

**IN THE HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction  
ORIGINAL SIDE**

**APOT/68/2025  
WITH  
CS/220/2021  
IA NO: GA/1/2025  
MOLINA DEY  
VS  
RUNA KUNDU  
wt2  
OCOT/4/2025  
SMT MOLINA DEY  
VS  
RUNA KUNDU**

**BEFORE:**

**The Hon'ble JUSTICE ARIJIT BANERJEE**

**AND**

**The Hon'ble JUSTICE RAI CHATTOPADHYAY**

|                    |                                                                                                                                           |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| For appellant      | : Mr. Sabyasachi Chowdhury, Sr. Adv.<br>Mr. Meghnad Dutta, Adv.<br>Mr. Arindam Paul, Adv<br>Mr. Abhishek Shaw, Adv.                       |
| For the respondent | : Mr. Amitava Mukherjee, Sr. Adv.<br>Mr. Lalratan Mondal, Adv.<br>Ms. Antara Das, Adv.<br>Ms. Munmun Dubey, Adv.<br>Ms. Arpita Saha, Adv. |
| Judgment on        | : 20.08.2025                                                                                                                              |

**Arijit Banerjee, J. :-**

1. This appeal and cross-objection are directed against a judgment and order dated February 12, 2025, passed by a learned Judge of this Court in GA no. 9 of 2023 filed on CS no. 222 of 2021.
2. The appellant, Smt. Molina Dey (in short Molina) has filed the suit against the defendant, Smt. Runa Kundu (in short Runa), for eviction,

recovery of khas possession of the suit premises and mesne profits. Runa filed an application for rejection of the plaint. It is that application which was disposed of by the learned Single Judge with a direction that the plaint to be returned to the plaintiff i.e., Molina, with liberty to file the same before the appropriate Court in accordance with law. The learned Judge came to the conclusion that the suit is a commercial suit and therefore ought to be filed in the Commercial Division of the High Court. Being aggrieved, Molina, the plaintiff, has filed the instant appeal.

**3.** Runa has filed a cross appeal being aggrieved by certain findings/observations of the learned Single Judge.

**4.** We have heard the appeal and the cross appeal together, by consent of the parties.

**5.** The undisputed facts of the case are that Molina and her husband purchased the suit premises on April 28, 1993, and thereby became joint absolute owners thereof.

**6.** One Satya Ranjan Kundu was a monthly tenant under Molina and her husband in respect of the suit premises. Satya Ranjan died on September 24, 1998. Thereafter, the tenancy was transferred in the name of his wife, Smt. Durga Rani Kundu. Molina's husband died on June 5, 2008. Molina became the sole and absolute owner of the suit premises. Durga Rani continued as monthly tenant under Molina.

**7.** Durga Rani died on May 27, 2015, leaving behind her son Prabir Kumar Kundu as her only legal heir and representative. Prabir continued to be in occupation of the suit premises as tenant under Molina till he died on February 2, 2018. After his death, his wife Runa, the respondent/defendant

herein continues to be in occupation of the suit premises. She runs a business from the suit property and holds trade license therefor.

**8.** The respondent contends that since from the very inception of the tenancy, Satya Ranjan, then Durga Rani, thereafter Prabir and now Runa runs a business of ready-made garments under the name and style of “Jasoda Stores”, from the suit premises, and the Kolkata Municipal Corporation has issued trade license for such business, the suit filed by Molina is covered under Section 2(1)(c)(vii) of the Commercial Courts Act, (in short “CC Act”) 2015 and hence is a commercial suit. Therefore, the suit ought to have been filed in the Commercial Division of the High Court. This contention found favour with the learned Single Judge who directed the plaint to be returned for being presented before the appropriate Court.

**9.** The appellant / plaintiff however argues that just because the suit property is being used for commercial purpose, the present suit cannot be classified as a commercial suit.

**10.** Before proceeding further, we may note that Section 2(1)(c)(vii) of the CC Act defines ‘commercial dispute’ as “a dispute arising out of ..... (vii) agreements relating to immovable property used exclusively in trade or commerce”.

**11.** Learned Senior Counsel representing the appellant argued that firstly, there is no agreement relating to the suit premises. An agreement in these contexts must mean a formal written agreement. In any event, even assuming that there is an oral agreement between Molina and Runa or her predecessors in interest in respect of the suit premises, the dispute between the parties which forms subject matter of the suit does not arise out of such

agreement. The plaintiff's cause of action does not arise out of any agreement relating to the suit premises. The cause of action arises under the West Bengal Premises Tenancy Act, 1997 (in short, the 1997 Act).

**12.** Learned Senior Counsel submitted that after the demise of Durga Rani who could be considered as the original tenant after the death of Satya Ranjan, her son Prabir enjoyed protection as a tenant only for 5 years in terms of Section 2(g) of the 1997 Act. Runa never had any right, title or interest in respect of the suit premises. At the highest, any protection that Runa may have had under section 2(g) of the 1997 Act would be only till May 27, 2020, i.e., for a period of 5 years from the date of death of Durga Rani. After Prabir's death on February 2, 2018, and in any event after May 27, 2020, the defendant has no right to occupy the suit premises. She became a rank trespasser and continues to be so.

**13.** The learned Single Judge came to a finding that the defendant is not entitled to protection under Section 2(g) of the West Bengal Premises Tenancy Act, 1997. However, the learned Judge came to a conclusion that since the suit premises at all material times has been used as a shop room, i.e., for trade and commerce, the dispute involved in the suit becomes a commercial dispute. Hence, the High Court cannot entertain the suit in its ordinary original civil jurisdiction. The learned Judge directed the plaint to be returned to the plaintiff with liberty to file the same before the appropriate Court in accordance with law.

#### **Court's view**

**14.** The sole question which falls for determination in this appeal is whether or not the subject matter of the suit constitutes "commercial

dispute” within the meaning of Section 2(1)(c)(vii) of the CC Act. If that is so, then we must hold that there is no infirmity in the order under appeal.

**15.** The definition of “commercial dispute” in Section 2(1)(c) of the 2015 Act is exhaustive. This is clear from the fact that sub-section (c) of Section 2 (1) says that commercial dispute “means” a dispute arising out of matters enumerated in clauses (i) to (xxii) under Section 2(1)(c). A dispute arising out of an “agreement relating to immovable property used exclusively in trade or commerce”, is included within the meaning of “commercial dispute”. We must also note the Explanation provided under clause (xxii) under Section 2(1)(c) of the said Act, which reads as follows: -

“Explanation. - A commercial dispute shall not cease to be a commercial dispute merely because –

(a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;

(b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;”

**16.** Before proceeding further, I must note that the said Act was promulgated with the object of setting up Commercial Courts, Commercial Appellate Courts and Commercial Division and Commercial Appellate Division in the High Courts for speedy adjudication and disposal of commercial disputes of specified value and matters connected therewith or incidental thereto. As has been held by the Hon’ble Supreme Court in the case of **Ambalal Sarabhai Enterprises Limited v. K.S. Infraspace LLP &**

**Anr. reported in (2020) 15 SCC 585**, the phrase “commercial dispute” must be interpreted strictly and in a restricted manner. This is because if disputes are indiscriminately construed as “commercial disputes”, the Commercial Courts will get clogged and the salutary object of speedy disposal of commercial causes will be defeated. In this connection one may note the dictum of the Hon’ble Supreme Court in paragraphs 36 and 37 of the reported decision in **Ambalal Sarabhai Enterprises Limited, (Supra)** which reads as follows: -

“**36.** A perusal of the Statement of Objects and Reasons of the Commercial Courts Act, 2015 and the various amendments to the Civil Procedure Code and insertion of new rules to the Code applicable to suits of commercial disputes show that it has been enacted for the purpose of providing early disposal of high value commercial disputes. A purposive interpretation of the Statement of Objects and Reasons and various amendments to the Civil Procedure Code leaves no room for doubt that the provisions of the Act require to be strictly construed. If the provisions are given a liberal interpretation, the object behind constitution of Commercial Division of Courts viz. putting the matter on fast track and speedy resolution of commercial disputes, will be defeated. If we take a closer look at the Statement of Objects and Reasons, words such as "early" and "speedy" have been incorporated and reiterated. The object shall be fulfilled only if the provisions of the Act are interpreted in a narrow sense and not hampered by the usual procedural delays plaguing our traditional legal system.

**37.** 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" and it cannot be either "ready for use" or "likely to be used" or "to be used". It should be "actually used", Such a wide interpretation would defeat the objects of the Act and the fact tracking procedure discussed above."

**17.** The facts of the present case which are not in dispute are as follows: -

- (i) The original tenant of the suit premises was Satya Ranjan Kundu.
- (ii) After Satya Ranjan's death on September 24, 1998, his wife Durga Rani became the tenant. She can be considered to be the original tenant for the purpose of this proceeding.
- (iii) Durga Rani passed away on May 27, 2015, leaving Prabir Kumar Kundu as her only legal heir.
- (iv) Prabir occupied the suit premises till he died on February 2, 2018.
- (v) After Prabir's death, the defendant continues to occupy the suit premises. She runs a business from the suit property.
- (vi) There is no written agreement of lease or tenancy in respect of the suit premises. At least, no such agreement has been produced before us.

**18.** We shall proceed on the basis that the suit property is used exclusively in trade and commerce as the same appears to be an admitted position. The dispute forming the subject matter of the suit, in order to qualify as “commercial dispute” must find its origin in an agreement relating to the suit property. Section 2 (1) (c) (vii) of the said Act only mentions “agreement”. It does not say whether the agreement must necessarily be in writing. I would have thought in the context of the said Act, the legislature intended the word “agreement” to mean an agreement or contract of a formal nature i.e., a written agreement. However, even if I take a slightly liberal approach and say that an agreement within the meaning of Section 2(1)(c)(vii) would include an oral agreement, the same would not help the defendant to any extent. This is because, there is no agreement, written or oral, between the plaintiff and the defendant in respect of the suit premises in relation to which the dispute between the parties has arisen.

**19.** Every relationship of landlord and tenant is based on and presupposes an agreement of tenancy. Very often, such agreements are oral in nature and are evidenced by nothing more than payment of rent by the tenant and acceptance thereof by the landlord. There may have been such an oral agreement between Satya Ranjan and the landlords or between Durga Rani and the landlords. However, it is not the case of the defendant that there ever was any agreement between her and the plaintiff or that the plaintiff ever accepted rent from her. In fact, it is the specific case of the plaintiff, as pleaded in the plaint, that never ever any rent was received by her from the defendant.

**20.** In the absence of there being any agreement relating to the suit premises between the plaintiff and the defendant, I do not see how Section 2(1)(c)(vii) of the said Act would be attracted. Hence, in my opinion, the learned Single Judge was not correct in holding that the subject matter of the suit constitutes “commercial dispute” within the meaning of the said Act.

**21.** The argument of learned Senior Counsel representing the appellant that the plaintiff’s cause of action in this case arises under the West Bengal Premises Tenancy Act, 1997 and not in connection with any agreement relating to the immovable property in question, and, therefore, the dispute in question would not come within the purview of commercial dispute, is attractive. However, I need not decide that point in this case. Suffice it to say that there may be cases where a cause of action arising under a statute in relation to an immovable property also may qualify as commercial dispute within the meaning of Section 2(1)(c)(vii) of the said Act. For example, the cause of action in an eviction suit based on service of notice under Section 106 of the Transfer of Property Act, 1882, may be termed as a statutory cause of action but the same may amount to a 'commercial dispute also. If such dispute arises in relation to a written agreement, or may be an undisputed oral agreement pertaining to the concerned property which is used exclusively for trade and commerce. In this connection one may refer to the decision dated June 18, 2025, rendered by a Coordinate Bench of this Court in **IA No. GA-COM/2/2024 In CS (COM) NO. 4 of 2023 (T.E. Thomson & Company Limited v. Swarnalata Chopra Nee Kapur & Anr.)**.

**22.** In so far as the cross-objection of the defendant is concerned, I am of the view that since the learned Judge came to the conclusion that His Lordship did not have jurisdiction to entertain the suit in the ordinary original civil jurisdiction of this Court, the learned Judge ought not to have made observations on the merits of the case. It would have been proper for the learned Judge not to make any comment on whether or not the defendant is entitled to protection under Section 2(g) of the West Bengal Premises Tenancy Act, 1997, which reads as follows: -

“2(g) "tenant" means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and [in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family and were dependant on him or a person authorised by the tenant who is in possession of such premises,] [Words within the third brackets substituted for the words 'in respect of premises let out

for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family and were dependent on him' by W.B. Act 14 of 2002, w.e.f. 10.7.2001.] but shall not include any person against whom any decree or order for eviction has been made by a court of competent jurisdiction:

Provided that the time-limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependent on him and who does not own or occupy any residential premises,

Provided further that the son, daughter parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependent on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises <sup>1</sup>[on condition of payment of

fair rent]. This proviso shall apply *mutatis mutandis* to premises let out for non-residential purpose.”

**23.** In the result, the plaintiff's appeal succeeds. The judgment and order under appeal is set aside in so far as it holds the suit to be a “commercial suit”. The observations of the learned Single Judge in the impugned order touching the merits of the plaintiff's claim and the defendant's defence stand expunged. I make it clear that we are not deciding the correctness or otherwise of such observations pertaining to the merits of the case. We only

clarify that the learned Single Judge hearing the suit or any application connected therewith will not take into consideration the observations in the order impugned in this appeal relating to the merits of the dispute between the parties.

**24.** The appeal and the cross-objection stand disposed of accordingly.

**25.** Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

**I agree.**

**(ARIJIT BANERJEE, J.)**

**(RAI CHATTOPADHYAY, J.)**