

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

**APD/6/ 2025
WITH
CS/138/2022**

**BENGAL SHRIRAM HITECH CITY PRIVATE LIMITED
Versus
HINDUSTAN MOTORS LTD. AND ANR.**

Present :

The Hon'ble Justice Debangsu Basak

-And-

The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant : *Mr. Jishnu Saha, Sr. Adv.*
Mr. Sankarsan Sarkar, Adv.
Mr. Aditya Kanodia, Adv.
Ms. Sharfaa Ahmed, Adv.

For the Respondents : *Mr. Tridib Bose, Adv.*
Mr. Debjyoti Saha, Adv.

HEARD ON : 11.11.2025
DELIVERED ON : 11.11.2025

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the plaintiff and directed against the judgement and decree dated November 29, 2023.

2. By the impugned judgment and decree, learned Single Judge, allowed an application seeking dismissal of the suit filed by the appellant.
3. Learned senior Advocate appearing for the appellant submits that, Learned Single Judge, dismissed the suit primarily on two grounds. One of the two grounds, was per Order II Rule 2 of the Code of Civil Procedure, 1908 and the other was that, the dispute being a commercial dispute within the meaning of the Commercial Courts Act, 2015, and the suit not being filed in the Commercial Division, subsequent to the cut off date being December 11, 2020, was barred under Section 12A of the Act of 2015.
4. Learned senior Advocate for the appellant submits that, the suit cannot be dismissed on the ground of Order II Rule 2 of the Code of Civil Procedure, 1908, as erroneously done by the learned Single Judge. He submits that, the appellant filed a suit being Title Suit No.162 of 2021 in the Court of the Learned Civil Judge (Senior Division) at Serampore. He refers to the plaint of such suit (hereinafter for the sake of convenience referred to as the “first suit”). He submits that, there are two defendants in the first suit, namely, the respondent herein as the first defendant and the State of West Bengal as the second defendant. So far as the present suit

is concerned, there are two defendants also. However, apart from the respondent no.1 herein being common in the two suits, the other defendant in the present suit is a Municipality.

5. Learned senior Advocate appearing for the appellant submits that, the causes of action in the two suits are different. He points out that, the appellant purchased immoveable properties from the respondent no.1 in the present appeal for valuable consideration. The appellant filed the first suit seeking relief with regard to the dues that the respondent no.1 owed to the State Government and which the appellant was forced to pay. He points out that, the second suit is essentially under Sections 69 and 70 of the Contract Act. Since, the respondent no.1 was not paying the Municipal rates and taxes for the separation, the appellant paid the same. The appellant as the plaintiff is seeking to recover the same from the respondent no.1. He points out that, the Municipality was made party defendant in the present suit since, the Municipality is a proper party. The Municipality was not permitting the appellant to continue to develop the immoveable properties since the respondent no.1 was not paying the municipality requisite separation fees.

6. Learned senior Advocate appearing for the appellant submits that, essentially, the causes of action in the two suits are different. Parties in the two suits are different. In the first suit the second defendant is the State of West Bengal, while, in the present suit, the second defendant is a Municipality.
7. Relying upon **(2022)16 SCC 1 (Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr.)** and **(2015) 11 SCC 12 (Inbasakaran & Anr. Vs. S. Natarajan (Dead) Through Legal Representatives)**, learned senior Advocate appearing for the appellant submits that, the present suit cannot be dismissed under Order II Rule 2 of the Code of Civil Procedure since, the two suits are not based on the same cause of action.
8. Learned senior Advocate appearing for the appellant submits that, all disputes of commercial nature cannot be brought under the purview of the Commercial Courts Act, 2015. He refers to the definition of a commercial dispute appearing in Section 2(1)(c) of the Act of 2015. He submits that, the nature of transaction between the appellant and the respondent no.1 does not fall within any of the definitions of a commercial dispute as enshrined in Section 2(1)(c) of the Act of 2015.

9. Learned senior Advocate appearing for the appellant submits that, the immovable properties concerned, belong to the respondent no.1. Out of a large portion of the land owned by the respondent no.1, a portion was sold to the appellant by the respondent no.1. The respondent no.1 was obliged to ensure that all rates and taxes in respect of the immoveable properties were paid. Since the respondent no.1 failed to discharge its obligation to pay rates and taxes to the respondent no.2 in respect of the entirety of the land owned by the respondent no.1, the respondent no.2 was not allowing the appellant to proceed with the development of the immoveable properties concerned. Secondly, the appellant paid the Municipal rates and taxes which included the portion which the respondent no.1 was liable to pay. The appellant is seeking to recover such portion which was the liability of the respondent no.1 payable to the respondent no.1. Therefore, the present suit cannot be said to involve any commercial dispute within the meaning of the Act of 2015.

10. Learned Advocate appearing for the respondent no.1 submits that, the appellant filed two civil suits against the respondent no.1. Both the suits emanate out of a transaction of sale of the same immoveable property by the respondent no.1 to the appellant. He

submits that, the cause of action of the present suit arose and was subsisting at the time when the first suit was filed. Since the appellant did not include the reliefs sought for in the first suit, the present suit is barred under Order II Rule 2 of the Code of Civil Procedure, 1908.

11. Learned Advocate appearing for the respondent no.1 submits that, although the appellant applied for leave under Order II Rule 2 of the Code of Civil Procedure, 1908, in the first suit nevertheless, the appellant did not proceed with such application. As on date, the Court in which the first suit is pending, did not grant any relief under Order II Rule 2 of the Code of Civil Procedure, 1908. At the time when the present suit was presented before the High Court, no relief under Order II Rule 2 of the Code of Civil Procedure, 1908 was granted by the Court in which the first suit was pending.

12. Learned Advocate appearing for the respondent no.1 refers to the Act of 2015. He submits that, the present suit, comes within the purview of Section 2(1)(c)(vii) of the Act of 2015. He submits that, since, the present suit was claimed to be presented subsequent to December 11, 2020, and since, no leave under Section 12A of the Act of 2015 was obtained, the present suit was barred by law. In support of his contention that the appellant was

required to obtain leave under Section 12A of the Act of 2015, since the suit was a commercial suit and filed subsequent to December 11, 2020, he relies upon **AIR 2021 Cal. 190 (Laxmi Polyfab Pvt. Ltd. vs. Eden Realty Ventures Pvt. Ltd. & Another)**.

13. Learned Advocate appearing for the respondent no.1 relies upon **(2022) 10 SCC 1 (Patil Automation Private Limited & Others vs. Rakheja Engineers Private Limited)** in support of the contention that, Section 12A of the Act of 2015 is mandatory and that, any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule 11, as rightly done by the Learned Single Judge.

14. Relying upon **(2020) 15 SCC 585 (Ambalal Sarabhai Enterprises Limited vs. K.S. Infraspace LLP & Another)**, learned Advocate appearing for the respondent no.1 submits that, the immoveable property concerned was used for commercial purpose at the time of institution of the suit. He submits that a special purpose vehicle namely, the appellant was incorporated for the purpose of developing the immoveable property concerned. Therefore, by all stretch of imagination, the land was actually used for commercial purpose and therefore, comes within the meaning of Section 2(1)(c)(vii) of the Act of 2015.

15. The appellant is a special purpose vehicle incorporated to purchase a portion of the immovable properties belonging to the respondent no.1 to build a township. This is the pleading in the plaint of the present suit.

16. Prior to the present suit, the appellant filed a suit on August 16, 2021 before the learned Civil Judge (Senior Division) at Serampore being Title Suit No. 162 of 2021. In the first suit, there are two defendants. The first defendant is the respondent no.1 while the second defendant is the State of West Bengal. The first suit is a suit for declaration and injunction and for a money decree. Cause of action of the first suit, as appearing from a careful reading of the plaint of the first suit is that, the respondent no.1 failed to discharge certain obligations to the State of West Bengal and that, the appellant paid for the same. The appellant seeks to recover such payments made to the State of West Bengal, defendant no.2 in the first suit, from the respondent no.1, which is the defendant no.1 in the first suit. In this regard also, the appellant as the plaintiff sought declaration and injunction against the defendants in the first suit.

17. The present suit was instituted on May 26, 2022 after obtaining leave under Clause 12 of the Letters Patent, 1865. In the second suit,

there are two defendants. The Municipality in which, the land purchased by the appellant from the respondent no. 1, is situated, is defendant no. 2 in the present suit. State of West Bengal is not a party to the second suit.

- 18.** In the present suit, appellant seeks a money decree against the respondent no. 1. Cause of action appearing from the plaint of the present suit, on constructive reading of the same, is that, the appellant was made to pay by the respondent no. 2, liabilities that the respondent no. 1 owed to the Municipality, for the purposes of the Municipality granting permission to the appellant. Essentially, appellant seeks reimbursement of such payment made on behalf of the respondent no. 1 to the respondent no. 2 in the present suit.
- 19.** Relief sought for in the two suits are different. Parties to the two suits are different. Causes of action in the two suits are different.
- 20.** Sanjeev Builders Private Limited and Another (supra) considers provisions of Order II Rule 2 of the Code of Civil Procedure, 1908 and is of the view that if the two suits and the relief claimed therein are based on the self-same cause of action then the subsequent suit will become barred under Order II Rule 2 of the Code of Civil Procedure, 1908.
- 21.** Inbasakaran & Another (supra) considers Order II Rule 2 of the Code of Civil Procedure, 1908 and is of the view that, if the two suits and the relief claimed therein are based on the same cause of action then only the subsequent suit will become barred under Order II Rule 2 of the

Code of Civil Procedure, 1908. It explains that a cause of action consists of a bundle of facts which will be necessary for the plaintiff to prove in order to obtain a relief from a Court. It also explains that, when, the cause of action of the two suits are different and distinct and the evidence to support the relief in the two suits are also different then the provision of Order II Rule 2 of the Code of Civil Procedure, 1908 will apply. It notices various authorities including one that of the Privy Council reported at 75 IA 121 (Mohd. Khalil Khan v. Mahabub Ali Mian).

22. It would be apposite to refer to the relevant portion of the Mohd. Khalil Khan (supra), which is as follows :

"The principles laid down in the cases thus far discussed may be thus summarised:

(1) The correct test in cases falling under Order 2 Rule 2, is whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation for the former suit. (Moonshee Buzloor Ruheem v. Shumsoonnissa Begum¹)

(2) The cause of action means every fact which will be necessary for the plaintiff to prove if traversed in order to support his right to the judgment. (Read v. Browns)

(3) If the evidence to support the two claims is different, then the causes of action are also different. (Brunsden v. Humphrey)

(4) The causes of action in the two suits may be considered to be the same if in substance they are identical. (Brunsden v. Humphrey?)

(5) The cause of action has no relation whatever to the defence that may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. It refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour'. (Chand Kour v. Partab Singh¹⁰) This

observation was made by Lord Watson in a case under Section 43 of the Act of 1882 (corresponding to Order 2 Rule 2), where the plaintiff made various claims in the same suit.'

23. Since, we are of the view that, cause of action in the two suits are different, and that, evidence required to establish the two claims are different, on the test laid down in Mohd. Khalil Khan (supra), the second suit cannot be said to be barred under Order II Rule 2 of the Code of Civil Procedure, 1908.

24. The present suit was instituted on May 26, 2022 after obtaining leave under Clause 12 of the Letter's Patent, 1865. The present suit was not filed in the commercial division.

25. All disputes which are commercial in nature, does not come within the purview of a commercial dispute within the meaning of Section 2(1)(c) of the Act of 2015, unless, such commercial dispute comes within the various classifications of commercial disputes enumerated therein.

26. It is the contention of the respondent no. 1 that the dispute contained in the present suit is a commercial dispute within the meaning of Section 2(1)(c)(vii) of the Act of 2015.

27. Section 2(1)(c)(vii) of the Act of 2015 is as follows:

*"S.2. Definitions. - (1) In this Act, unless the context otherwise requires, -
....(c) 'commercial dispute' means a dispute arising out of –
...(vii) agreements relating to immovable property used exclusively in trade or commerce."*

28. Sub-section (vii) of Section 2(1)(c) of the Act of 2015 was considered in Ambalal Sarabhai Enterprises Limited (supra). It held as follows :

“A dispute relating to immovable property per se may not be a commercial dispute. But it becomes a commercial dispute, if it falls under sub-clause (vii) of Section 2(1)(c) of the Act viz. "the agreements relating to immovable property used exclusively in trade or commerce". The words "used exclusively in trade or commerce" are to be interpreted purposefully. The word "used" denotes "actually used"

29. Ambalal Sarabhai Enterprises Limited (supra) noted that a dispute relating to immovable property per say is not a commercial dispute. It needs to fall within sub-clause (vii) of section 2(1)(c) of the Act of 2015 to be one.

30. In the facts and circumstances of the present suit, the dispute does not relate to an immovable property per say. Title to the immovable property is not in dispute. Appellant seeks to be reimbursed for the sums that the appellant was made to pay by the respondent no.2 on behalf of respondent no.1, from the respondent no.1 in the present suit. Such a dispute to our understanding, does not come within Section 2(1)(c) of the Act of 2015.

31. Laxmi Polyfab Pvt. Ltd. (supra) held that, obtaining leave under Section 12A of the Act of 2015 was mandatory in respect of suits filed in the Commercial Division subsequent to December 11, 2020 and that, in

the event, such leave was not obtained, such suit was liable to be dismissed.

32. Patil Automation Pvt. Ltd. and Another (supra) held Section 12A of the Act of 2015 to be mandatory and that, if leave was not obtained thereunder, in respect of suits filed in the Commercial Division, subsequent to the order passed by the High Court, the same was liable to rejection under Order VII Rule 11 of the Code of Civil Procedure, 1908.

33. Since the present suit is not falling within the meaning of a commercial dispute under the Act of 2015, the same could not be filed in the commercial division and, therefore, the rigors of Section 12A of the Act of 2015 are not attracted.

34. In view of the discussions above, we allow the present appeal. The impugned judgment and order is set aside.

35. APDT/6/2024 along with connected application, if any, stands disposed of without any order as to costs.

(DEBANGSU BASAK, J.)

36. I agree.

(MD. SHABBAR RASHIDI, J.)