

ALP/13/2025

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

AMIT NEWER & ANR.

-VERSUS-

MOHAMMED ISLAM & ANR.

BEFORE:

The Hon'ble JUSTICE SHAMPA DUTT (PAUL)

Date : 20th November, 2025.

Appearance:

Mr. Krishnaraj Thaker, Sr. Adv.

Mr. Kaushik Kejriwal, Adv.

Mr. Ramendu Agarwal, Adv.

Mr. Apoorva Choudhury, Adv.

.... for the petitioner.

Mr. Arik Banerjee, Adv.

Mr. Arijit Roy, Adv.

Ms. Shreyashi Maity, Adv.

...for the respondent No.1.

The Court: This application under Clause 13 of the Letters Patent, 1865 has been preferred praying for transfer of Title Suit No.968 of 2019 (Md. Islam vs. Om Prakash Newar & Ors.) pending before the Court of the learned VIth Bench, City Civil Court at Calcutta to this Hon'ble Court in its Extra-ordinary Original Jurisdiction for its trial and determination.

It is the case of the petitioner that the petitioner is the landlord/owner in respect of a shop room at the ground floor at premises No.24A, Shakespeare Sarani, Kolkata- 700 017 (suit property) and the respondent no.1 is a monthly tenant wherein he runs a hair cutting saloon

under the name and style “Hair Studio”. It is the case of the petitioner that the said tenancy is governed by the provisions of Transfer of Property Act, 1882. It is further stated that as the respondent no.1 defaulted in payment of rent and other charges, the petitioner was intending to file an eviction suit. It appears that on or about July 25, 2019 the respondent no.1 instituted a suit before the learned Judge, VIth Bench, City Civil Court at Calcutta, being Title Suit No.968 of 2019 (Md. Islam vs. Om Prakash Newar & Ors.) against the petitioners and the respondent no.2 herein. The said suit is a suit for declaration of tenancy rights and injunction.

As the respondent no.1 defaulted in paying rent and was in breach of the agreement between the parties, the petitioner issued a notice dated August 16, 2019, through the learned Advocate on behalf of the petitioner, under Section 106 of the Transfer of Property Act, 1882 and sent by speed post with acknowledgement due to the respondent no.1 and duly terminated the said tenancy. The said notice was duly received by the respondent no.1 and the said tenancy has come to an end.

As the respondent no.1 did not vacate the premises on receiving the notice to quit, the petitioner instituted a suit being CS No.51 of 2020 (Md. Islam vs. Om Prakash Newar & Ors.) before the High Court, inter alia, for eviction and mesne profit. The said suit was, however, withdrawn with liberty to sue afresh vide order dated 15th February, 2021.

The petitioner, then, as per liberty granted, instituted a fresh suit on 5th July, 2021 before the High Court against the respondent no.1 herein, being CS(Com) No.276 of 2024 (Old C.S. No.115 of 2021) (Amit Newar & Anr. vs. Md. Islam). **The said commercial suit was instituted on the basis of a specific plea raised by the respondent no.1 in the earlier suit.**

In the present suit, the petitioner before the High Court has prayed for eviction and recovery of vacant and peaceful possession of the same suit premises of which the petitioner has prayed for declaration as a tenant. Other connected reliefs have also been prayed for. The petitioner in the present application has prayed for transfer of Title Suit No.968 of 2019 pending before the City Civil Court, Calcutta to the High Court on the ground that the parties to the suit are same and the subject property in two cases are same.

Learned counsel for the petitioner has relied upon the following judgments of this Court,:

- i) *E.D. Enterprises Pvt. Ltd. vs. Kaiser Begum & Ors.* reported in MANU/WB/0622/2021; and
- ii) *Mani Square Ltd. & Ors. vs. Subhash Kumar & Ors.* reported in MANU/WB/0716/2025

On the other hand, learned counsel for the respondent has cited the decisions in following cases :

- a. *Rupendra Deb Raikut vs. Ashrumati Debi & Ors.* reported in 1949 SCC OnLine Cal 44 : AIR 1951 Cal 286; and
- b. *Nirmal Chandra Dutta vs. Pradip Kumar Dutta* reported in 1985 SCC OnLine Cal 56 : AIR 1986 Cal 177

It appears from the judgments relied upon by the respondents herein that the facts and circumstances in those judgments are not similar to the facts and circumstances in the present case. Rather, the facts narrated in the case of **ED Enterprises Pvt. Ltd.** (*supra*) cited on behalf of the petitioner, are very similar to that of the present case. Relevant paragraphs of the said judgment are reproduced herein:

“4. The petitioner thereafter instituted C.S. No.105 of 2021 before the Commercial Division of this Court praying for a decree for vacant, khas and peaceful possession of the suit premises and other consequential reliefs.

5. According to learned counsel for the petitioner, the suit pending before the City Civil Court should be transferred since the parties are the same and both the proceedings relate to the same suit property whereby common questions of law and fact would appear. Counsel submits that both the suit should be heard by this Court to avoid overlapping decisions and for the purpose of saving litigation costs.”

High Court, on considering the case of both the parties then, held as follows:

“12. On the other hand, the pleadings in both the suits indicate that the subject matter of the dispute involve the same property

between the same parties leading to the presumption that the adjudication would necessarily involve common questions of law and evidence. There is hence good reason to transfer T.S. No.571 of 2020 pending before the City Civil Court to this Court so that the said suit and C.S.105 of 2021 can analogously be heard by this Court. Clause 13 of the Letters of the High Court of Judicature at Fort William in Bengal mandates that this Court shall have the power to remove any suit falling within the jurisdiction of this Court and subject such suit to its superintendence when the Court thinks it proper to do so for the purpose of justice. On considering the facts, the Court is of the view that this is a fit case for exercising the power under Clause 13 for preventing multiplicity of proceedings, conflicting decisions and unnecessary litigation costs. An order passed by a learned Single Judge in Shyam Sunder Jalan vs. Kamal Agarwala; ALP No.23 of 2014 may be referred to in this context where a similar issue was involved.

13. A.L.P. No.3 of 2021 is allowed and disposed of for the above reasons. T.S. No.571 of 2020 pending before the VIth Bench, City Civil Court at Calcutta is directed to be transferred to this Court to be heard along with C.S. No.105 of 2021. The department is directed to take appropriate steps and parties are given liberty to mention for listing of the suits.”

In the case of **Mani Square** (*supra*) relied upon by the petitioner, this Court categorically held as to when a title suit can be transferred and be heard along with a commercial suit.

In the present case, admittedly, the suit pending before the High Court is a commercial suit. The said commercial suit was instituted on the

basis of the specific plea taken by the respondent no.1 herein that the premises in question is a commercial property.

As such, as the title suit has been initiated before the City Civil Court by the respondent no.1 herein in respect of the **same suit property** and **the said property being commercial in nature**, as per the specific plea of the respondent no.1 himself, the suit before the City Civil Court is also, in substance, commercial in nature. It also appears that in the two suits, the reliefs prayed for relate to the self-same property.

Since it appears that the dispute in both the suits is, between the same parties in respect of the self-same suit property, the issue in the Title Suit filed by the respondent no.1 herein, will also qualify as a commercial dispute and thus, can be heard by the Commercial Court along with the petitioner's commercial suit.

Considering the said facts, **ALP No.13 of 2024 stands allowed**. The records of Title Suit No.968 of 2019 (Md. Islam vs. Om Prakash Newar & Ors.) pending before the Court of the learned VIth Bench, City Civil Court at Calcutta be withdrawn and transferred to this Hon'ble Court in its Extraordinary Original Jurisdiction for its analogous trial and determination.

(SHAMPA DUTT (PAUL), J.)