

RVWO/12/2025
In ALP/2/2025
IA No.GA/1/2025

IN THE HIGH COURT AT CALCUTTA
Extra-Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

SRI SUBHAS KUMAR AND ORS.

-VERSUS-

MANI SQUARE LIMITED AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA DUTT (PAUL)

Date : 15th May, 2025.

Appearance:

Mr. Dhruva Ghosh, Sr. Adv.
Mr. Shuvasish Sengupta, Adv.
Mr. Sourik Majumdar, Adv.
Ms. Anyapurba Banerjee, Adv.
Ms. Ajeya Chowdhury, Adv.
...for the review applicant.

Mr. Joydeep Kar, Sr. Adv.
Mr. Pranit Bag, Adv.
Ms. Rituparna Chatterjee, Adv.
Ms. Sadia Sultana, Adv.
...for the respondent.

1. The prayer for review in the present application has been made on the ground that there is error apparent on the face of the judgment and order dated 27th March, 2025 passed in ALP/02/2025 for the reasons that there has been mis-conception of facts and law in the decision under review, which as stated in the application are as follows:-

- i) *The application for rejection of plaint filed under Order 7 Rule 11 in IA No.5 of 2023 by the review petitioners was not dismissed on the*

ground that the dispute inter se the parties was a commercial dispute.

- ii) It will be apparent from record that the issue of commercial dispute was not adjudicated by the learned trial Court in IA No.5 of 2023, nor the High Court or the Supreme Court.*
- iii) The Court has made observations on merits of the pending suits and interlocutory application.*
- iv) The case laws referred to in paragraph 15 of the judgment and/or order dated 27th March, 2025 are not applicable in the facts and circumstances of the case.*
- v) The reliefs granted are beyond the prayers sought for in ALP/2/2025.*

2. The following judgments have been relied upon by the parties herein:-

For the Petitioners/Revisionists/Respondents:-

- a) *Richa Bisht & Ors. vs. Union of India & Ors.* reported in *2020 SCC OnLine Utt 1386* (paragraphs 9, 10 & 11);
- b) *S. Murali Sundaram vs. Jothibai Kannan & Ors.* reported in *(2023) 13 SCC 515* (paragraphs 16 & 17).

For the Opposite Parties/Petitioners in ALP/2/2025:-

- a) *Kamalesh Verma vs. Mayawati & Ors.* reported in *(2013) 8 SCC 320* (paragraph 13);
- b) *S. Murali Sundaram vs. Jothibai Kannan & Ors.* reported in *(2023) 13 SCC 515* (paragraphs 16, 17 & 23);
- c) *S. Madhusudhan Reddy vs. V. Narayana Reddy & Ors.* reported in *(2022) 17 SCC 255* (paragraphs 20.2).

3. The opposite parties case while opposing the prayer for review is that in the guise of a prayer for review, the petitioners herein has actually made out a case of an appeal, which lies before a different forum.

4. It is further stated by the opposite parties that the petitioners by the grounds as stated in the review application has tried to put in their own interpretation of the findings in the judgment, which clearly is beyond the scope of review.

5. On hearing the parties and considering the case as made out along with the judgments relied upon, it appears that:-

a) In *S. Murali Sundaram vs. Jothibai Kannan & Ors (supra)*, a judgment relied upon by both sides, the Supreme Court clearly laid down the guidelines relating to the scope of review jurisdiction.

6. The petitioners' argument that the petition under Order 7 Rule 11 of C.P.C was not dismissed on the ground that the dispute inter se the parties was a commercial dispute, this Court having not gone into the merits of the case before the trial/commercial Court, made observations based on the materials on record, being the prayer of the petitioners herein in his petition under Order 7 Rule 11 of CPC (paragraph 3 in the order of the Commercial Court and Para 19 therein rejecting the petition under Order 7 Rule 11 of CPC).

7. Paragraph 3 of IA No.GA/1/20256 is reproduced here:-

*“3. The concerned **defendants** by dint of the instant application being I.A No. 05 of 2023 pray for rejection of the plaint stemming on the grounds that, i) **this is not a commercial***

suit, ii) the instant suit is barred by laws of limitation, iii) the plaint does not disclose any cause of action.”

8. The Commercial Court kept the issues of limitation and cause of action open and rejected the application under Order 7 Rule 11 CPC of the petitioners, wherein relief prayed for included the prayer that the suit before the Court was not a commercial suit.

9. In appeal the High Court in paragraph 16 of it's judgment held as follows:-

“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 petitioner 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.”

10. The said observation is the answer to the judgment in *Richa Bisht & Ors. (supra)* relied upon by the petitioners.

11. The High Court then affirmed the trial Court’s order.

12. The Supreme Court dismissed the SLP filed by the petitioners herein.

13. About the case laws, being not relevant, is a **matter of interpretation** and thus not subject to review.

14. No relief beyond the prayers have been granted, which includes prayer to **grant relief as deemed fit and proper by the Court.**

15. It is thus clear that the review application has been preferred, even though there is no error apparent on the face of the judgment/order under review.

16. The grounds on which the prayer for review has been made, are not grounds for review, there being no material error, manifest on the face of the judgment/order under review and thus **no miscarriage of Justice.**

17. Considering the grounds on which review has been prayed for, it appears that the review application is clearly an appeal in disguise as there is no error apparent on the face of the record.

18. The petitioners in the review application have sought to re-appreciate the materials on record which is not permissible under the forum of review, there being no prima facie misconception of fact or law in the judgment/order under review.

19. Regarding the submission made by Mr. Ghosh, that the petitioners apprehend that the order under review may influence, the Court while deciding the petition under Order 7 Rule 10 CPC filed in the commercial suit, it is made clear that the commercial court while deciding the application under order 7 Rule 10 CPC shall do so on its independent findings, as **this Court while considering the prayer for transfer has not gone into the merit of any of the issues in the two suits.**

20. Thus there being no ground for review having been made out, **RVWO/12/2025 arising out of ALP/2/2025 stands dismissed.** Consequently, the connected application **IA No.GA/1/2025 also stands dismissed.**

(SHAMPA DUTT (PAUL), J.)