

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

IA No: GA 3 of 2022

In CS 138 of 2022

Bengal Shriram Hitech City Pvt. Ltd.

Versus

Hindustan Motors Ltd. & Anr.

Mr. Jishnu Saha, Sr. Adv.

Mr. Sankarsan Sarkar

Mr. Aditya Kanodia

Mr. Ishaan Saha

... For the plaintiff.

Mr. V.V.V. Sastry

Mr. Debjyoti Saha

... For the defendants.

Hearing Concluded On : 05.10.2023

Judgment on : 29.11.2023

Krishna Rao, J.:

1. The defendant no.1 has filed the present application being G.A. No. 3 of 2022 for dismissal of the suit being C.S. No. 138 of 2022 or in the alternative to return the plaint to the plaintiff on the ground that the cause of action pleaded in Title Suit No. 162 of 2021 pending before the Learned Court of Civil Judge, Senior Division at Serampore and in the present suit are one and the same. The present suit is filed by the Plaintiff is in the nature of commercial dispute but the plaintiff has not obtained leave under Section 12A of the Commercial Courts Act, 2015.
2. The plaintiff has made out the following case in T.S. No. 162 of 2021 pending before the Learned Court of Civil Judge, Senior Division at Serampore:

“2. On 4th May, 2006 the defendant No.1 made an application to the State of West Bengal for release of 314 acres of land and getting raiyatari settlement thereof on freehold basis under Section 14Z of the West Bengal Land Reforms Act, 1955, for the purpose of developing the said land to fund revival and renewal plan of its Automotive Industrial Complex at Uttarpara. The Defendant No.1 made such application as admittedly the said lands had been vested with the State Government by virtue of the provisions of Section 4 of the West Bengal Estate Acquisition Act, 1953 but the same had been allowed to be retained by the Defendant No.1 under Section 6(3) of the said Act.

5. At a meeting held on 24th August, 2006 the proposal of the Defendant No.1 for revival and renewal of its Automotive Industrial Complex at Uttarpara and its proposal for development

and disposal of land and property against realization of a consideration money of Rs.10.50 crores was approved by the State Government by agreeing to give the desired benefit under the 2nd proviso of Section 14Z of the Land Reforms Act, 1955 to the Defendant No.1. As the Defendant No.1 had already deposited a sum of Rs.10.50 crores with the State Government, following a Cabinet approval on 24th August, 2006, on 13th September, 2006, the State Government was pleased to pass an order by Memo No. 2675-GE(M)/5M – 03/06 dated 13th September, 2006, hereinafter referred to as the “G.O. of 13th September, 2006” directing resumption of the plaintiff’s land/project land and resettling the same with the Defendant No. 1 under the 2nd proviso of sub-section (1) of Section 14Z of the West Bengal Land Reforms Act, 1955 on realization of consideration money of Rs. 10.50 crores for the same.

7. *Pursuant to the leave granted to it by the G.O. of 13th September, 2006, the Defendant No.1 decided to sell the plaintiff’s land. Upon identifying one Shriram Properties Private Limited (presently known as Shriram Properties Limited), the Defendant No.1 approached Shriram Properties Private Limited to develop the plaintiff’s land/project land through a Special Purpose Vehicle (SPV) to be incorporated for the purpose, in which the initial shareholders would be the Defendant No.1 and the said Shriram Properties Private Limited. Upon the said Shriram Properties Private Limited agreeing to such proposal, it was agreed that the plaintiff’s land/project land would be transferred by the Defendant No.1 to the SPV absolutely free from all encumbrances with clear and marketable title at agree value to enable the Defendant No.1 to fulfil its commitments made to the State Government under the G.O. of 13th September, 2006, and to enable the SPV to thereafter develop the plaintiff’s land/project land without any fetter or restriction whatsoever.*
8. *Accordingly, on 23rd March, 2007 the Defendant No.1 entered into a development agreement*

with the plaintiff, being the SPV, whereby and whereunder it was agreed that the plaintiff's land/project land would be developed by the Plaintiff. The said Shriram Properties Private Limited was made a confirming party to such agreement.

10. *For the purpose of transfer, the plaintiff's land/project land was divided into five lots marked (A) to (E). The said five lots were thereafter transferred by the Defendant No.1 to the Plaintiff at or for a total consideration of Rs.284.47 crores by executing five several sale deeds in its favour, alongwith 4 deeds of declaration.*
11. *In view of the financial obligations undertaken by the Defendant No.1 under the G.O. dated 13th September, 2006, and in order to ensure that the development of the plaintiff's land/project land is progressed peacefully without any hindrance not in any manner impeded or affected by whatsoever means, the above stated sale deeds, inter alia recorded that the Defendant No.1 would comply with all the terms and conditions of the said Government Order. And undertaking of the Defendant No.1 to such effect was recorded in the said sale deeds.*
12. *The above said sale deeds further recorded that the defendant No.1 had not violated any of the commitments made to the State Government and contained express covenant to the effect that it would strictly observe and comply with all the terms and conditions of the G.O. dated 13th September, 2006, including the utilization of the sale proceeds to finance economic revival and rejuvenation of its existing Automotive Complex in Uttarpara in accordance therewith. In view of its promise to perform all such obligations under the G.O. dated 13th September, 2006, by the said sale deeds, the Defendant No.1 also indemnified and to keep the Plaintiff saved, harmless and indemnified against all actions, claims and demands in this respect.*

13. *As is evident from the above, the plaintiff agreed to purchase and purchased the plaintiff's land/project land relying on undertaking of the defendant No.1 to duly perform all its obligations under the G.O. of 13th September, 2006t and to ensure that the development of the plaintiff's land/project land is progressed peacefully without any hindrance and not in any manner impeded or affected by whatsoever means.*
14. *By the development agreement the Defendant No.1 confirmed its willingness to invest Rs. 85 crores in accordance with the G.O. of 13th September, 2006 and also undertook to – (a) cooperate with and an assist the plaintiff in development of the plaintiff's land; (b) sign and execute all deeds, documents and papers as may be necessary or be required by the Plaintiff for obtaining all necessary regulatory permissions, approved sanction and concessions for development and transfer of the plaintiff's land/project land in terms of the said agreement; and (c) to ensure and fulfil all its commitments under the Government Order other than the development of the plaintiff's land. Such undertaking was once again reiterated in the sale deeds.*
16. *Apart from the said 314 crores of land, the Defendant No.1 continued to retain the remaining 395 acres of land in its Automotive Industrial Complex at Uttarpara. In March 2007 it was agreed that the Defendant No.1 shall not compete with the Plaintiff for a period of five years from the commencement of construction in any manner which would adversely impact the development and marketing of the plaintiff's land/project land under the development agreement of 23rd March, 2007. Accordingly, the same was recorded in the shareholders agreement dated 23rd March, 2007.*
17. *The non-compete agreement contained in the shareholders' agreement dated 23rd March, 2007 is contained in clause 6 thereof. The agreement clearly recorded that the outer limit of the non-compete agreement would be five*

years and that the consideration therefore would be 4% of the sale proceeds “of the developed area”, i.e. the area developed during the subsistence of the non-compete agreement, which is for a maximum period of five years, which naturally meant and has been understood and acted upon to be from the commencement of construction. Consequently, what was agreed was within such period of 5 years from the commencement of construction the Project, the Defendant No.1 would be entitled to 4% of the sale proceeds accruing during such period of 5 years. This is clearly expressed in the Shareholders Agreement and in any event must be necessarily implied, *inter alia*, from the acts and conduct and the dealings and transactions of the parties in order to give business efficiency to the same.

21. Having paid the entire sale consideration of Rs. 284.47 crores for the project land and having acquired ownership of the same, the plaintiff expected the Defendant No.1 to fulfil its obligations under the G.O. of 13th September, 2006, *inter alia*, to ensure that the development and construction and marketability thereon of the project land was not in any manner hindered or obstructed. This the Plaintiff expected from the Defendant No.1, as – (a) the Defendant No.1 was also a shareholder in the Plaintiff company; (b) in view of the representations and undertakings of the Defendant No.1 both in the said development agreement and in the said sale deeds and (c) as under and in terms of the development agreement the Defendant No.1 had represented to the Plaintiff that the Plaintiff shall be in a position to immediately undertake the development and marketing of the plaintiff's land/project land.
22. Upon registration of sale deeds, the Plaintiff took all necessary steps to make all applications required by law for commencing the development of the plaintiff's land. It is reiterated in this regard that it is on the representation of the Defendant No.1 that it would duly perform all its obligations under

the G.O. of 13th September, 2006 so as to ensure that the development of the project land was not in any manner obstructed or hindered, including in the matter of seeking formal conversion of the plaintiff's lands, that the Plaintiff agreed to the non-compete fee for a period of 5 years. However it was agreed and in any event implied that in the event and at any point of the time the defendant No.1 breaches the non-compete clause, the plaintiff would automatically be relived from all and any obligations to pay any fee on account of non-compete.

- 23. Notwithstanding its representations, promises and undertakings to the plaintiff, the Defendant No.1 did not, however, fulfil its obligations under the G.O. of 13th September, 2006.*
- 24. Although the Plaintiff was not really concerned with the performance of the obligations of the defendant No.1 under the G.O. of 13th September, 2006, and had purchased the project land for valuable consideration upon the State Government granting the requisite approval to the Defendant No.1 to sell the same, in view of non-fulfilment of the Defendant No.1's obligations under the said G.O. of 13th September, 2006, the State Government, withheld permissions, clearances, sanctions, approvals and no objections required for its development and particularly commencing construction.*
- 25. As a result, despite spending a significant sum in acquiring the Plaintiff's land after paying consideration to Defendant No.1, and after paying requisite stamp duty and registration fees to the concerned registration office, the Plaintiff could not develop and market thereon the Project Land. Consequently, the Plaintiff's investment in the same was rendered completely idle and useless. Although repeated attempts to obtain such permissions, sanctions and approvals was made by the plaintiff company, the same yielded no result as the State Government remained steadfast in its resolve not to allow development of the*

project land in view of the non-performance of the obligations undertaken by the defendant No.1 under the G.O. of 13th September, 2006. As a result, no development whatsoever of the project land was possible owing to such defaults of the defendant no.1.

- 26. As stated hereinabove, despite the plaintiff being entitled to the grant of all such permissions, clearances, sanctions, approvals and no objections, the State Government withheld the same only in view of non-fulfilment of the obligations of the defendant no.1 under the G.O. of 13th September, 2006, even though the plaintiff was not in any manner concerned with the same.*
- 32. Despite the above the Plaintiff was prevented from commencing its construction activity. In such circumstances and in the meantime almost seven years had passed since the acquisition of the project land by the Plaintiff, the Plaintiff was compelled to initiate further negotiations with the Defendant No.1 and also with the Defendant no.2 to resolve matters to the facts and circumstances as afore stated, the State Government was naturally in a superior bargaining position and in a position to dominate the will of the plaintiff in the discussions and negotiations that followed.*
- 35. Accordingly, on 18th September, 2014 the defendant No.1 executed a document of assignment in favour of the defendant No.2 of its receivables in favour of the defendant No.2 being a document titled as "Assignment of non-compete fees in favour of Government of West Bengal" The said document is ex facie void and in any event voidable since the same is based on a wrong premise and proceeds to assign alleged receivables under the development agreement when infact the plaintiff has no obligation to make any payment under the development agreement whatsoever and cannot be enforced in any manner whatsoever.*
- 36. Notwithstanding the aforesaid, the fact that the plaintiff was under no obligation to make*

any payment to the defendant No.1 under the non-compete agreement as recorded in the shareholders' agreement dated 23rd March, 2007, in view of the defendant No.2 preventing any development of the project land, in the acts and circumstances as aforesaid, plaintiff was coerced into once again reviving such agreement to pay 4% non-compete fee to the State Government on behalf of the defendant No.1 on the value of all sale of areas of the project land development and sold during such period of 5 Years, when the defendant No.1 would also continue to non-compete with the plaintiff.

37. *Although it was roughly and tentatively estimated that the value of such 4% non-compete fee would be Rs. 194.47 crores within the said period of 5 years, it is reiterated that the said sum was merely a rough and tentative estimation made and did not form a part of the revived non-compete agreement, whereunder the plaintiff was coerced into agreeing to pay to the Government of West Bengal 4% non-compete fee payable to the defendant No.1 on the value of all sale of areas of the project land developed and sold during the period of five years. However, in view of the fact that the value of the 4% noncompete fee accruing as above was merely a rough and tentative estimate, the Government of West Bengal would continue to collect its dues from the Defendant No.1 which was recorded in the said Memorandum dated 29th September, 2014.*

42. *Following the assignment agreement, on 29th September, 2014 the Defendant no.2 however, published a Memorandum recording, inter alia, that –*

“...3. In terms of approval by Cabinet in 2006 and as per Section 14Z (1), Hindustan Motors was authorized to use only Rs. 85 Crores out of the proceeds of sale of land as per the revival plan. Hence HML should have returned rupees to 279.47

crores – Rs. 85 crores = Rs. 194.47 crores to the Govt. of West Bengal.

4. State Government has been making continuous efforts for recovery of the said amount and for this purpose, several rounds of formal and informal discussions were held between the State Government and the representatives of HML and BSL (the Plaintiff company) in 2012, 2013 and 2014. But HML has expressed its inability to refund the amount as per claim of the Government of West Bengal.

5. In the meantime, HML had moved the Hon'ble High Court, Calcutta to demerge Uttarpura unit from the HML unit located at Chennai. The State Government through intervention at the Hon'ble High Court vide C.P. No. 665/2013 with C.A. No. 215/2013 dated 13.01.2014 has successfully stalled the demerger in order to protect public interest.

6. On account of not returning these dues by HML to the State Government, the project involving thousands of crores of investment by way of development of housing, infrastructure, IT park, social infrastructure and other significant infrastructure projects by Bengal Shriram has been held up since January, 2010. The BSL has continuously been requesting the State Government to accord the statutory clearance/approvals at an early date as it is hurting the interest of development infrastructure and resultant economic growth in the area.

46. The plaintiff was clearly under a state of duress and coercion since the defendant No.1 having received the entire consideration from the plaintiff and thereafter having committed breaches of its obligations, was in a position to dominate the plaintiff and compel the plaintiff to carry out such acts, when the plaintiff was substantially out of pocket.

49. The Memorandum dated 29th September, 2014 required the plaintiff and the Plaintiff was compelled to pay an initial sum of Rs. 5 crores to the Defendant no.2. Although, the plaintiff was not under any obligation to revive the non-compete agreement but in the facts and circumstances as a afore stated the Plaintiff was coerced into making payment of the said initial sum of Rs. 5 crores to the Defendant No.2 on 30.10.2014, particularly as the Defendant No.2 persisted with its pressure of not giving the requisite permissions, sanctions approvals with regard to the development of the Plaintiff's land. Although the plaintiff could not thereafter furnish the bank guarantee of Rs.25 Crores, it was similarly coerced by the State Government to earmark a 40 Acre portion of the developed land and to offer the same to the State Government by way of security, and the obligation to do so has now also come to an end upon expiry of the agreed period of 5 years and even otherwise the defendant No.1 having started competing with the plaintiff.

52. As the payments which the Defendant No.2 is seeking under the assignment agreement and the Memorandum dated 29th September, 2014 are an account of the dues of the Defendant No.1, the said Defendant No.1 is obliged to make payment of the same and to keep the Plaintiff protected against the consequences of non-payment of such dues, including the threatened enforcement of the Memorandum of 29th September, 2014 against the plaintiff. The Defendant No.1 has however, deliberately failed and/or neglected and/or avoided to make payment of its dues to the Defendant No.2

54. The Defendant No.1 is obliged and bound to pay its dues to the State Government and is obliges to keep the Plaintiff saved, harmless and indemnified against the consequences of non-payment of the dues payable by it under the G.O. of 13th September, 2006. The plaintiff is, in the circumstances, entitled to enforce the performance of such obligation of the Defendant No.1 to protect the Plaintiff's project

from jeopardy and to enable the Plaintiff to keep the present and future approvals, permissions and sanctions intact from the State Government.

60. The Plaintiff state that the Plaintiff has various other claims including arising out of the selfsame cause of action which the Plaintiff has not been able to ascertain or identify as on the date of filing the instant suit and thus the Plaintiffs pray for leave under Order II, Rule 2 of the Code of Civil Procedure for claiming such relief.

61. The subject matter in relation whereof the present cause of action arises is situated at Uttarpara, Hooghly, within the jurisdiction of this learned Court, particularly the demand raised by the defendant No.2 also arise in respect of the land situated within the jurisdiction of this Learned Court and accordingly this Learned Court has jurisdiction to receive try and determine the instant suit.

3. The plaintiff has prayed for following reliefs in T.S. No. 162 of 2021:

- “(a) Decree directing the Defendant No.1 to pay the dues of Defendant No.2/State Government under the G.O. of 13th September, 2006, save the sum of Rs. 7,92,15,209/- payable by the Plaintiff as 4% non-compete fee in respect of the lands developed and sold within the period of five years;*
- (b) Decree directing attachment and sale of the remaining lands of the Defendant No.1 at Uttarpara more fully described and identified in a schedule hereto and/or of whatever right or interest that the Defendant No.1 may have over and in respect of the same and for the appropriation of the proceeds of such sale to be made and adjusted against the dues of the Defendant No.1 to Defendant No.2;*
- (c) Decree directing the defendant No.1 to indemnify and to keep the plaintiff safe, harmless and indemnified in respect of all*

claims and demands on it by the State Government.

- (d) Declaration that the plaintiff's obligation under the assignment agreement is confined to making payment of 4% of the sale proceeds of the developed area of the project land developed during the revived term of five years from the commencement of construction or till date the defendant No.1 does not compete with the plaintiff, whichever is earlier;*
- (e) Decree directing the Defendants to accept the sum of Rs.7,92,15,209/- after adjusting the sum of Rs.5 crores already paid/tendered by the plaintiff to the Defendant No.2/State Government for and on behalf of the Defendant No.1 in full and final settlement of all claims under the Assignment Agreement.*
- (f) Decree of perpetual injunction restraining the Defendant No.2/State Government from revoking, suspending or withholding any permission, approval, clearance, no objection granted to the plaintiff or required by the plaintiff for the continued development of the project land on the ground of any default of the defendant No.1 to make payment under the G.O. dated 13th September, 2006;*
- (g) Decree of mandatory injunction directing the defendant No.1 to continue to perform its obligations under the agreements with the plaintiff as necessary to enable the plaintiff complete its construction at the Project Land*
- (h) Decree of perpetual injunction restraining the defendant No.1 from acting in breach of any of its obligations under the agreements with the plaintiff which may in any manner impede or hinder with the plaintiff in completing its construction at the Project Land.*
- (i) Receiver;*
- (j) Injunction;*
- (k) Attachment;*
- (l) Judgment upon Admission;*
- (m) Attachment before Judgment;*

(n) Costs;

(o) Further and other reliefs to which the Plaintiff may be entitled.”

- 4.** In the present suit i.e. CS No. 138 of 2022, the plaintiff has made out the following case :

- “1. The plaintiff has acquired an area of 314 Acres of free hold land comprised in Mouza Kharda Bahera, Mouza Konnagar, Mouza Bara Behra, Mouza Kotrang, Mouza Bhandarkali and Mouza Makhla, all under Uttarpura Police Station, Hooghly, West Bengal from the Defendant No.1 by five separate sale deeds.*
- 2. Subsequent to the execution and registration of the aforesaid five sale deeds, owing to certain typographical errors that had crept in the said sale deeds, the Plaintiff and the Defendant no.1 executed four separate deeds of rectification/declaration for rectifying the defects with respect to four sale deeds. Details of such sale deeds and rectification deeds are set out in a Schedule annexed hereto and marked as Annexure ‘A’.*
- 3. Out of the aforesaid of 314.003 Acres, an area of 211.16 Acres is situated within the jurisdiction of Kanaipur Gram Panchayat and the balance area of 102.83 Acres is situated within the jurisdiction of the Defendant no.2. The said area of 102.84 Acres falling within the jurisdiction of the Defendant no.2 were purchased vide the aforementioned two sale deeds both dated December 8, 2007. Such areas are situated within Mouza Kotrang, Bahera and Makhla recorded vide Khaitan Nos. 5690, 7693 and 5853 and are part of Holding No.1, Hind Motor Road, Makhla, Hooghly.*
- 5. After having acquired the aforesaid are of 314.003 Acres, the Plaintiff applied for separation and mutation of the said area of 102.84 Acres in the records of the Defendant*

No.2. In such process, the Plaintiff by letter dated March 6, 2018 called upon the Defendant no.1 to accord its no objection and/or consent for such application for mutation, being the procedural requirement of the Defendant no.2. A copy of the said letter dated March 6, 2018 is annexed hereto and marked as Annexure "B".

6. The Defendant No.1 by its letter dated April 18, 2018 accorded its consent and/or no objection for such mutation in favour of the Plaintiff. A copy of such letter dated April 18, 2018 is annexed hereto and marked as Annexure "C".
8. The Defendant No.2 by its letter dated May 22, 2018 intimated the Plaintiff that a sum of Rs. 1,93,38,938/- was due and payable in respect of Holding No.1, Hind Motor Road, Makhla, Hooghly under Municipal Ward No.24 and called upon the Plaintiff to make payment of the said sum of Rs.1,93,38,938/- in order to enable the Defendant No.2 to process the mutation and separation request submitted by the Plaintiff. A copy of the letter dated May 22, 2018 is annexed hereto and marked as Annexure "E".
12. The Plaintiff accordingly by a letter dated August 3, 2018 informed the Defendant No.1 about the entire proceedings that took place before the Defendant no.2 and also intimated the Defendant no.1 that a sum of Rs.1,74,39,429/- was due and payable by the Defendant No.1 for the balance area of land retained and continue to be owned by the Defendant no.1 being an area of 252.16 Acres along with 20,89,349 Sq. Ft. of covered/constructed area which includes certain Buildings and Factory sheds. The Plaintiff also enclosed a copy of the assessment register showing the said details and called upon the Defendant No.1 to make payment of its share of property tax for such entire area amounting Rs. 1,74,39,429/- to the Defendant no.2 so that the process of separation and mutation of the land acquired by the Plaintiff could be completed. A copy of

the letter dated August 3, 2018 written by the Plaintiff to the Defendant no.1 is annexed hereto and marked as Annexure "H".

15. *The Plaintiff states that as would appear from the aforesaid sale deeds executed by the Defendant no.1 in favour of the Plaintiff, there is a clear representation and assurance made by the Defendant no.1 to the Plaintiff that the Defendant no.1 has paid upto-date revenue and tax of inter alia the said area of 102.84 Acres. The Defendant no.1 has further undertaken and agreed with the Plaintiff that all rates, revenues, taxes, assessments and outgoings in respect of the said portion of land payable to the State West Bengal and/or Uttarpara Kotrang Municipality and/or Panchayat and/or any other legal body or authority for the period upto the date of the respective the sale deeds, whether assessed and/or imposed or levied before or after the dates of respective sale deeds shall be paid by the Defendant no.1.*
17. *Despite having made such representation to the Plaintiff and despite having extended its undertaking and also the indemnity to the Plaintiff, the Defendant no.1 has wrongfully refused to make payment of the dues attributable to and payable by the Defendant no.1.*
18. *The Plaintiff by its letter dated September 7, 2018 once again called upon the Defendant No.1 to make payment of its share of dues of the property tax by reason whereof the Plaintiff's land being the said area of 102.84 Acres was neither being separated nor mutated in the name of the Plaintiff and the Plaintiff also expressed its position and the loss being caused to the Plaintiff by delay in such mutation and separation. The Plaintiff also pointed out that in case the Defendant no.1 fails to make payment of its share of dues of property tax and furnish no-due certificate from the Defendant no.2, the Plaintiff would be constrained to make such payment in order to have its application for separation and mutation processed with the*

right of recovery of such payment with interest and costs from the Defendant no.1. A copy of the said letter dated September 7, 2018 is annexed hereto and marked as Annexure J.

19. *Despite more than two weeks having elapsed from having received the said letter dated September 7, 2018, the Defendant no.1 maintained stoic silence and did not act upon the demand of the Plaintiff, the Plaintiff, being left with no other opinion, was constrained to make payment of the said sum of Rs. 1,74,39,429/- being the share of property tax due and payable by the Defendant no.1 to the Defendant no.2 under the cover of its letter dated September 26, 2018. A copy of such letter dated September 26, 2018 is annexed hereto and marked as Annexure K.*
30. *The Plaintiff therefore seeks decree for a sum of Rs. 2,83,44,567.00 against the Defendant no.1. The Plaintiff is entitled to and claims further interest on and from 1.04.2022 @ 18% p.a. The nature of transaction between the parties is purely commercial and the rate of interest is not only appropriate and proper but also necessary to compensate the unjust benefit being enjoyed by the Defendant no.1. The said rate of interest would otherwise be payable by the Defendant no.1 to the Defendant no.2 had the Plaintiff not paid the said sums of money to the Defendant no.2 on behalf of the Defendant no.1.”*

5. The plaintiff has prayed for following relief in C.S. No. 138 of 2022:

- “a. Decree for Rs. 2,83,44,567.00/- against the Defendant no.1 with further interest @18% p.a. on and from 01.04.2022;*
- b. Interest pendente lite and decree to carry interest @18% p.a.*
- c. Receiver;*
- d. Injunction;*
- e. Judgment upon admission;*
- f. Attachment before judgment;*

g. Costs;
h. Further and other reliefs;"

6. Both the suits filed by the plaintiff are connected with the same property, same documents and the defendant no.1 is the same. In the previous suit, the plaintiff has made the State of West Bengal, service through the Secretary, Department of Land and Land Reform as defendant no. 2 but in the present suit the defendant no.2 is the Chairman, Uttarpara Kotrang Municipality. In both suits, the plaintiff has sought reliefs against the defendant no.1 only.
7. The plaintiff has filed the first suit on 16th August, 2021 and the present suit is filed on 26th May, 2022. As per the specific case of the plaintiff in the present suit that despite receipt of the letter dated 7th September, 2018, the defendant no.1 has not paid his share of dues of the property tax due to which the plaintiff's land being an area of 102.84 Acres were neither being separated nor mutated in the name of the plaintiff and finding no other alternative, the plaintiff has paid an amount of Rs.1,74,39,429/- being the share of property tax due which is required to be paid by the defendant no.1 to the defendant no.2.
8. In the present case, the plaintiff has prayed for recovery of an amount of Rs. 1,74,39,429/- along with interest against the defendant no.1. This cause of action for filing of the present suit was already existing when the plaintiff has filed the previous suit before the Learned Court of Civil Judge, Senior Division at Serampore.

9. In paragraph 60 of the previous suit, the plaintiff has pleaded as follows :

“The Plaintiff state that the Plaintiff has various other claims including arising out of the selfsame cause of action which the Plaintiff has not been able to ascertain or identify as on the date of filing the instant suit and thus the Plaintiffs pray for leave under Order II, Rule 2 of the Code of Civil Procedure for claiming such relief.”

In previous suit, the plaintiff has also prayed for leave under Order II, Rule 2 of the Code of Civil Procedure, 1908. By an order no.1 dated 17th August, 2021, the Learned Court of Civil Judge, Senior Division Serampore has passed the following order:

“Order No. 01

Dated – 17.08.2021

On this date the Ld. Advocate for the Plaintiff moves the petition for leave u/s 80 (2) CPC.

The said petition is taken up for hearing.

It was submitted by the Ld. Advocate for the plaintiff that there is an urgency to file the present suit as the defendant no.1 who is in possession of the neighbouring property is trying to disrupt the truck movement in the property purchased by the plaintiff as per the Government G.O. dated 13.09.2006. It was further submitted that the injunction petition has been filed praying for injunction against defendant no.1 and not against the State who is defendant no.2 herein. The Ld. Advocate therefore has prayed for granting leave u/s 80(2) CPC by allowing the plaintiff to file the instant suit.

Heard. On perusal of the record it appears that the instant suit has been filed against Hindustan Motors Ltd as Defendant no.1 and State of west Bengal as defendant no.2. The

prayer for injunction is against the defendant no.1 as such no interim relief has been prayed for against the State. Considering the ground as mentioned in the petition I am inclined to allow the instant petition by granting leave u/s 80(2) CPC to file the instant suit without any notice being served u/s 80 CPC against the State.

Hence it is

O R D E R E D

The instant petition is allowed ex parte without costs.

Leave is granted to the petitioner to file the instant suit as per the provision of Section 80(2) CPC.

Issue summons upon the State forthwith.”

10. Order II, Rule 2 of the Code of Civil Procedure, 1908 reads as follows :

“2. Suit to include the whole claim—

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under

the same obligation shall be deemed respectively to constitute but one cause of action.”

11. In the case of *Coffee Board –vs- Ramesh Exports Private Limited* reported in (2014) 6 SCC 424, para no. 9 reads as follows :

“9. The above rules are offshoots of the ancient principle that there should be an end to litigation traced in the Full Bench decision of the Court in Lachmi vs. Bhulli and approved by this Court in many of its decisions. The principle which emerges from the above is that no one ought to be vexed twice for the same cause. In light of the above, from a plain reading of Order 2 Rule 2, it emerges that if different reliefs and claims arise out of the same cause of action then the plaintiff must place all his claims before the Court in one suit and cannot omit one of the reliefs or claims except without the leave of the Court. Order 2 Rule 2 bars a plaintiff from omitting one part of claim and raising the same in a subsequent suit.”

12. In the case of *State Bank of India –vs- Gracure Pharmaceuticals Limited* reported in (2014) 3 SCC 595, the Hon’ble Supreme Court held that :

“17. When we go through the above quoted paragraph it is clear that the facts on the basis of which subsequent suit was filed, existed on the date on which the earlier suit was filed. The earlier suit was filed on 15.03.2003 and subsequent suit was filed on 21.05.2003. No fresh cause of action arose in between the first suit and the second suit. The closure of account, as already indicated, was intimated on 20.03.2002 due to the alleged fault of the respondent in not regularizing their accounts i.e. after non-receipt of payment of LC, the account became irregular. When the first suit for recovery of dues was filed i.e. on 15.03.2001 for alleged relief, damages sought for in the subsequent suit could have also been sought for. Order 2 Rule 2 provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the same cause of action. Respondent is not

entitled to split the cause of action into parts by filing separate suits. We find, as such, that respondent had omitted certain reliefs which were available to it at the time of filing of the first suit and after having relinquished the same, it cannot file a separate suit in view of the provisions of sub-rule 2 of Order 2 Rule 2, CPC. The object of Order 2 Rule 2 is to avoid multiplicity of proceedings and not to vex the parties over and over again in a litigative process. The object enunciated in Order 2 Rule 2, CPC is laudable and it has a larger public purpose to achieve by not burdening the court with repeated suits."

13. In the present suit also when the plaintiff has filed the previous suit, the cause of action of the present suit was existed. The previous suit was filed on 16th August, 2021 and the present suit is filed on 26th May, 2022. As per paragraph 19 of the present suit the cause of action arose on 7th September, 2018 and on 26th September, 2018, thus no fresh cause of action arose to file the present suit.
14. As regard to whether the suit filed by the plaintiff is of commercial in nature, on perusal of statements made in paragraphs 8, 9, 10 and 11 of the previous suit being Title Suit No. 162 of 2021 and the admission made in the present suit being C.S. No. 138 of 2022 at paragraph 30 wherein the plaintiff has admitted that *"The nature of transaction between the parties purely commercial and the rate of interest is not only appropriate and proper but also necessary to compensate the unjust benefit enjoyed by the defendant no.1"* this Court finds that suit filed by the plaintiff is commercial in nature but the plaintiff has not filed the suit in the Commercial Division.

15. In view of the above, the subsequent suit filed by the plaintiff before this Court being C.S. No. 138 of 2022 is barred under Order II, Rule 2 of the Code of Civil Procedure, 1908 as well as the suit is of Commercial in nature, thus the plaint is accordingly rejected.

16. G.A. No. 3 of 2022 is thus **allowed**.

(Krishna Rao, J.)