

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
COMMERCIAL DIVISION

APOT/242/2022
WITH CS/3/2019
IA NO: GA/1/2022

MAHARSHI COMMERCE LIMITED
VS
RAJIV R. BALANI AND ORS.

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
AND
The Hon'ble JUSTICE UDAY KUMAR

Date: 19th June, 2023.

Appearance:
Mr. Sabyasachi Chowdhury, Adv.
Mr. Avinash Kankani, Adv.
Mrs. A. Sengupta, Adv.
Mr. Suman Majumder, Adv.
...for the appellant

Mr. Rupak Ghosh, Adv.
...for the respondents

The Court:- By consent of the parties, the application are taken up together and disposed of by this order. The plaintiff filed a suit for eviction of the defendants on the ground that they are trespassers.

The facts made out in the plaint are:-

In 1972, three persons, namely, Mr. B.G. Harchandani, Mr. D.G. Harchandani and Mr. J.G. Harchandani approached the predecessors-in-title of the plaintiff namely Poddar Chambers Limited, to take on rent a shop room morefully described in the Schedule to the plaint.

The aforesaid three persons agreed to take on rent the suit properties in the name of the partnership firm in which they were partners. In terms of the order dated 10th June, 1998 passed in Company Petition No. 304 of 1997 in a scheme for arrangement, the plaintiff became the owner/landlord of a portion of the suit premises including the suit property. The present defendants have acknowledged the plaintiff as the owner of the suit premises and as such there is no dispute with regard to the same. The plaintiffs, thereafter, been issuing rent receipts in the name of the defendant no. 3 under the impression and bonafide belief that the aforesaid three persons were still the partners of the defendant no. 3 and in possession and occupation of the suit premises. However, subsequently, it transpired that the original tenants, namely, the three persons were no more associated with the business of the defendant no. 3 and the defendant nos. 1 and 2 are now present occupants of the suit premises and there was a complete severance of status between the said three persons on one hand and the defendant no. 3 on the other. A notice to quit was served followed by a suit for eviction treating the respondents as trespassers. The said suit was filed in the ordinary original civil jurisdiction of the High Court in the Original Side.

After service of the summons, the defendants filed an application praying, inter alia, for an order for returning/transferring the suit to the Court having jurisdiction and try determination and entertain the suit.

This application was allowed by the impugned order.

Mr. Sabyasachi Chowdhury, learned counsel appearing on behalf of the plaintiff submits that having regard to the averments made in the plaint it is clear that the suit was filed for eviction of a trespasser. The plaint proceeds on

the basis that there has been a severance of status between the three persons who were partners of the defendant no. 3. There has been a severance of status and relationship between the three persons on the one hand and the defendant no. 3 on the other and the status of the defendant nos. 1 and 2 is that of trespassers. However, the learned Trial Court has proceeded on the basis that since the suit premises was used for commercial purpose, any such proceeding has to be filed in the Commercial Division. It is submitted that by reason of the said order it would be an acknowledgement of the relationship of the plaintiff and the defendants with regard to an agreement which the plaintiff has never entered into and the suit is not based on the agreement between the plaintiff and the original three partners. In absence of any agreement between the plaintiff and the defendant nos. 1 and 2, the status of the said defendants are trespasser and this factor is required to be taken into consideration in deciding the suit whether the suit is a commercial suit or not. It is further submitted by the plaintiff that the defendant nos. 1 and 2 deceptively took over the exclusive possession of the suit premises in a clandestine manner by retaining the name of the defendant no. 3. The change of constituents of the defendant no. 3 was without the consent of the plaintiff.

Mr. Rupak Ghosh, learned counsel representing the respondents submitted that there is a partnership firm and the present defendants have acknowledged the plaintiff as a owner of the suit premises and if the present defendants were accepted to be the partners of the partnership firm then having regard to the fact that the premises is for the commercial purpose, the suit has to be tried in the Commercial Division. The learned Single Judge in deciding the

said issue has proceeded on the basis that by reason of sub-clause (vii) of Section 2(1)(c) of the Commercial Courts Act, 2015 that the agreement is in relation to an immovable property used exclusively in the trade or commerce and in view of the fact that the defendant nos. 1 and 2 are the partners of the respondent no. 3 and the defendants are using the suit property for the business purpose, it would constitute a commercial dispute in terms of the decision of the Hon'ble Supreme Court in *Ambalal Sarabhai Enterprises Limited -versus- K.S. Infraspace LLP & Another*, 2020 (15) SCC 585. For the purpose of determination of the jurisdiction of the Court, the averments made in the plaint are required to be taken as true and correct. The suit is not filed for eviction of the partners of the partnership firm. Partnership firm is not a legal entity. The firm name is only a compendious name given to the partnership and the partners are the real owners of the assets. The suit is primarily for eviction of the persons who according to the plaintiff are trespassers. It is premature at this stage on the basis of the statements made in the plaint to arrive at a finding that there has been a reconstitution of the partnership firm and the plaintiff has acknowledged the said reconstitution. Whether there is a privity of contract between the plaintiff and the defendant nos. 1, 2 and 3 and/or there has been a reconstitution of the partnership firm and it was accepted by the plaintiff, one matters required to be taken into consideration at the trial of the suit. The defendant has already filed a Written Statement and accordingly the rigours of time limit under the Commercial Court's Act, 2015 would not be an impediment for the Trial Court to proceed. On such consideration we set aside the judgment of the learned Trial Judge. The suit shall be heard as an ordinary original civil suit. We make it clear that if during the trial

it appears that the contentions of the defendants are correct and it was merely a reconstitution of the partnership firm permissible under the existing arrangement then the suit would be required to be registered as a commercial suit.

Mr. Chowdhury submits that this order shall not prevent the plaintiff to file application for judgment upon admission. We do not propose to make any observation in this regard. It is for the Trial Court to take a decision if such an application is filed.

(SOUMEN SEN, J.)

(UDAY KUMAR, J.)

T.O.