

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

C.O. 954 of 2024

Sri Subhas Kumar & Ors.
Vs.
Mani Square Limited

For the petitioners : Mr. Aniruddha Chatterjee,
Mr. Soumabho Ghosh,
Mr. Pushan Kar,
Mr. Souvik Majumdar,
Mr. Shounak Bhattacharya,
Mr. Sagnik Majumdar,
Ms. Anyapurba Banerjee,
Ms. Sudha Singh

For the opposite party : Mr. S.N.Mookherjee, Sr. Advocate,
Mr. Jaydip Kar, Sr. Advocate,
Mr. Debjit Mukherjee,
Mr. Suddhasatva Banerjee,
Ms. Rituparna Chatterjee,
Ms. Khushboo Choudhary,
Mr. Yash Singhi

Hearing concluded on: 06.05.2024

Judgment on: 21.05.2024

Shampa Sarkar, J.:-

1. The revisional application arises out of an order dated March 6, 2024, passed by the learned Judge Commercial Court at Alipore in T.S. (Com) No. 48 of 2023. By the order impugned, the Learned Court rejected an application under Order 7, Rule 11, read with Section 151 of the Code of

Civil Procedure. The application was registered as I.A. No.05 of 2023. It was filed by the defendant Nos. 2 to 6/petitioners.

2. The petitioners herein prayed for rejection of the plaint. The learned Court was of the view that the questions of limitations, non-disclosure of cause of action etc., were mixed questions of law and fact and should be decided on evidence. Upon a meaningful reading of the plaint, the learned Court opined that the plaint disclosed a cause of action. Whether the plaintiff would ultimately succeed or not, would be a matter of trial and not the subject matter of an enquiry under Order 7 Rule 11 of the Code of Civil Procedure.

3. Aggrieved by the aforementioned order, the petitioners have approached this Court seeking rejection of the plaint.

4. Mr. Aniruddha Chatterjee, learned Advocate appearing on behalf of the petitioners has assailed the order on various grounds. First of such grounds being, absence of cause of action. It has been specifically urged that the suit, as it had been framed, did not disclose whether the same was filed for eviction of a tenant or a trespasser or a licensee.

5. Order 7 Rule 7 of the Code of Civil Procedure was relied upon to urge that the plaint ought to have clearly stated the grounds on which the plaintiff proceeded against the petitioners and what were the reliefs claimed. It was next submitted that the suit was not maintainable before the Commercial Division as the dispute disclosed in the plaint was not a commercial one. The Commercial Court at Rajarhat did not have jurisdiction over the subject matter of the suit.

6. Mr. Chatterjee urged this Court to consider the specific objections taken in the application seeking rejection of the plaint. Learned Advocate stated that the suit for recovery of possession was filed under the Transfer of Property Act and did not come within the definition of a Commercial Dispute under Section 2(1)(c)(vii). The dispute did not arise out of any agreement in respect of immovable property, used exclusively for trade or commerce. The lease agreement which expired in 1993 could not be the basis for filing of the suit in the Commercial Division. Admittedly, there was no agreement between the plaintiff and the defendants in respect of the immovable property which had given rise to the present dispute. The schedule of the plaint would indicate that the property was a dwelling house. The plaint did not disclose that the petitioners were using the property for commercial activity. The petitioners had been in occupation of the premises even after the expiry of lease. They were exercising their right of possession over the premises, without any interference or interruption. Thus, the suit was also barred by limitation as the same was filed beyond twelve years from expiry of the lease.

7. The petitioners also raised a question with regard to the maintainability of the suit in the Commercial Court, on account of non-compliance of Section 12A of the Commercial Courts Act, 2015. It was submitted that mediation had not initiated by the plaintiff/opposite party.

8. Mr. Chatterjee relied on the following decisions:-

- a) ***Ambalal Sarabhai Enterprises Limited vs. K.S. Infraspace LLP and anr.*** reported in **(2020) 15 SCC 585;**

- b) ***Deepak Polymers Private Limited vs. Anchor Investments Private Limited*** decided in **CO No.759 of 2021**; and
- c) ***Biswanath Agarwalla vs. Sabitri Bera and ors.*** reported in **(2009) 15 SCC 693**.

9. Mr. S.N. Mookherjee, learned Senior Advocate on behalf of the opposite party, submitted that the grounds on which a plaint could be rejected, were not available to the petitioners. The plaint disclosed a cause of action. The suit property was leased for commercial use. Thus, the suit for recovery of such immovable property was a commercial dispute. The suit had rightly been filed before the Commercial Court. The dispute arose when the lease in respect of the immovable property expired in 1993. The lease agreement stood terminated by efflux of time. The plaintiff stepped into the shoes of the original owner of the property. The plaintiff was entitled to recover possession of the same from the petitioners. The petitioners were continuing to unlawfully occupy the premises, even after the termination of the lease. The suit was not filed earlier as the predecessor of the petitioners claimed to be thika tenants and approached the Thika Controller for adjudication of their status vis-à-vis the suit property. Exemption from applicability of Section 12-A of the Commercial Courts Act, 2015 was prayed for and such leave was granted by the Court, by an order dated April 1, 2023.

10. Mr. Mookherjee, further submitted that at the stage of deciding an application under Order 7 Rule 11 of the Code of Civil Procedure, the averments in the plaint were to be taken as true and correct. Neither the documents relied upon by the petitioners nor the defence case in the written

statement could be taken into consideration while adjudicating the said application.

11. It was next contended that paragraphs 2 and 3 of the plaint clearly indicated that the dispute arose upon determination of the lease dated December 15, 1973, on November 30, 1993. The original owner Jitendra Nath Ghosh, by a registered indenture dated December 15, 1973, had leased out the property to Badri Narayan Kumar and Nemai Chandra Kumar (since deceased). They claimed to be proprietors of one Kumar Industries. The said lease was for a term of 20 years, commencing from December 1, 1973. The premises were leased for the purpose of running a ferrous and non-ferrous foundry and factory, etc. Even prior to the lease and at the time of grant of lease, the property was being used for commercial purpose. Paragraphs 6, 7, 8, 9 and 10 of the plaint were placed before this Court in order to narrate how the cause of action had arisen, leading to the filing of the suit. The original lessees illegally and wrongfully claimed to be thika tenants in respect of the suit property and submitted returns before the Controller, Kolkata Thika Tenancy. On such claims being made, the owners of the property could not take any action for eviction of the predecessor of the petitioners, because questions as to whether a person was a thika tenant or not, or whether the land was a thika property or not, were to be determined by the Thika Controller. The plaint further disclosed that by a conveyance dated September 10, 2007, the heirs of the original owner Jitendra Nath Ghosh had sold the property to the plaintiffs and six other companies for valuable consideration. By an order dated September 19, 2008, the High Court at Calcutta sanctioned a scheme of amalgamation whereby six other

companies were amalgamated with the plaintiff/opposite party. Consequently, all the assets and properties of the six companies vested with the plaintiff. On January 27, 2010, an order was passed by the Controller, Kolkata Thika Tenancy. The opposite party filed an application dated August 26, 2010, before the Government under Section 13 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001. Objection of the opposite party was disposed of by the thika controller on August 1, 2012 holding that Kumar brothers, that is, the predecessors of the petitioners, were thika tenants in respect of the property. The order of the thika controller was challenged before the West Bengal Land Reforms and Tenancy Tribunal. The tribunal rejected the appeal. The order was challenged before the High Court and by judgment and order dated March 10, 2014, the High Court set aside the order of the Tribunal, *inter alia*, holding that the predecessors of the petitioners were not thika tenants and the property was not a thika property. Aggrieved by the aforementioned order, the petitioners approached the Hon'ble Apex Court. The Hon'ble Apex Court by judgment and order dated July 27, 2022, upheld the order of the Division Bench of the High Court and dismissed the appeal.

12. During the pendency of the appeal, by interim orders dated April 15, 2014, July 22, 2014 and other subsequent orders, the Apex Court directed the petitioners to pay occupancy charges. The amounts were directed to be invested in a fixed deposit with periodical renewal. On the dismissal of the appeal, the plaintiff was permitted to withdraw the said amount. A review of the said order was filed. The same was rejected. Paragraphs 23 and 24 of the plaint were placed. It was submitted that the plaintiff had categorically

stated that the suit was filed for recovery of possession and mesne profit against the defendants who were in wrongful occupation of the suit property, upon determination of the lease. In terms of the original agreement, the lease was for a period of 20 years.

13. Paragraph 25 of the plaint was further relied upon to show that the predecessors of the defendants and on their death, the defendants had become liable to pay mesne profits for wrongful use and occupation of the suit property of the plaintiff. Paragraphs 34 and 36 of the plaint were placed before this Court in support of the contention that the plaint categorically disclosed that the defendants were unlawfully occupying the premises without any right to remain in possession thereof and were also creating third-party interest. That the cause of action arose on July 27, 2022, when the Hon'ble Apex Court had finally determined the right of the plaintiff and had held that the defendants were not thika tenants. Thus, no part of the claim was barred by the laws of limitation, as per the plaint case. The Hon'ble Apex Court permitted the plaintiff to proceed against the petitioners and claim all reliefs as were available under the law.

14. It was contended that a meaningful reading of the plaint would indicate that the dispute arose after the lease agreement was determined. The suit was for recovery of the immovable property upon determination of the lease executed between the erstwhile owner and the predecessors of the defendants. The plaintiff, having stepped into the shoes of the original owner, could recover the property upon determination of the lease in terms of explanation (a) to Section 2(1)(c) of the said Act.

15. Distinguishing the decision in ***Deepak Polymers (supra)***, Mr. Mookherjee urged this Court to consider paragraph 27 of the said decision. A coordinate Bench had opined that suits for termination of the lease on the ground of forfeiture or for violation of any of the clauses of the lease agreement or for specific performance of agreement, would definitely come within the purview of a commercial suit. In this case, the suit was filed for recovery of possession, after termination of the lease by effluxion of time. Eviction of those persons who were in wrongful and illegal possession of the property since 1993 was prayed for in the suit. ***Deepak Polymers (supra)***, would not apply in the instant case. According to Mr. Mookherjee, the said decision dealt with suits for recovery of immovable property under Section 106 of the Transfer of Property Act, 1882. Mr. Mookherjee submitted that as per the ratio of ***Ambalal (supra)***, the agreement between the parties should indicate that as on the date of the agreement, the property was exclusively used for trade or commerce. In the present case, the averments in paragraph 2 of the plaint clearly indicated that prior to the execution of the lease, the property was being used as a commercial property. The lease agreement also indicated that the property would be used for commercial purpose, that is, as a foundry and factory. The schedule of the plaint did not only mention a dwelling house, but also factory sheds, etc. Moreover, all such questions were matters of trial. The plaint read as a whole indicated why the suit had been filed before the Commercial Court and also how the cause of action arose. The trial court had been invited to decide an application under Order 7 Rule 11 of the Code of Civil Procedure. The learned Court, upon analyzing the submissions of the parties, held that all

the issues raised in the said application were triable issues and involved mixed questions of law and fact. A roving enquiry to determine such questions, could not be embarked upon by the Court at a nascent stage of the suit.

16. Considered the submissions of the learned Advocates for the respective parties. The issue which has fallen for a decision by this Court is whether the learned trial judge had passed a perverse order. The defendants/petitioners prayed for rejection of the plaint on the grounds of non-disclosure of cause of action, lack of jurisdiction of the Commercial Court and non-maintainability of the suit on the ground of limitation. While adjudicating an application for rejection of a plaint, the averments in the plaint should be treated as true and correct. Upon a meaningful reading of the plaint, the court must arrive at the conclusion that the plaint disclosed a cause of action. A meaningful and not a formal reading would be necessary to determine whether the right to sue had been properly pleaded in the plaint. Cause of action is a bundle of facts and cannot be extracted from a single paragraph. The plaint read as a whole, must disclose that the plaintiff had made out a case to sue the defendants for the reliefs claimed. The averments in the plaint which have been placed by Mr. Mookherjee, indicate that the suit was filed by the present owner of the property, who claimed to have stepped into the shoes of the original owner. The suit was for recovery of possession of the property from persons who were allegedly in wrongful and illegal possession of the property, upon termination of the lease way back in 1993 as per the terms and conditions of the lease deed. The lease by which the predecessors of the defendants had been inducted into the

premises dated December 15, 1973 was for a period of 20 years and upon expiry of lease on November 30, 1993, the predecessors of the petitioners and thereafter the petitioners, became wrongful and illegal occupants of the premises. The dispute arose upon termination of the lease agreement by efflux of time on November 30, 1993. The suit was filed for recovery of the premises (immovable property) from the unlawful and unauthorized occupants. There are sufficient pleadings to indicate why the dispute was covered by the definition of a commercial dispute under Section 2(1)(c)(vii) and explanation (a) thereof.

17. The plaint discloses a cause of action for suing the defendants. The reliefs are in consonance with the cause of action namely, recovery of possession, mesne profit, etc. The calculation of the mesne profits have been provided in the plaint. There are averments with regard to the valuation. The leave under Clause 12A was prayed for and was allowed by the Court. The pleading that the suit was not barred by limitation is available in paragraph 36 of the plaint. It was stated that the cause of action arose upon disposal of the appeal by the Apex Court in July 2022 and no part of the claim could be treated as barred. The Hon'ble Apex Court also permitted the opposite party to proceed against the petitioners in accordance with law, upon holding that the petitioners were not thika tenants. The fact that the property had been used for commercial activity, has been stated in the plaint.

18. It is well settled that documents filed with the plaint can also be looked into at the time of adjudication of an application under Order 7 Rule 11 of the Code.

19. Reference is also made to decision of **G. Nagaraj and Anr. vs, B.P. Mruthunjayanna and Ors.** decided in **Civil Appeal No.- 2737 of 2023.**

The Hon'ble Apex Court held as follows:-

"6. The law is well settled. For dealing with an application under Rule 11 of Order VII of CPC, only the averments made in the plaint and the documents produced along with the plaint are required to be seen. The defence of the defendants cannot be even looked into. When the ground pleaded for rejection of the plaint is the absence of cause of action, the Court has to examine the plaint and see whether any cause of action has been disclosed in the plaint.

7. A perusal of the judgments of the Trial Court and the High Court will show that the Courts have gone into the question of correctness of the averments made in the plaint by pointing out inconsistent statements made in the plaint. The Courts have referred to the earlier suits filed by the appellants and have come to the conclusion that the plaint does not disclose cause of action.

8. The learned counsel appearing for the second and third respondents vehemently submitted that on a plain reading of the plaint, it is crystal clear that cause of action is not disclosed. Therefore, we have perused the plaint. After having perused the plaint and in particular paragraphs 16 and 17, we find that the cause of action for filing the suit has been pleaded in some detail. It is pleaded how the first appellant acquired title to the property. The facts constituting alleged cause of action have been also incorporated in paragraph 17.

9. We are of the view that merely because there were some inconsistent averments in the plaint, that was not sufficient to come to a conclusion that the cause of action was not disclosed in the plaint. The question was whether the plaint discloses cause of action. As observed earlier, the plaint does disclose cause of action. Whether the appellants will ultimately succeed or not is another matter."

20. Thus, this Court had the occasion to peruse the documents produced with the plaint. The lease dated December 15, 1973, stipulated that the premises would be used to run a ferrous and non-ferrous foundry and machine shop factory etc.

21. The Hon'ble Apex Court in ***Ambalal Sarabhai (supra)***, held that in order to constitute a commercial dispute, the agreement should indicate that as on the date of the agreement, the immovable property was being used for trade or commerce. In this case, the averments in the plaint and the indenture of 1973 indicate that the lease of the land was granted for commercial use, i.e., as a foundry and as a factory.

22. The decision of the Division Bench of this Court passed in ***W.P.L.R.T 325 of 2013*** was produced with plaint. The same has been considered.

Their Lordship recorded as follows:-

“Admittedly, the lessees raised pucca structure having pucca foundation, pucca floor and pucca wall with partly tin and partly tile shed on the roof and used the said premises including the structure constructed therein for running its factory activities therein.”

23. The Hon'ble Division Bench held that the property was not a thika property. The claim of Thika Tenancy was unfounded, baseless and contrary to law. The petitioners were held to be trespassers. Such observations of the Hon'ble Division Bench was upheld by the Hon'ble Apex Court on the same reasons as assigned by the Hon'ble Division Bench. The Hon'ble Apex Court also granted liberty to the opposite party to proceed against the petitioners in accordance with law, for all other reliefs and claims. The plaint discloses that the suit was also filed on the strength of the findings of the High Court and the Apex Court, with regard to the status of the petitioners, i.e., trespassers. Further deliberation on the maintainability of the suit or chances of success of the suit, are matters of trial.

24. Relevant portion of the decision of the High Court is quoted below:-

The definition of thika tenant under Section 2 (14) of 2001 Act as mentioned above was almost identical with the definition of thika tenant as mentioned in Section 3(8) of 1981 Act except the exclusion part regarding structure which stood forfeited to the State under Sub-Section 2(6) of the said Act. The definition of thika tenant in Section 2(14) of Act of 2001 was amended by the Amendment Act of 2010 and thereby the words "by purchase or gift any structure on such land" was substituted by the words "by purchase or gift any structure including pucca structure if any on such land". Thus the expression "pucca structure was included in the definition clause of Section 2 (14) of the said Act for the first time by the Amendment Act of 2010 and effect of such amendment was given prospectively with effect from 1st November, 2010. The effect of the amendment was not given from the date when the 2001 Act came into operation from 18 July, 1961. Thus, existence of pucca structure on the said land as on 1 November, 2010 will itself be of no help to the private respondent inasmuch as on 1st November, 2010 there was no subsisting lease and/or contract under which original lessees were liable to pay rent to their landlords in respect of the land comprising in the said premises. The lease dated 15 December, 1973 expired by efflux of time on 30th September, 1993. After expiry of the said lease, the lessees became trespassers and/or at least they may be regarded as tenant by sufferance who had no liability to pay rent to their landlord either under the said lease which stood expired in 1993 or under any other law. Thus, the first part of the requirement of Section 2(14) of the said Act is not fulfilled in the instant case. As such the land which was comprising in the said tenancy of the predecessor-in-interest of the private respondent cannot vest with the State under Section 4 of the said Act."

25. On the above findings of the Hon'ble Division Bench of this Court, the Hon'ble Apex Court observed as follows:-

"32. Then, the lease in question came to an end on 30.11.1993. Thereafter, the appellants ceased to be persons liable to pay rent at monthly or in any other periodical rate. In that position, they ceased to answer to the definition of thika tenant within the meaning of Section 3(8) of the Act of 1981. Similarly, they did not answer to the description of thika tenant within the meaning of Section 2(14) of the Act of 2001. As a necessary corollary, neither Section 5 of the Act of 1981. applied to the tenancy in question nor Section 4 of the Act of 2001. The application made before the Controller in the month of April, 2003 for accepting the appellants and/or their predecessors as thika tenants was therefore, fundamentally misconceived and could have only be rejected."

26. The conclusions arrived at by the Hon'ble Apex Court were as follows:-

“**35.** In summation of what has been discussed hereinabove, we could broadly say:

1. The Full Bench decision of Calcutta High Court in *Lakshmimoni Das (supra)* is affirmed.
2. The structure, as put up by the appellants and/or their predecessors, had been pucca structure on the property in question.
3. For the structure being pucca in character and the term of lease being 20 years, the appellants and/or their predecessors were not thika tenants within the meaning of Section 2(5) of the Act of 1949.
4. The appellants and/or their predecessors were not thika tenants within the meaning of the Act of 1981 for two major reasons:
 - a. that the structure in question was a pucca structure; and
 - b. that the Act of 1981 was not operative in relation to the property in question because of the stay order passed by the High Court.
5. On the date when lease expired in the month of November, 1993, the appellants and/or their predecessors were not thika tenants and, therefore, the Act of 2001 does not enure to their benefit.
6. The impugned decision of the High Court, therefore, calls for no interference.

36. Before closing, we may also take note of the fact that by way of interim orders dated 15.04.2014 and 22.07.2014, the appellants were directed to make payment towards occupancy charges. The appellants have made certain deposits and by the order dated 27.08.2021, we had directed the appellants to deposit further an amount of Rs. 20,00,000/- (Rupees twenty lakhs) in the Registry of this Court of which, the contesting respondents were held entitled to withdraw an amount of Rs. 16,50,000/- (Rupees sixteen lakhs fifty thousand) by way of the occupancy charges; and the remaining amount was ordered to be invested in a fixed deposit with periodical renewal, to be disbursed subject to the outcome of this appeal. The said deposited amount together with accrued interest is ordered to be disbursed to the respondent No. 1 while we otherwise leave it open for the said respondent in taking recourse to appropriate remedies, strictly in accordance with law, in relation to any other claim/relief.

37. Accordingly and in view of the above, this appeal fails and is, therefore, dismissed subject to the observations foregoing. All pending applications also stand disposed of. No order as to costs.”

27. The decision is ***Biswanath Agarwalla (supra)***, cannot be made applicable at this stage. In the said decision, it was held that although the suit was for eviction of a trespasser, no specific averments were made in the plaint. No issue was framed. Thus, the Apex Court held that the defendant could not bring on record evidence to rebut such claim of the plaintiff. Here, a meaningful reading of the plaint would indicate that the plaint discloses

that the suit was filed for recovery of possession and for mesne profit against persons who were allegedly in wrongful and illegal possession of the suit property, after the lease stood terminated by efflux of time.

28. Whether the dispute would cover a commercial dispute and whether the dispute arose out of an agreement relating to a property used for commercial purpose, shall be proved in evidence. Paragraph 27 of **Deepak Polymers (supra)** clarifies that suits for termination of a lease on the ground of forfeiture or for violation of the clauses of the lease agreement or for specific performance, would definitely come within the purview of a commercial dispute as defined in section 2(1)(c)(vii) of the Commercial Courts Act, 2015.

29. The decision does not, prima facie, apply to a suit for recovery of possession from a trespasser or a person in illegal possession. It was held that a suit under Section 106 of the Transfer of Property Act would not be a commercial suit. Further deliberation in this regard will be available at the final hearing of the suit. The relevant paragraph of **Deepak Polymers (supra)** is quoted below:-

“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.”

30. Also, limitation is a mixed question of law and fact and the plaint discloses how the suit is not barred by limitation. For further adjudication of such issue, trial is necessary.

31. With regard to the contention of Mr. Chatterjee that the learned court was required to go into the question as to whether the dispute was a commercial dispute or not and return a finding to that effect, this Court is of the view that the learned Court was deciding an application under Order 7 Rule 11 of the Code of Civil Procedure and not an application under Order 7 Rule 10 of the Code. For the purpose of ascertaining whether the plaint should be rejected or not, a perusal of the plaint case and the connected documents filed with the plaint were rightly looked into by the learned Court. The Court was only required to see whether a meaningful reading of the plaint and the contents of the documents would indicate that the suit should continue or the suit should be nipped at the bud on the ground of the same being vexatious and harassive. Whether a plain reading of the plaint would indicate that by clever drafting the plaintiff wanted to create an illusion of a cause of action or not.

32. In the decision of ***Jageshwari Devi and ors. vs. Shatrughan Ram*** reported in **(2007) 15 SCC 52**, the Hon’ble Apex Court held as follows:-

“3. We have heard learned counsel for the parties. We have perused the order of the trial court and of the High Court. We have also perused the plaint filed by the respondent herein. The main ground on which rejection of the plaint was sought was that the plaint does not disclose a cause of action which is a ground specified under Order 7 Rule 11(a) CPC. The trial court on consideration of the averments in the plaint held, and in our view rightly, that it could not be held that

the plaintiff does not disclose a cause of action. It is relevant to state that there is a difference between the non-disclosure of a cause of action and defective cause of action: while the former comes within the scope of Order 7 Rule 11, the latter is to be decided during trial of the suit. The contention raised on behalf of the appellant that the cause of action disclosed is vague and incomplete, is not a ground for rejection of the plaintiff, under Order 7 Rule 11 CPC no exception can be taken to the order.”

33. Cause of action is a bundle of facts and has to be ascertained from a complete and meaningful reading of the plaintiff. Here, the plaintiff discloses that the plaintiff had stepped into the shoes of the original owner. The original owner had inducted the predecessors of the petitioners as lessees in respect of the suit premises for a period of 20 years, by a registered deed of lease. Such lease stood terminated with expiry of time, on November 30, 1993. The past and present owners of the property could not sue for recovery of possession from the persons allegedly in wrongful possession upon determination of the lease, as proceedings had been initiated before the Thika Controller and protracted litigation continued upto the Hon’ble Apex Court. Ultimately, it was held that the petitioners were not thika tenants. The Hon’ble Apex Court granted liberty to the opposite party to proceed in accordance with law for all other reliefs and claims. Accordingly, the suit was filed for recovery of possession and mesne profits.

34. The moment the Court is required to delve deeper into the factual aspects in order to ascertain whether the plaintiff would ultimately get a decree as prayed for or not, it becomes a mini-trial. Such is not the scope for adjudication of an application under Order 7 Rule 11 of the Code. It is a rule of strict interpretation.

35. Order 7, Rule 11 of the Code of Civil Procedure is an independent and special remedy. The Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence and by conducting a trial on the basis of the evidence received. Such remedy is available if the Court is satisfied that the action should be terminated on any of the grounds contained in the said provision. The Court would not be permitted to unnecessarily protract the litigation. It would be necessary to put an end to sham litigations so that further judicial time would not be wasted.

36. The order impugned is well reasoned. At pages 1 and 2 of the order, the learned Court has narrated the facts which led to the filing of the suit. In paragraphs 4 to 13, the Court recorded the arguments advanced by each of the parties, **Ambalal (supra)** and **Deepak Polymer (supra)**, which were placed before this Court by Mr. Chatterjee in great detail, were also considered by the learned Court. The contention of the petitioners that the decision in **Deepak Polymer (supra)** would oust the jurisdiction of the Commercial Court, was also weighed with the reply given by the learned Advocate for the plaintiff. Sections 108 (q) and 111 of the Transfer of Property Act were referred to. On the point of limitation, the decision in **Ravinder Kaur Grewal vs Manjit Kaur** reported in **(2019) 8 SCC 729**, was discussed. In paragraphs 15 to 21 of the order, the learned Court went on to assign reasons as to why the plaint should not be rejected. The Court held that upon scrutiny of the averments in the plaint, read in conjunction with the documents relied on, the plaint should not be rejected.

37. Upon consideration of the rival contentions of the parties and the case laws relied upon by each of the parties, the learned Court was of the view

that a meaningful reading of the plaint would indicate that in this case the issues with regard to limitation, the cause of action etc., were mixed questions of law and fact. Therefore, the Court had no other option, but to reject the application under Order 7 Rule 11 of the Code of Civil Procedure.

38. The test was laid down in ***Liverpool and London SP and I Association Ltd. vs. M.V. Sea Success I***, reported in ***(2004) 9 SCC 512***.

The Hon'ble Apex Court held that the question whether a plaint disclosed a cause of action or not, was essentially a question of fact, to be ascertained from the reading of the plaint itself. For the said purpose, the averments made in the plaint, in their entirety, must be held to be correct. The test would be whether on the averment made in the plaint if taken to be correct, a decree could be passed. This case has satisfied the test laid down.

39. In ***Azhar Hussain v. Rajiv Gandhi*** reported in ***1986 Supp SCC 315***, the Hon'ble Apex Court held that the whole purpose behind conferment of powers under Order 7 Rule 11 of the Code of Civil Procedure, was to ensure that a litigation which was meaningless and bound to prove abortive, should not be permitted to continue, as it would result in wastage of judicial time. Here, it cannot be held that the litigation was bound to be abortive and would result in wastage of judicial time.

40. In the decision of ***Eldeco Housing and Industries Limited vs Ashok Vidyarthi and Ors.***, decided in ***Civil Appeal No. 7891 of 2023***, the Hon'ble Apex Court held that a meaningful reading of the plaint should indicate that the suit was manifestly vexatious and without any merit or did not disclose a right to sue. In ***Hardesh Ores Pvt. Ltd. vs M/s. Hede and Company***, (paragraph 23.12), reported in ***(2007) 5 SCC 614***, it was held

that it would not be permissible for the Court to cull out a sentence or a passage and read it in isolation. It was the substance and not the form which had to be looked into. The plaint had to be construed as it stood, without addition or subtraction of any word. If the averments in the plaint, prima facie, showed a cause of action, the Court could not embark upon an enquiry as to whether the allegations were in fact true.

41. In ***Kum. Geetha, D/o. Late Krishna vs Nanjundaswamy*** reported in **2023 INSC 964**, it was held that the true test would be first to read the plaintiff meaningfully and as a whole, taking all averments to be true. Upon such reading, if the plaint disclosed a cause of action, then the application under Order 7, Rule 11 of the Code of Civil Procedure must fail. To put it negatively, where the plaint did not disclose a cause of action, the plaint should be rejected.

42. The contention of Mr. Chatterjee that the Court was specifically required to return a finding as to the maintainability of the suit in the commercial court, is not correct. The lease which stood terminated by efflux of time, was a registered lease and Section 111 and 108(q) of the Transfer of Property Act were argued before the learned court in great detail. Thus, the court reserved all issues to be decided at the trial.

43. Under such circumstances, the revisional application is dismissed. The order impugned is upheld. All questions raised by the petitioners will be decided as issues in the suit, on the basis of evidence.

44. The observations made in this revisional application are only restricted to the consideration of the propriety of the order impugned. Such

observations shall not influence the learned Trial Judge. The learned Trial Judge shall proceed in accordance with law and independently.

45. There shall be no order as to costs.

46. Parties are directed to the server copy of this judgement.

(Shapma Sarkar, J.)