

13.05.2026
(D/L-349)
Ct.-06
(NMD)

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

C.O. 158 of 2025

Global Calcium Private Limited
-Vs-
West Bengal Chemical Industries Limited

Mr. Amarjeet Kumar,
Mr. Dipankar Majumdar,
Ms. Shruti Jhunjunwala,
Mr. R. Chakraborty
... for the Petitioner
Mr. Saunak Sarbajna
... for the Opposite Party

1. Affidavit-of-services filed in Court today, are taken on record.
2. This application under Article 227 of the Constitution of India is directed against an order dated November 27, 2024 passed by the learned Judge, Commercial Court, Rajarhat North 24 Parganas thereby dismissing the petitioner's application under Order VII Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 praying for return of plaint.
3. The opposite party has instituted a suit being T.S. No. 03 of 2022 (CC) before the learned Commercial Court, Rajarhat praying, *inter alia*, for decree for damages for infringement of patent and for permanent injunction. In the said suit, the petitioner filed an application under Order VII Rule 10 read

with Section 151 of the Code praying for return of plaint asserting that the learned Commercial Court lacks territorial jurisdiction to hear and decide the suit. Such application has been turned down by the learned Commercial Court by the order impugned observing that an application filed by the defendant seeking return of plaint is not maintainable. Hence the revisional application.

4. Learned Advocate appearing for the petitioner submits that the learned Trial Court has committed a jurisdictional error in dismissing the petitioner's application for return of plaint merely on the ground of the same having been filed by the defendant in the suit by relying on a judgment of the Hon'ble High Court of Karnataka in the case of ***Acharya Pathasala Education Trust Vs. Mrs. Rashmi w/o. Ramesh Khatawar & Anr.*** (WP No. 100173 of 2024) decided on January 22, 2024.
5. He cites judgment of the Hon'ble Division Bench of the same Hon'ble Court in the case of ***M/s. Sekar Poultry Feeds Vs. Annapurna Organics Pvt. Ltd.*** and submits that in the said judgment, the earlier judgment of the Karnataka High Court has been found to be *per incuriam*.
6. Learned Advocate appearing for the opposite party submits that the learned Trial Court has reached a just conclusion. He further submits that in any

case, there is no lack of territorial jurisdiction as alleged.

7. Having heard the learned Advocates appearing for the respective parties and having considered the material on record, this Court is of the considered view that the learned Trial Court has committed a jurisdictional error in dismissing the petitioner's application under Order VII Rule 10 of the Code without deciding the same on merits.
8. The learned Trial Court has held that at the said stage, the learned Trial Court was not required to adjudicate as to whether the learned Court had jurisdiction to hear the suit or not. The learned Trial Court has further held that such an issue would be decided as a preliminary issue "*when the Court considers the question of forum or authority before whom the suit should have been filed or which Court has the territorial jurisdiction to try the instant suit.*" The learned Court has further observed that "*on the basis of the instant application, there is no necessity to adjudicate whether there is any cause of action for filing the suit or whether a part or whole of the cause of action for the suit has arisen within the territorial jurisdiction of this Court or not.*"
9. The learned Court has then ultimately rejected the petitioner's application for return of plaint on the ground that the same had been filed by the defendant and not by the plaintiff.

10. A perusal of the provision of Order VII Rule 10 would make it evident that the said provision not only confers authority but also imposes a corresponding duty on the Court to ascertain as to whether the Court has or lacks jurisdiction to entertain a suit. Such power can be exercised even *suo motu* and it should be exercised at the threshold.
11. If that be the case, there is no reason why such power cannot be exercised upon an application being made by the defendant. An application made by any of the parties, would just be a trigger for the Court to exercise the power and to determine whether the Court has or lacks jurisdiction to entertain the suit. Once the Court reaches a conclusion that the Court lacks jurisdiction it would be duty bound to return the plaint under Order VII Rule 10 of the Code.
12. Having not decided the said application on merits, the Court has committed a jurisdictional error and has failed to exercise jurisdiction vested in it.
13. On such ground alone, the order dated November 27, 2024 is set aside. The application filed by the defendant petitioner under Order VII Rule 10 of the Code stands revived.

14. The learned Trial Court shall consider such application afresh on merits and decide the same in accordance with law.
15. It is made clear that this Court has not expressed any opinion on the merits of the said application and the question as to whether the Court has or lacks territorial jurisdiction to entertain the suit will be decided by the Court independently upon taking into consideration the averments made in the plaint, in accordance with law.
16. It shall be open to the parties to make appropriate submissions in support of their respective stands.
17. With the above observations C.O. 158 of 2025 stands disposed of. There shall be no order as to costs.
18. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)