

**IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE DIVISION  
ORIGINAL SIDE**

**APO/144/2023  
WITH  
CS/85/2016**

**AWAM MARKETING LLP  
VS  
M/S ORIENT BEVERAGES LIMITED AND ORS**

**BEFORE:**

**The Hon'ble JUSTICE DEBANGSU BASAK**

**-AND-**

**The Hon'ble JUSTICE MD. SHABBAR RASHIDI**

For the Appellant : Mr. Sabyasachi Choudhury, Sr. Adv.  
Mr. Soumabho Ghose, Adv.  
Ms. Tiana Bhattacharya, Adv.  
Mr. Souvik Majumdar, Adv.  
Ms. Anyapurba Banerjee, Adv.

HEARD ON : 01.04.2026  
DELIVERED ON : 01.04.2026

**DEBANGSU BASAK, J.:-**

1. Appeal is at the behest of a plaintiff and directed against the judgment and order dated December 5, 2022 passed in GA/4/2021 in CS/85/2016.
2. By the impugned judgment and order, learned Single Judge dismissed the application for judgment on admission filed by the appellant.
3. None appears for the respondent despite service.

4. Plaintiff filed a suit for declaration that the plaintiff is entitled to be and remain in possession of the suit property and that, the defendants are trespassers. Plaintiff also sought for decree of khas possession and mesne profit.
5. Plaintiff's case is that initially a lease deed was entered into. The lease deed expired by efflux of time. Some of the defendants entered into unlawful possession of the suit property through some of the lessees.
6. Essentially, plaintiff is seeking recovery of possession and mesne profit on the basis of expiry of a lease subsisting in respect of an immovable property against some of the defendants while as against others as trespassers.
7. Lease deed relates to an immovable property which is used in commerce that is to say that office spaces were let out.
8. In **2026:CHC-OS:84-DB (Auto Fuel & Services Vs. Amalgamated Fuels Limited & Anr.)** and **2026:CHC-OS:85-DB (Indian Oil Corporation Limited Vs. Jayanta Krishna Datta And Another)**, it was held that Section 12A was mandatory. It was also held that, since, the plaintiff as the lessor was seeking eviction of lessees, after expiry of the lease, on the ground of such lessees becoming trespassers, nonetheless, since, the plaint refers to a registered deed in respect of an immovable property used in commerce presently, the disputes involved in the suit fell within the meaning of Section 2 (1) (c) (vii) of the Commercial Courts Act, 2015.
9. In the facts and circumstances of the present case, the same ratio as that of **Indian Oil Corporation Limited (supra)** and **Auto Fuel**

**& Services (supra)** applies. As against some of the defendants the suit is on the basis of expiring of lease. The other defendants cannot be said to be not necessary and proper parties.

10. The present suit was filed in 2016. In **AIR 2021 Cal 190 (Laxmi Polyfab Pvt. Ltd. Vs. Eden Realty Ventures Pvt. Ltd. and Another)**, Section 12A was held to be mandatory. **Laxmi Polyfab Pvt. Ltd. (supra)** was approved by the Hon'ble Supreme Court in **2022 10 SCC 1 (Patil Automation (P) Ltd. Vs. Rakheja Engineers (P) Ltd..**
11. **Patil Automation (P) Ltd. (supra)** was noticed in **2025 9 SCC 424 (Dhanbad Fuels Private Limited Vs. Union of India and Anr.).**
12. In **Dhanbad Fuels Private Limited (supra)**, it was directed that if the suit was instituted on or after the decision in **Patil Automation (supra)** i.e. August 20, 2022, without complying with Section 12A of the Act of 2015, then, it will meet the rejection under Order VII Rule 11 of the Code of Civil Procedure. If, however, the suit is instituted prior to August 20, 2022 without complying with Section 12A of the Act of 2015 and the same does not fall within the exceptional categories, then, it would be open to the Court to keep the suit in abeyance and direct the parties to explore the possibility of mediation with the Act of 2015. The present suit was instituted in 2016. Obviously, it was prior to August 20, 2022.
13. Since, the suit involves a commercial dispute within the meaning of the Act of 2015, it would be appropriate to invoke powers under Section 15 of the Act of 2015 and direct the Department to

transfer CS/85/2016 to the Commercial Division. Department will allot a new number immediately on transmission of CS/85/2016 to the Commercial Division. Immediately on transfer of CS/85/2016, Department will treat CS/85/2016 as disposed of in its records.

- 14.** The impugned judgment and order was passed on December 5, 2022 in the non-Commercial Division. The learned Single Judge did not notice that the suit involved a commercial dispute within the meaning of the Act of 2015. Learned Single Judge did not pass the impugned judgment and order in the Commercial Division.
- 15.** In such circumstances, the impugned judgment and order dated December 5, 2022 is set aside. The application on which the impugned judgment and order was passed is revived. Such application may be decided by the learned Single Judge, in accordance with law, without being influenced by the impugned judgment and order dated December 5, 2022, in any manner whatsoever.
- 16.** APO/144/2023 is disposed of without any order as to costs.

**(DEBANGSU BASAK, J.)**

- 17.** I agree.

**(MD. SHABBAR RASHIDI, J.)**