it has been pleaded that notices were given under Section 106, which the defendants failed to comply with even after the expiry of fifteen (15)

days thereafter. Hence, the first ingredient of the suits which stares in the face is that the suits are based on the statutory right conferred by Section 106 of the 1882 Act. The cause of action in each of the suits clearly arises by virtue of the rights conferred by Section 106. In the event the suits were for termination of lease on the ground of forfeiture for violation of any of the clauses of the lease agreements and/or for specific performance of the agreements or suits of like nature, the suits would definitely come within the purview of “commercial dispute” as defined in Section 2(1)(c) of the Commercial Courts Act, 2015.

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

- 29.** What has been highlighted in the judgments placed by the opposite parties is that all suits arising out of agreements relating to immovable property used exclusively in trade or commerce, including eviction suits, would come within the ambit of the expression “commercial dispute” and shall be decided by the Commercial Courts in the event of the pecuniary jurisdiction, on the basis of valuation of the suits, being above the stipulated amount.
- 30.** However, the cardinal question which has not been addressed but is pivotal to the present adjudication is the expression “dispute” which precedes the expression “arising out of” as appearing in Section 2(1)(c) of the 2015 Act. Reading sub-clause (vii) in conjunction with the starting words of Clause (c), it is seen that the expression “agreements relating to immovable property...” qualifies the term “dispute” arising out of such agreements.
- 31.** A “dispute” can only be determined by the cause of action of the suit and not the preceding backdrop. Even if Section 106 of the Transfer of Property Act deals with termination of the jural relationship of lessor and lessee, pre-supposing a prior lease agreement, the bundle of facts comprising the cause of action of the suit is the sole determinant of the “dispute” involved in the suit.
- 32.** In the event the suits, in the present case, had been filed for recovery of possession in respect of immovable property on the ground of forfeiture for contravention of any of the terms and conditions of the

respective agreements-in-question, it might have been argued that the suits pertains to disputes “arising out of” such agreements.

33. However, the dispute itself, in the present case, arises out of refusal by the defendants to comply with the notices issued by the lessor under Section 106 of the Transfer of Property Act, 1882, which is based on a statutory right independent and irrespective of any clause of the lease agreements.
34. Hence, the suits squarely arise out of a statutory right conferred by Section 106 of the Transfer of Property Act, having no direct nexus with the lease agreements in respect of the immovable properties concerned. Thus, the pre-condition of the applicability of Section 2(1)(c)(vii), that is, the emanation of the dispute out of the lease agreement, is not satisfied in the present suits. Thus, the secondary question as to whether the immovable properties are used exclusively in trade or commerce, pales into insignificance.
35. As regards the jurisdiction of this Court under Article 227 of the Constitution, the provisions of Section 8 of the Commercial Courts Act, 2015, despite its initial *non-obstante* clause, cannot operate as an absolute bar to the exercise of the power of juridical review by High Courts, which is conferred by the Constitution of India under Article 227 thereof, since the 2015 Act is a subordinate legislation under the Constitution, the latter being the *grundnorm* of the Indian legal system.

- 36.** Since Section 2(1)(c)(vii) of the 2015 Act is not attracted to the present suits, the question of valuation cannot be determined in the light of Section 19 of the 2015 Act, as there is no scope of assumption of jurisdiction by the Commercial Court under Section 6 of the said Act. Such jurisdiction involves the dual ingredients of pecuniary limit and inherent jurisdiction. The pecuniary limit in case of commercial disputes is circumscribed by the satisfaction of the pre-requisite of the dispute being a “commercial dispute” as contemplated in Section 2(1)(c) of the 2015 Act. Since such pre-requisite is not met in the present case, the determinant of the valuation of the suit is not Section 12 of the 2015 Act but Section 7(xii)(d) of the West Bengal Court Fees Act, 1970, read with the Suits Valuation Act, 1887.
- 37.** Once it is held that the dispute involved in the suits are not commercial disputes as contemplated in the 2015 Act, the hierarchy of jurisdiction would not be governed by the 2015 Act but by the Bengal, Agra and Assam Civil Courts Act, 1887.
- 38.** As such, the trial court exercised jurisdiction not vested in it by law in entertaining the suits and dismissing the applications under Order VII Rule 10 of the Code of Civil Procedure made by the defendants/petitioners.
- 39.** No question of the bar to revisions against interlocutory orders passed by Commercial Courts Act arises in the present case in view of the patent jurisdictional error committed by the trial court in passing the impugned orders. In consonance with the observations in *Surya Dev*

Rai vs. Ram Chander Rai & Ors. [(2003)6 SCC 675] cited by the plaintiff/opposite party, compelling the defendants to contest litigations before a court palpably lacking inherent jurisdiction would invite interference under Article 227 of the Constitution by way of a “stitch in time” which would save nine.

- 40.** In view of the aforesaid considerations, the applications under Article 227 of the Constitution are very much maintainable.
- 41.** The court below lacked inherent jurisdiction to entertain the suits from which the revisional applications arise. Hence, it committed a patent jurisdictional error in refusing to return the plaints of the respective suits to be presented before the appropriate forum. Thus, C.O. No.759 of 2021, C.O. No. 765 of 2021, C.O. No.757 of 2021, C.O. No.761 of 2021 and C.O. No.763 of 2021 are allowed, thereby setting aside the orders impugned therein. All connected applications are disposed of accordingly. The plaints in the respective suits, from which the instant revisional applications arise, shall be returned to the respective plaintiffs for presentation before the competent court in which the suits should have been instituted, subject to compliance of Order VII Rule 10(2) of the Code of Civil Procedure, by the learned Trial Judge at the earliest (but not later than a fortnight) after communication of this order to the court below. The parties and the learned Trial Judge shall act on the communication of the advocates for the parties and/or server copy of this order for the purpose of

compliance with the same, without insisting upon prior production of a certified copy.

- 42.** There will be no order as to costs.
- 43.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)