

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CO 3446 OF 2025

M/S. LEAP INFRAPROJECTS LTD.

VS

SMT. RUMA BHOWMICK

For the Petitioner : Mr. Gopal Chandra Ghosh, Adv.
Mr. Supratim Dhar, Sr. Adv.
Mr. Dhananjay Nayak, Adv.

For the Opposite Party : Mr. Subhasish Sengupta, Adv.
Mr. Meghajit Mukherjee, Adv.
Ms. Srijeeta Gupta, Adv.
Ms. Sonia Das, Adv.

Last heard on : 22.09.2025

Judgement on : 20.11.2025

Uploaded on : 20.11.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This revisional application is directed against an order dated August 27, 2025 passed by Learned Judge, Bench VI City Civil Court at Calcutta in title suit no. 683 of 2023, whereby the application filed by the defendant /petitioner under Order VII Rule 11 of C.P.C, treating the same as under Order VII Rule 10 of C.P.C has been rejected.

2. The plaintiff case is that the plaintiff being the absolute owner in respect of the suit property as described in the schedule of the plaint and being approached by the defendant /Opposite Party agreed to grant leave and license agreement for a period of 11 months on terms and conditions stated there in. The said document was signed and executed by the parties within the jurisdiction of the City Civil Court at Calcutta. The plaintiff came to know on 30th March, 2023 on receiving a telephone call from a local resident that the defendant/petitioner is making massive damages and demolition in respect of the suit premises, including the structure thereof and on reaching, he found that the unauthorized construction is going on which has damaged the premises. After that an F.I.R was filed by the plaintiff/opposite party and thereafter the instant suit was filed seeking a declaration that the defendant is purely a licensee under the plaintiff and is not entitled to violate the terms and conditions of the said leave and license agreement dated March one, 2023. The plaintiff further prayed for an order of permanent injunction restraining the Opposite party from making any damages or additional alteration or unauthorised construction at the suit premises.

3. The defendant also filed a suit being title suit no. 312 of 2023, before the learned Civil Judge (Senior Division) 2nd Court Baruipur Court. The plaintiff/petitioner being the defendant in the said suit took out an application for stay under Section 10 of the Code of Civil Procedure, but such prayer was turned down on August 9, 2023, against which a revisional application was filed before the High Court at Calcutta being C.O 30 25 of 2023 and a coordinate bench of this court while disposing the revisional application by the order dated March 5, 2024 laid down the ingredients , required to be satisfied

before a Court granting stay of suit and one of such was that a Court must come to the conclusion that the Court in which the previous suit has been instituted, must have jurisdiction to grant the relief claimed in the subsequent suit and accordingly, the subsequent suit was stayed as pending before the Baruipur Court till disposal of the Title suit no. 683 of 2023. The Opposite party filed an application under Order 7 Rule 11 in the suit filed by the petitioner which was dismissed by the judgement and order dated June 10, 2024, challenging the same another revisional application was filed being C.O no. 711 of 2025, where in a Coordinate Bench of this Court directed the learned Court to treat the said application under Order 7 Rule 10 C.P.C

4. It is contended by the learned advocate of the petitioner, that there exists a distinction between the maintainability of suit and suitability. A suit may be legally maintainable in terms of cause of action and relief claimed yet not tenable by the Court due to lack of territorial jurisdiction as situation in the present case. It is submitted that the Agreement contained an exclusive jurisdiction clause limiting the jurisdiction to the courts at Calcutta. The registered office of the defendant/petitioner is within the jurisdiction of City Civil Court and therefore it was necessary that the matter to be heard entertained and adjudicated by the said Court.

5. Per Contra the learned advocate representing the opposite party plaintiff argued that it was the defendant/petitioner who was causing damage to the property owned by the plaintiff/Opposite Party and therefore she has every right to prevent the defendant who is a licensee in order to restrain him from causing for the damage and therefore there was a good cause of action to file the suit and it no way can be said that to be barred by any cause of action.

6. Further contention is that the plaint can only be rejected where the plaint does not disclose any cause of action or the relief claimed is undervalued or where the suit appears from the statement of the plaint to be barred by any law and when the defendant failed to prove anything about the precondition of rejection of plaint, whatever prayer they have made should be rejected in limine. The learned Court relied upon decision reported in **Adcon Electronics (P) Limited vs Daulat**¹ where it was observed that when the suit is not the acquisition of title to the land and is not a suit land and is also not a suit simplicity for specific performance for contract for sale, the suit cannot be said to have filed outside the jurisdiction. The learned advocate further relied upon the decisions in **Rohit Kochar versus Vipul infrastructure developers Ltd. & Ors**².

7. Heard the submissions of the learned Advocate. The learned Court observed that parties agreed at the time of execution of leave and license agreement about the jurisdiction of the court to be at Kolkata, and in absence of any challenge against the said clause before any Court of law by the defendant cannot challenge the territorial jurisdiction of the court. That apart when the defendant/company is carrying on business at Kolkata within the jurisdiction of the City Civil Court, in view of clause of section 16, the present suit cannot be said to have been filed before the wrong forum as the present suit is merely a suit for injunction so that the defendant may not violate the terms and conditions of the leave and license agreement and it cannot be said that the present suit is not maintainable to adjudicate before this Court. The learned Court further observed that the application filed by defendant for rejection of

¹ (2001) 7 SCC 698

² 2024 INSC 920

plaint which includes return of plaint under Order 7 Rule 10 of CPC cannot be allowed since the court is of the view that the suit has not been filed in the wrong forum and the court has every jurisdiction to try the said suit.

8. It can be gathered from the pleadings and from the submissions advanced that the present opposite party being the plaintiff filed Title Suit no. 683 of 2023, *Ruma Bhowmik versus M/s leap infra projects Limited*, seeking a decree for declaration and permanent injunction against the present petitioner/defendant claimed to be the lawful owner of the self-contained flat as mentioned in the schedule of the plaint.
9. In the decision of ***Rohit Kochhar versus Vipul infrastructure developers Limited & ors***³, the plaintiff instituted a civil suit at the court at Delhi for specific performance of contract and permanent injunction in respect of the property situated in Gurgaon. Subsequently, the original defendant No. 2 offered to sell and written communication was received by plaintiff containing the said offer which was accepted and a cheque was issued by the plaintiff in favour of the defendant No. 3 in furtherance of said acceptance. Dispute cropped up between the parties regarding terms and conditions and the plaintiff instituted the suit for specific performance. The defendant raised a preliminary objection regarding territorial jurisdiction. The Learned Single Judge, overruled such objection and took the view that plaintiff was seeking the relief of specific performance simplicitor had not prayed for a decree to put him in possession of the suit property, and such relief could be granted and enforced by the personal obedience of the vendor, and thus the court in whose

³ 2024 INSC 920

territorial jurisdiction, the vendor resides or carries on business works for a gain would have the jurisdiction to entertain the suit.

10. The decision of Adcon Electronics Pvt. Ltd was relied on by the learned Single Judge and a distinction was drawn between a suit relating to specific performance of a contract for sale of immovable property, simpliciter and a suit where additional claim for delivery of possession is prayed for. The learned Court distinguished the decision of ***Babulal versus Hazari Lal Kishori Lal and others reported in***⁴ in view of the decision of ***Adcon Electronics Pvt.Ltd (supra)*** and the matter travelled up to Hon'ble Supreme Court where it was held that it is clear from the terms of the contract between the parties that the transferred of possession of the suit property is implicit in the contract and absence of a specific prayer seeking transfer of possession would not have any bearing on the character of the suit, which one is covered by Section 16 (d) of the C.P.C and accordingly dismissed the special leave petition.

11. In the instant case, the prayer of the plaintiff was for a declaration that the defendant being a purely licensee under the plaintiff is not entitled to violate any of the terms and conditions of the said leave and license agreement dated 3rd of January, 2023, including causing any damages to the suit premises as described in the schedule. Further prayer for permanent injunction restraining the defendant and his main and agents from making any damages under addition or alteration and unauthorised construction at the suit premises was made.

12. The learned Advocate on behalf of the petitioner strenuously argued that the prayer is no way connected with recovery of possession and, the clause

⁴ (1982) 3 SCR 94

under sub Section (d) of Section 16 is for the determination of any other right to or interest in immovable property. The contention of the learned advocate representing the Opposite Party on the other hand is that since the prayer extended including causing any damages to the suit property, which means the relief sought can be entirely obtained through his personal obedience and to be instituted either in the court within the local limits of whose jurisdiction, the property is situated or in the Court within the local limit of whose jurisdiction, the defendant actually and voluntarily resides or carries on business or personally works for gain and the defendant/petitioner is carrying on business within the jurisdiction of the Civil Court. Hence in view of Section 16 of CPC, the suit is maintainable before that Court.

13. The situation became different after the observation of the coordinate bench of this court when the direction was given to convert the state petition from Order 7 Rule 11 of CPC to be treated as under Order 7 Rule 10 of CPC. Therefore, primarily the coordinate bench was also not satisfied about the ground taken for rejection of plaint. Under order 7 Rule 10 the plaint to be returned to be presented to the Court in which the suit should have been instituted. The procedure about the returning of a plaint applies when defendant has already appeared and the court finds it has no jurisdiction. Section 16 of Code of Civil Procedure deals with where the suits are to be instituted where the subject matter situate and in Section 16 (d) of CPC speaks for the determination of any right to or interest in immovable property, the suit is to be instituted in the court within the local limits of whose jurisdiction the property is situated. It is clear in this case that the dispute revolves round a leave and license agreement and the suit was filed against the defendant from

raising any unauthorised construction and also restraining him not to violate any terms and condition, so question of determination of right or interest in immovable property does not arise. It is a settled proposition of law that jurisdiction cannot be created nor extinguished with consent of the parties. Therefore even if the parties entered into any such agreement, fixing the place of jurisdiction of the Court to settle any dispute, the same cannot be the guiding factor to determine the territorial jurisdiction.

14. The disputed property is situated in Garia Road, Kolkata 70084 and therefore it cannot come within the jurisdiction of the Learned Judge, 6th Bench, City Civil Court, Calcutta. In the case of **Rohit Kochar (supra)** the Hon'ble Supreme Court took note of another decision reported in **Harshad Chimanlal Modi versus DLF Universal Ltd.**⁵ Where it was observed that *"Section 16 of CPC recognises a well-established principle that actions against res or property should be brought in the forum where the such res is situate. A Court within whose territorial jurisdiction the property is not situated has no power to deal with and decide the rights or interests in such property. In other words, this court held that a court has no jurisdiction over a dispute in which it cannot give an effective judgement"*.

15. Section 16 (a) of the Code of Civil Procedure speaks of to maintain recovery of immovable property with or without rent or profit shall also be situated in the Court within Local limits of whose jurisdiction the property is situated .In this case, if later on any violation of terms of condition can be found, maybe the only remedy lies in institution of suit for recovery of

⁵ (2005) 7 SCC 791

possession and the same cannot be instituted in this Court when the property or res is not situated within its jurisdiction’

16. Therefore in view of the above discussion this Court is inclined to accept the contention of the Learned Advocate representing the petitioner that the order passed by the Learned Court that the City Civil Court has got jurisdiction to try and entertain the suit cannot be said to have any merit. Hence the order is liable to be set aside.

17. Hence this revisional application stands allowed. The order passed by the Learned Court is hereby set aside. The Learned Court is directed to take all initiative to return the plaint following the procedure under Order VII Rule 10 CPC.

18. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)

सत्यमेव जयते

Calcutta