

OD-1

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE

ALP/3/2021

E. D. ENTERPRISES PRIVATE LIMITED
Versus
KAISER BEGUM AND ANR.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 9th September, 2021.

Appearance:

Mr. Debdut Mukherjee, Adv.

Mr. M. Mukherjee, Adv.

Ms. Priyanka Sharma, Adv.

Mr. Arik Banerjee, Adv.

Mr. Arijit Roy, Adv.

Mr. C. K. Saha, Adv.

The Court: The petitioner seeks issuance of a Rule calling upon the respondents to show cause as to why an order should not be passed removing Title Suit No. 571 of 2020 pending before the City Civil Court at Calcutta and transfer the same to this Court in its Extraordinary Original Civil Jurisdiction for trial and determination.

C.S. 136 of 2020 was filed by the petitioner against the respondents on 3rd November, 2020, for a decree for vacant and *khas* possession of a demarcated portion of a premises located at 42A Shakespeare Sarani, Kolkata and for damages or *mesne* profit against the defendant no.1. The suit which the petitioner seeks to transfer was filed by the respondent against the petitioner on 10th August, 2020, in the City Civil Court at Calcutta for a decree of declaration that the respondent is a monthly

tenant and has subsisting tenancy right in the suit premises and for a decree of perpetual injunction restraining the petitioners from interfering with the peaceful possession of the respondent in respect of the suit premises.

The other proceedings filed by the parties herein in their respective suits include an application for temporary injunction filed by the respondents in their suit before the City Civil Court wherein the petitioner was restrained from disturbing the peaceful possession of the respondent in the suit property. In the present suit, the petitioner has filed for judgment on admissions and for an injunction restraining the respondents from creating third party rights in the suit property wherein an interim injunction was passed on 19th November, 2020 against the respondents from creating third party rights in the demarcated area of the suit property. The respondent no.1 thereafter filed an application for rejection of the plaint under Order VII Rule 11 of The Code of Civil Procedure which was disposed of by an order dated 7th April, 2021, returning the plaint for presentation before the Commercial Division and for treating C.S. No. 136 of 2020 as disposed of.

The petitioner thereafter instituted C.S. No. 105 of 2021 before the Commercial Division of this Court praying for a decree for vacant, *khas* and peaceful possession of the suit premises and other consequential reliefs.

According to learned counsel for the petitioner, the suit pending

before the City Civil Court should be transferred since the parties are the same and both the proceedings relate to the same suit property whereby common questions of law and fact would appear. Counsel submits that both the suits should be heard by this Court to avoid overlapping decisions and for the purpose of saving litigation costs.

Learned counsel for the respondents opposes the prayer for transfer by relying on a judgment passed by a learned Single Judge of this Court in *Deepak Polymers Pvt. Ltd. vs. Anchor Investments Pvt. Ltd.*; C.O. 759 of 2021 wherein it was held that an eviction suit for recovery of immovable property is not a commercial dispute under The Commercial Courts Act, 2015. A Special Leave Petition filed from the said judgment was dismissed by the Supreme Court. According to counsel, the present suit is also a suit for eviction based on a notice issued by the petitioner under section 106 of The Transfer of Property Act, 1882 and would hence be covered by the judgment of the co-ordinate Bench which has been relied upon. Counsel also submits that since the existing suit filed by the petitioner is in the Commercial Division, no useful purpose would be served by transferring the suit before the City Civil Court to the extraordinary civil jurisdiction of this Court. It is also submitted that section 15 of the 2015 Act does not provide for transfer of suits from subordinate courts to the Commercial Division of this Court.

Upon hearing learned counsel appearing for the parties before this Court, it appears that the main hurdle to the relief sought for by the

petitioner is the judgment of a learned Single Judge in C.O. 759 of 2021 passed on 24th June 2021; *Deepak Polymers Pvt. Ltd. vs Anchor Investments Pvt. Ltd* (along with C.O. 765 of 2021 and the other civil revisional applications before the Court all of which were disposed of by the judgment). Since the respondents before this court have relied on the said decision to contend that the present suit is not maintainable as a commercial suit, the correctness of such contention should first be dealt with.

The revisional applications in *Deepak Polymers* were filed against applications for return of plaint on the ground that the commercial court in which the suits were instituted does not have jurisdiction to hear the suits. The court below rejected the applications filed under Order VII Rule 10 of the CPC. The question before the learned Single Judge was whether a suit for recovery of possession of immovable property under section 106 of the Transfer of Property Act constitutes a 'commercial dispute' under the provisions of The Commercial Courts Act, 2015. Upon construing section 2(1)(c)(vii) of the 2015 Act, the Court held that suits which are primarily filed for recovery of possession of immovable property under section 106 of the TP Act and from a refusal by the defendants to comply with the notices issued by the lessor under section 106 of the TP Act, is based on a statutory right independent of any clause in the lease agreement. The Court hence concluded that the dispute lay outside the purview of 2(1)(c)(vii) of the 2015 Act and is not a

commercial dispute.

Upon considering *Deepak Polymers*, this Court is of the view that the question which was before the Court in that decision was the issue of maintainability i.e. whether the concerned court, not being a commercial court, had the power to entertain the suits and whether a suit for recovery of immovable property under section 106 of the TP Act is a 'commercial dispute' under the provisions of the 2015 Act. Both the aforesaid issues would assume relevance at the time of determining whether such a suit should be heard by a commercial court. Such questions would therefore fall for consideration only after the suit is entertained and the parties are heard on the merits of the dispute, not before. Since the instant case is for transfer of a suit pending before the City Civil Court to this court, simpliciter, on the ground of commonality of parties, subject matter and the issues to be tried, the question whether the suit for recovery filed by the plaintiff is a commercial suit or not is premature at this stage and may become relevant only at the time when the suit is taken up for consideration by the Court on merits.

Besides, the respondents in their affidavit in opposition, have stated that C.S. 105 of 2021 (being the present suit) is admittedly a commercial suit filed in the commercial jurisdiction of this Court. The respondents' stand is hence clearly contradictory. Moreover, the order of a co-ordinate Bench dated 7th April 2021, passed in the earlier suit filed by the petitioner (CS No. 136 of 2020) had directed that the plaint filed in the

said suit be returned to the plaintiff for presentation in the Commercial Division of this Court. The said order was passed on the respondents objecting to the jurisdiction by way of an application under Order VII Rule 10 of the CPC. The respondents therefore are estopped in law and by conduct from taking the point that the suit filed by the petitioner thereafter on the same cause of action and for the same reliefs (C.S. No. 105 of 2021) is not a commercial suit.

The other objections taken by counsel for the respondents with regard to the 2015 Act being a special statute having overriding effect on all other laws including the Letters Patent of this Court is misconceived and this Court does not find any substance in such contention.

On the other hand, the pleadings in both the suits indicate that the subject matter of the dispute involve the same property between the same parties leading to the presumption that the adjudication would necessarily involve common questions of law and evidence. There is hence good reason to transfer T.S. No. 571 of 2020 pending before the City Civil Court to this Court so that the said suit and C.S. 105 of 2021 can analogously be heard by this Court. Clause 13 of the Letters Patent of the High Court of Judicature at Fort William in Bengal mandates that this Court shall have the power to remove any suit falling within the jurisdiction of this Court and subject such suit to its superintendence when the Court thinks it proper to do so for the purposes of justice. On considering the facts, the Court is of the view that this is a fit case for

exercising the power under Clause 13 for preventing multiplicity of proceedings, conflicting decisions and unnecessary litigation costs. An order passed by a learned Single Judge in *Shyam Sunder Jalan vs Kamal Agarwala*; ALP No.23 of 2014 may be referred to in this context where a similar issue was involved.

A.L.P. No. 3 of 2021 is allowed and disposed of for the above reasons. T.S. No. 571 of 2020 pending before the VIth Bench, City Civil Court at Calcutta is directed to be transferred to this Court to be heard along with C.S. 105 of 2021. The department is directed to take appropriate steps and parties are given liberty to mention for listing of the suits.

(MOUSHUMI BHATTACHARYA, J.)