

22.02.2022
Ct. 21
D/L 06

C.O. 45 of 2022
(Via Video Conference)

Cemin Consultants Pvt. Ltd. & Ors.

-Vs-

Tai Industries Ltd. & Ors.

Mr. Pranit Bag,
Mr. Alakanada Das,
Mr. Amit Kr. Muhuri,
Ms. Srinjita Ghosh,

... for the petitioners

Mr. Shuvasish Sengupta,
Mr. Sarosij Dasgupta,
Mr. Subhra Das,

...for the respondents

Mr. Pranit Bag, learned Advocate appears on
behalf of the petitioners.

Mr. Shuvasish Sengupta, learned Advocate
appears on behalf of the opposite parties.

The petitioners file affidavit of service.

Revisional application is taken up for hearing.

Heard learned Advocate for the parties.

The present revisional application under
Article 227 of the Constitution of India is at the
instance of plaintiffs being aggrieved the order of
return of the plaint along with annexure of Title
Suit No. 770 of 2009 to the Court of Civil Judge
(Senior Division), 4th Court at Alipore by learned

Commercial Court, Alipore vide order no. 35 dated 16.12.2021.

The facts necessary for determination of the present revisional application in gist is that the petitioners being the plaintiffs have instituted Title suit no. 770 of 2009 against the opposite parties claiming a decree for declaration that the plaintiffs are entitled to recover the entire amount up to the lock in period of 9 years with 24% interest thereon and for recovery of the entire arrear amount with interest and for attachment.

Learned Civil Judge (Senior Division), 4th Court at Alipore vide its order dated 08.08.2019 held that the suit being for declaration and for recovery of arrear claim amounting to Rs. 90 lakh and considering the same to be a commercial dispute has sent the case record to the learned Commercial Court at Alipore for disposal.

From the plaint it appears the plaintiffs claiming themselves to be the owners of the schedule car parking space alleged to had been let out the same to one Consultancy Private Limited and Eastern Agro Farms private Limited of Manipur with a right to sublet the car parking space on the basis of a tenancy agreement dated 19.11.2003.

Apparently, such tenants are not impleaded as parties in the suit. Those tenants sublet the car parking space to the present defendant no. 1 as a sub-tenant. That defendant no.1 being a sub-tenant was liable to pay rent, corporation tax, maintenance and other service charges to the pro forma defendant nos. 2 to 4. The defendant no.1 failed to pay rent and other charges during the lock in period of 9 years, when it surrendered the tenancy.

It has been alleged Tai Industries Limited is bound and liable to make payment of rents, corporation taxes and maintenance and service charges to pro forma defendant nos. 2 to 4. Surprisingly, the plaint is silent how pro forma defendant no. 2 to 4 have become the tenants under the plaintiffs.

Further, plaintiffs have stated in para 6 of the plaint it inducted M/s. JCB Construction Private Limited, M/s. Nagaland Agro Industries Private Limited and M/s. East Chem Private Limited all the three companies registered as tenants in respect of 12 car parking space with right to inducting sub-tenants. I do not find those three companies being impleaded in this plaint and

plaint is silent how pro forma defendant nos. 2 to 4 became tenants under the plaintiffs when the plaintiffs have entered tenancy agreement with Consultancy Private Limited and Eastern Agro Farms private Limited of Manipur on 19.11.2003.

Therefore, this Court finds the plaint inconsistent and full of contradiction regarding with whom the plaintiffs actually entered into tenancy agreement and who inducted the defendant no.1 as a sub tenant whether with Consultancy Private Limited and Eastern Agro Farms private Limited of Manipur or by those companies mentioned in para 6 of the plaint or by the pro forma defendants no.2 to 4.

Be that as it may, the basis of the dispute appears to be nonpayment of rent and other charges by the sub tenant for the period of 9 years to the tenant of the plaintiffs and plaint is unclear under which tenant of the plaintiffs the defendant no.1 was sub tenant.

Prima facie the dispute is in between the land lords and sub-tenants in respect of realization of arrear rent, maintenance charges and other incidental charges in respect of 12 car parking space and with whom the plaintiffs have never

entered into any tenancy agreement or who was not inducted by the plaintiffs as their tenant directly. Nothing is there on record that those 12 car parking space was used for commercial purpose. In order to attract Commercial Courts Act, 2015 there must exist a commercial dispute between the parties. That as per section 2 (c) (vii) of Commercial Courts Act, 2015, if dispute arise out of an agreement relating to immovable property used exclusively in trade or commerce then such dispute will be termed as commercial dispute. In the present case the dispute between the parties lacks such ingredients that car parking is used for commercial or trade purpose.

No doubt that the plaintiffs have alleged that they have sublet car parking space to some companies but the pleading itself is inconsistent who is the actual and the real tenant of the plaintiffs. The learned Court below has rightly held that merely because the amount claimed exceed certain limit that such fact will not make the dispute to be a commercial. The dispute being between land lords and sub tenant and in respect of immovable property which is not used for commercial purpose cannot come within the

jurisdiction of Commercial Court. Therefore, this Court holds that learned Court below has rightly reverted back the case to the Court where the case was initially filed 2009.

It has been contended by learned Advocate for the opposite parties since there is return of the plaint by the learned Commercial Court to the Court where the case was originally filed and as such in view of provision of Order 43 Rule 1 of CPC appeal lies against an order passed under Order 7 Rule 10 of CPC. and revision is not maintainable.

On the other hand learned Advocate for the petitioners submits that this Court has ample jurisdiction under Article 227 of the Constitution being a supervisory Court to prevent the subordinate Courts from acting arbitrary, irregularly in the exercise of their jurisdiction and to see that the proceedings of the subordinate Courts are conducted in accordance with the law within the bounds of their jurisdiction and for furtherance of justice. It has been submitted that the learned Commercial Court below has committed error that while considering the amendment petition suddenly decided on the point of maintainability of the suit and returned the plaint.

Such conduct of the learned Commercial Court is illegal.

It is settled law that a Court can suo moto return the plaint if it finds that it has no jurisdiction to hear the lis for proper presentation before the proper forum. It is not necessary that there has to be application from the side of the parties challenging the maintainability. Therefore, this Court does not find any illegality and irregularity in the order impugned.

Accordingly, **C.O 45 of 2022 is dismissed.**

Connected applications, if any, stand disposed of.

Interim order, if any, stands discharged.

There will be no order as to costs.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(**Kesang Doma Bhutia, J.**)