

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

**G.A. No. 3 of 2024
In
CS No. 282 of 2022**

Basu House Private Limited

Versus

Rubee Air Freight Limited

Mr. Shyamal Chakraborty
Ms. M. Jaiswal
Mr. Gaurav Kumar
Mr. Debajyoti Mondal

... For the plaintiff.

Mr. Aditya Mondal
Mr. Oishik Chatterjee.

... For the defendant.

Hearing Concluded On : 15.01.2024

Judgment on : 22.01.2025

Krishna Rao, J.:

1. The defendant has filed the present application being G.A. No. 3 of 2024 praying for return of plaint on the ground that the suit filed by the plaintiff is commercial in nature but the plaintiff has filed the suit before the Non-Commercial Division.
2. Learned Counsel for the defendant submits that in the plaint, the plaintiff has stated that the entire building is used for commercial purpose and the suit premises was let out to the defendant for business.
3. Learned Counsel for the defendant submits that it is the specific case of the plaintiff that the defendant has approached the plaintiff for letting out office space for commercial purposes in the second floor of the premises. He submits that the plaintiff has also stated in the plaint that the defendant is also liable to pay commercial sur-charge, increased property tax and other taxes that may be levied by competent authority.
4. Learned Counsel for the defendant submits that the plaintiff has filed the suit against the defendant for eviction of the defendant on the ground of bona fide requirement as the plaintiff has made out a case in the plaint that the entire office space which is let out to the defendant is reasonably required by the plaintiff for their own business and to expand their business.

5. Learned Counsel for the defendant submits that the tenancy agreement entered between the plaintiff and the defendant dated 22nd April, 2001 with respect to the suit premises in Clause-1(d) it is specifically mentioned that the space shall be used by the new tenant only for its office and for no other purposes.
6. Learned Counsel for the defendant submits that the case of the plaintiff is covered under Clause (vii) of Section 2(1)(c) of the Commercial Courts Act, 2015. He relied upon the judgment in the case of ***Ambalal Sarabhai Enterprises Limited vs. K.S. Infraspace LLP and Another*** reported in ***(2020) 15 SCC 585***.
7. Learned Counsel for the plaintiff submits the relation between the plaintiff and the defendant was landlord and tenant and there is no commercial transaction between the plaintiff and the defendant. He submits that the plaintiff before institution of the suit has issued notice under Section 6(4) of the West Bengal Premises Tenancy Act, 1997 for eviction of the defendant but inspite of issuance of notice, the defendant failed to vacate the premises.
8. Learned Counsel for the plaintiff submits that the writ of summons of the suit was duly served upon the defendant on 16th December, 2022 but the defendant has neither filed written statement nor has taken any steps for depositing the admitted arrears of rent along with current monthly rent before this Court.

9. Learned Counsel for the plaintiff submits that as per section 7(3) of the West Bengal Premises Tenancy Act, 1997 on failure of the tenant to deposit entire arrears of monthly rent along with interest and current monthly rent, the Court has the obligation to strike out the defence either on the application of the plaintiff or suo motu.
10. Learned Counsel for the plaintiff submits that inspite of receipt of writ of summons by the defendant of the instant suit, the defendant has not filed written statement. He submits that the defendant has filed the instant application only with the intention to prolong the suit and to delay the trial.
11. Learned Counsel for the plaintiff submits that the dispute between the plaintiff and the defendant is not a commercial dispute and is not coming under the purview of any of the clauses of Section 2(1)(c) of the Commercial Courts Act, 2015.
12. Learned Counsel for the plaintiff relied upon the judgment in the case of **Deepak Polymers Private Limited Vs. Anchor Investments Private Limited** reported in **2021 SCC OnLine Cal 4323** and submitted that the plaintiff has filed the suit for recovery of possession of the suit premises after issuance of notice under Section 6(4) of the West Bengal Premises Tenancy Act, 1997 as the defendant fails to comply with the notice by vacating the premises.
13. Heard the Learned Counsel for the respective parties, perused the materials on record and the judgments relied by the parties. The issue

in the present application is whether the suit filed by the plaintiff is commercial in nature or not. The defendant relied upon Clause (vii) of Section 2(1)(c) of the Commercial Courts Act, 2015 which reads as follows:

“(vii) agreements relating to immovable property used exclusively in trade or commerce.”

- 14.** In paragraph 23 of the plaint, the plaintiff has stated that *“The entire building is used for commercial purpose and the said accommodation was let out to the defendant for commercial purpose and the entire area surrounding the suit premises is a business area”*. In paragraph 17 of the plaint also, the plaintiff has stated that *“The plaintiff is unable to run their business properly and/or expand their business having shortage of accommodation. The entire office space which was let out to the defendant is reasonably required by the plaintiff for their own business and/or to expand business”*.

- 15.** Clause 1(d) of the agreement dated 22nd April, 2001 entered between the plaintiff and the defendant reads as follows:

“The said space shall be used by the new tenant only for its office and for no other purposes”.

- 16.** The plaintiff has relied upon Section 6(4) of the West Bengal Premises Tenancy Act, 1997 under which the plaintiff has issued notice to the defendant for vacating and handing over possession of the suit premises but the defendant failed to vacate the premises in terms of notice of the plaintiff.

17. Section 6(4) of the West Bengal Premises Tenancy Act, 1997 reads as follows:

“6(4). *Notwithstanding anything in any other law for the time being in force, no [suit] for the recovery of possession of any premises on any of the grounds as aforesaid, except on the ground mentioned in clause (e) of sub-section (1), shall be instituted by the landlord unless he has given to the tenant one month's notice expiring with a month of the tenancy.”*

The plaintiff has issued notice to the defendant to quit the tenancy but the defendant has not delivered vacant possession of the premises to the plaintiff. The said provision does not bar to file the suit in the Commercial Division. Neither Section 6 nor any sub-clauses of the said Section create any bar to initiate suit for eviction before the Commercial Court.

18. In the case of ***Ambalal Sarabhai Enterprises Ltd. (Supra)***, the Hon'ble Supreme Court held that

“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 fast tracking procedure discussed above.”*

In the present case, the plaintiff has made specific averment that the entire building is used for commercial purpose and the said accommodation was let out to the defendant for commercial purpose. The agreement also specified that the said space shall be used by the tenant only for its office and for no other purposes.

19. Considering the averments made in the pleading and the clause of the agreement, this Court finds that the plaintiff has let out the suit premises to the defendant exclusively for the purpose of business and is squarely covered under Section 2(1)(c)(vii) of the Commercial Courts Act, 2015.
20. The Judgment relied by the plaintiff in the case of ***Deepak Polymers Private Limited (Supra)*** is distinguishable from the facts and circumstances of the present case.
21. In view of the above, C.S. No. 282 of 2022 (Basu House Private Limited –vs- Rubee Air Freight Limited) is returned to the plaintiff with the liberty to be presented before the appropriate Court in accordance with law.
22. **G.A. No. 3 of 2024 is allowed. C.S. No. 282 of 2022 is disposed of.**

(Krishna Rao, J.)