

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

A.P.O. No. 126 of 2023

IN

CS 340 OF 2000

IA NO: GA 2 OF 2024

GA 4 OF 2025

TRACTEL TIRFOR INDIA PVT. LTD.

VS

TRACTEL INTERNATIONAL S.A.S.

For the Appellant : Mr. Abhijit Chatterjee, Sr. Adv.
Mr. Anindya Basu, Adv.
Mr. Amit Kumar Saha, Adv.

For the Respondent : Mr. Debnath Ghosh, Sr. Adv.
Ms. Rajshree Kajaria, Adv.
Mr. Soumabho Ghose, Adv.
Ms. Vrinda Kedia, Adv.
Mr. Ankit Prakash, Adv.

Hearing Concluded on : December 12, 2025

Judgement on : January 21, 2026

DEBANGSU BASAK, J.:-

Contents

Scope of the Appeal	2
Contentions of the Appellant.....	2
Contentions of the Respondent No. 1	6
Genesis	8
Issues	10
Analysis	10
(i) Transfer architecture under Section 15.....	10
ii) Proceeding before the Transferee Court.	13
(iii) Lodgement of Writ of Summons and its failure.	15
(iv) Adjudication of a matter where a Court lacks jurisdiction	21
Conclusion.....	26

Scope of the Appeal

1. Appellant has assailed the order dated March 28, 2023 passed in IA GA 5 of 2023 in CS 340 of 2000.
2. By the impugned order dated March 28, 2023, learned Single Judge has dismissed the application of the appellant seeking extension of time to file written statement.

Contentions of the Appellant

3. Learned Senior Advocate appearing for the appellant has contended that, the writ of summons of the suit was never served upon the defendant as, the same was never lodged by the plaintiff. Therefore, there was no delay in filing the written statement. In fact, the suit is liable to and should be dismissed for not lodging the writ of summons.

4. In support of the contention that, the writ of summons was not lodged by the plaintiff in the suit, learned Senior Advocate appearing for the appellant has drawn the attention of the Court to the order dated November 7, 2025 and the report of the office of the Sheriff, pursuant to the order dated November 7, 2025. He has pointed out that, the report of the Office of the Sheriff dated November 11, 2025 states that, no writ of summons for the suit was ever lodged. Consequently, he has contended that, the question of the time period to enter appearance by the appellant in the suit did not commence. Resultantly, the time period to file written statement has not commenced.

5. Learned Senior Advocate appearing for the appellant has contended that, the finding of the learned Single Judge that, writ of summons was lodged and served upon the appellant, is perverse in view of the materials on record.

6. Learned Senior Advocate appearing for the appellant has relied upon Chapter VIII Rules 6 and 7 of the Original Side Rule. He has contended that, the Rules of the Original Side prescribe a time limit for the purpose of lodging the writ of summons. After expiry of such period prescribed, the plaintiff has to obtain leave to lodge the writ of summons. In the present case, the plaintiff has not lodged

any writ of summons nor asked for extension of time to lodge the writ of summons.

7. Learned Senior Advocate appearing for the appellant has drawn the attention of the Court to Order IX Rule 2 of the Code of Civil Procedure, 1908 and contended that, in the event of non-lodgement of the writ of summons the suit is to be dismissed.

8. In support of the contentions that, the suit has to be dismissed due to non-lodgement of the writ of summons. Learned Senior Advocate appearing for the appellant has relied upon ***ILR 1955 Volume 1 Cal 119 (Bengal Chand Company vs. Durga Sankar Gouri Sankar)***, ***1994 Volume 2 Calcutta High Court Notes 161 (State Bank of India vs. Tarit Appliances (P) Ltd. & Ors.)***, ***2005 SCC OnLine Cal 214 (East Bengal Steam Services Ltd. Vs. East Bengal Steam Service & Engg. Works Workers Co-operative Industrial Society Ltd. & Ors.)***, ***2007 SCC OnLine Cal 690 (Bhairu Ratan Pachisia & Ors. Vs. International Club & Ors.)***, ***2007 SCC OnLine Bom 614 (Tardeo Properties Pvt. Ltd. Vs. Bank of Baroda)***, ***2009 SCC OnLine Cal 251 (Hindusthan Motors Limited vs. National Insurance Company Limited)***, ***2010 SCC OnLine Cal 73 (NPR Finance Limited Vs. Deepak Jhunjhunwala)***.

9. Relying upon ***2005 Volume 2 Supreme Court Cases 145 (Iridium India Telecom Ltd. vs. Motorola Inc.)***, learned Senior

Advocate appearing for the appellant has contended that, in the event of a conflict between the provisions of the Code of Civil Procedure, 1908 and the Letters Patent, 1865, the Letters Patent, 1865 will prevail.

10. Relying upon **1972 Volume 4 Supreme Court Cases 683 (*The Pullangoda Rubber Produce Co. Ltd. vs. State of Kerala and Another*)**, learned Senior Advocate appearing for the appellant has contended that, an admission can be explained. The admission that, the appellant had entered appearance in the suit and filed written statement is to be understood in the context of the materials presently available that is to say that, the writ of summons in the suit was never served for the appellant to enter appearance in the suit.

11. Learned Senior Advocate appearing for the appellant has contended that, the order dated September 20, 2022 passed by the learned Single Judge, posting the suit for ex parte hearing is not in consonance with the provisions of Chapter IX Rule 3 of the Original Side Rules as the writ of summons for the suit was not lodged for service.

Contentions of the Respondent No. 1

12. Learned Senior Advocate appearing for the respondent No. 1 has contended that, the appellant itself stated that it filed written statement in the suit. He has drawn the attention of the Court to the order dated December 16, 2020 in this regard.

13. Relying upon the letter issued by the advocate-on-record for the appellant learned Senior Advocate appearing for the respondent No. 1 has contended that, the appellant entered appearance in the suit initially on January 9, 2001 and subsequently with the change of the advocate-on-record, on April 21, 2022. He has referred to Chapter VIII Rule 15, of the Original Side Rules and contended that, by reason of entering into appearance, the appellant waived the service of the writ of summons.

14. Learned Senior Advocate appearing for the respondent No. 1 has drawn the attention of the Court to the fact that the provisions of Order IX Rule 2 of the Code of Civil Procedure, 1908 was introduced on July 1, 2002. Therefore, the authorities cited on behalf of the appellant on the issue of dismissal of the suit has no manner of application as, the suit was filed in 2000.

15. Learned Senior Advocate appearing for the respondent No. 1 has questioned the maintainability of the present appeal. He has submitted that, the suit was transferred to the Commercial Court by

an order dated January 24, 2023. The impugned order was passed subsequent to the order of transfer to the Commercial Court on January 24, 2023. Relying upon **2019 SCC OnLine Cal 3215 (Surajit Sen vs. Royal Bank of Scotland NV)** and **2024 SCC OnLine Cal 2530 (Sabri Properties Pvt. Ltd. and Others vs. Frostees Exports (India) Pvt. Ltd.)**, learned Senior Advocate appearing for the respondent No. 1 has contended that, the fact that, the Court passing the impugned order dated March 28, 2023 did so where the applications appeared in the non-commercial matters, but, did not detract from the fact that, the appeal was not maintainable.

16. Learned Senior Advocate appearing for the respondent No.1 has relied upon **2021 SCC OnLine Mad 17455 (Aarur Tamilnadan vs. S. Shankar and Others)** on the scope of appeal under the provisions of the Commercial Courts Act, 2015. He has relied upon **2025 SCC OnLine SC 582 (Garden Reach Shipbuilders and Engineers Limited vs. Grse Limited Workmens Union and Others)** on the issue of allocation of business and determination governing the subject matters which a Bench of the Court may decide.

17. Learned Senior Advocate appearing for the appellant has drawn the attention of the Court to Sections 2, 9, 13, 15 of the

Commercial Courts Act, 2015. He has contended that, by reason thereof the present appeal is not maintainable.

Genesis

18. The records made available to us have established that, the present suit was filed on or about August 28, 2000 by the respondent No. 1. Respondent No. 1 as the plaintiff had sought reliefs regarding intellectual property rights in the suit. Respondent No. 1 as the plaintiff had filed an interim application being GA No. 3480 of 2000 in which, from time to time diverse orders were passed. The appellant as the defendant No. 1 was represented by an advocate. In such application such advocate had entered appearance on January 9, 2001. The present advocate-on-record for the appellant had entered appearance on April 21, 2022.

19. The application of the respondent No. 1 being GA 3480 of 2000 had been dismissed for default on July 23, 2018. The respondent No. 1 as the plaintiff had filed an application for restoration of GA No. 3480 of 2000. By an order dated December 16, 2020, The learned Single Judge had allowed GA 2953 of 2019 and restored GA 3480 of 2000. The order dated December 16, 2020 had recorded that, the appellant filed written statement. The appellant had, in fact, not filed any written statement as wrongly recorded on

December 16, 2000. The impugned order has acknowledged that such recording was incorrect.

20. By an order dated September 20, 2022 the learned Single Judge had fixed the suit for ex parte hearing against the appellant on November 18, 2022.

21. Appellant had applied for recalling of the order dated November 18, 2022 and for extension of time to file written statement by way of IA GA No. 5 of 2023 in which the impugned order was passed rejecting such prayer.

22. By an order dated January 24, 2023 learned Single Judge had directed the suit to be placed before the appropriate determination as the subject matter related to intellectual property rights. The suit had nonetheless appeared in the non-commercial determination before the learned Single Judge on March 28, 2023, June 19, 2023, June 26, 2023 and July 5, 2023.

23. We had called for the original plaint and on perusal thereof in presence of the learned Counsel for the parties we found that the Department treated the suit to be transferred to the Commercial Division pursuant to the order dated July 5, 2023.

24. By a report dated March 10, 2025, the office of the Sheriff has reported that, no writ of summons was ever lodged by the respondent No. 1 as the plaintiff in CS No. 340 of 2000. Nothing has

been placed before us to establish that such report is incorrect. Office of the Sheriff has filed such report pursuant to the order dated March 3, 2025.

Issues

25. The following issues have arisen for consideration in the present appeal :-

- i) Is the impugned order dated March 28, 2023 a nullity?
- ii) Is the present appeal maintainable?
- iii) Was the writ of summons in CS 340 of 2000 lodged by the plaintiff therein?
- iv) Was CS 340 of 2000 validly subsisting by reason of non-lodgement of the writ of summons for an order of transfer under Section 15 of the Act of 2015 to be passed?
- v) To what relief or reliefs are the parties entitled to?

Analysis

(i) Transfer architecture under Section 15.

26. Since an issue of nullity of the impugned order has been raised a decision on the same would have ramification on the other issues raised, in the facts and circumstances of the present case. In fact, decisions on the third and fourth issues would have impact on the first and the second issues, also.

27. Legislature noted that there would be cases involving commercial dispute as defined in Section 2 (1) (c) pending on the date of the Act of 2015 coming into force. In order to deal with such pending cases Section 15 of the Act of 2015 has put in place a transfer architecture for the transfer of pending cases involving commercial disputes to the Commercial Courts or the Commercial Division of the Commercial Appellate Court or the Commercial Appellate Division as the case may be.

28. Sub-sections (1), (2), and (5) of Section 15 of the Act of 2015 which has provided for transfer of suits, applications and arbitration proceedings to the Commercial Division contemplate that such suits, applications and arbitration proceedings which are pending as on the date of the Act of 2015 coming into force, for its transfer. Transfer of a pending suit or proceeding under the transfer architecture of Section 15 of the Act of 2015 has to be of a suit or an application therein or an arbitration proceeding which is capable of being transferred as it is pending. For example, a disposed of suit or application or arbitration proceeding cannot be transferred. So also a suit or an application or an arbitration proceeding not involving commercial dispute as defined in Section 2 (1) (c) can be transferred.

29. Two jurisdictional facts have to exist simultaneously before the transferee Court for a valid exercise of powers under Section 15 of the Act of 2015. Firstly, the Court exercising powers under Section 15 of the Act of 2015 has evaluate as to whether or not the subject of the suit or the application or the arbitration proceeding involve a commercial dispute in terms of Section 2 (1) (c) of the Act of 2015 and secondly whether or not such proceeding is pending before it. By pendency before the transferee Court one understands that the suit or application or arbitration proceeding is in law capable of being considered as pending in such transferee Court. In other words, in order to ascertain the pendency of the suit or application or arbitration proceeding sought to be transferred the transferee Court has to evaluate as to whether or not any procedural law giving rise to any substantive right required the dismissal of such suit or application or arbitration proceeding by the transferee Court and not done by such Court.

30. An evaluation on pendency by the transferee Court would not involve an elaborate enquiry. Materials on record as on the date of the transfer must establish that the suit or application or the arbitration proceeding was incapable of being treated as pending. As and by way of an example, a suit dismissed for default by the transferee Court by an order passed prior to the date of transfer, but

the suit register erroneously does not record the suit to be dismissed for default, cannot be transferred by the transferee Court under Section 15 of the Act of 2015 as the suit was not pending on such date.

31. Similarly, if the Original Side Rules do not permit the suit to be treated as pending by reason of default of lodging the writ of summons for a period in excess of 3 years subsequent to the institution of the suit, the same suit cannot be transferred under Section 15 of the Act of 2015 as the same was not pending. Section 15 of the Act of 2015 permits transfer of pending suits, application and arbitration proceeding. Transferee Court is therefore, obligated by statute, that is, Section 15 of the Act of 2015 to arrive at a finding that the suit is “pending” on the date of the transfer. Failure to do so by the transferee Court will impinge upon the jurisdiction of the transferee Court to exercise powers under Section 15 of the Act of 2015.

ii) Proceeding before the Transferee Court.

32. The respondent No. 1 had filed CS 340 of 2000 seeking relief with regard to intellectual property rights. The suit having been filed prior to the Act of 2015 coming into effect, and the same being shown as pending, interlocutory applications relating to such suit

appeared in the non-commercial division of this Hon'ble Court, before the learned Single Judge.

33. The first order on the issue as to whether the suit is required to be transferred to the Commercial Division or not, is dated January 24, 2023 when the learned Single Judge had directed the suit to be placed before the appropriate determination as the subject-matter related to intellectual property rights.

34. None of the parties to the suit had taken steps pursuant to or in terms of the order dated January 24, 2023. Parties had continued to treat the suit as a non-commercial matter as will appear from their conduct subsequently. The suit had appeared in the non-commercial list of the learned Single Judge on March 28, 2023 when the impugned order was passed and subsequent thereto on June 19, 2023, June 26, 2023 and July 5, 2023. The application of the appellant for extension of time to file written statement had been decided by the impugned order dated March 28, 2023 when the matter had appeared in the non-commercial list of the learned Single Judge.

35. Department had transferred the suit to the Commercial Division pursuant to the order dated July 5, 2023. The order dated July 5, 2023 which the Department has referred to as the order

directing transfer of the suit to the Commercial Division is as follows:-

“The Court : The matter be placed in the Commercial Division and shall appear in the list on 13th July, 2023 accordingly.”

36. The order dated July 5, 2023 as quoted above, does not show that the learned Single Judge has expressed any view with regard to the subject-matter of the suit. In other words, learned Single Judge did not pronounce that the subject-matter of the suit has fallen within the definition of “commercial dispute” under Section 2 (1)(c) of the Act of 2015. The learned Judge also did not take into consideration whether or not the suit was capable of being considered as pending as on the date of the order of transfer.

37. Reasons being sine qua non for the validity of an order and the order dated July 5, 2023 suffering from the vice of no reasons, the same has to be classified as a nullity. In our view, the order dated July 5, 2023 which the Department has relied upon as the order of transfer of the suit from the non-commercial to the Commercial Division of this Hon’ble Court, not being informed with reasons is a nullity.

(iii) Lodgement of Writ of Summons and its failure.

38. The respondent has filed the suit on August 28, 2000. Report of the office of the Sheriff dated March 10, 2025 has established that

no writ of summons was ever lodged by the respondent No. 1 as the plaintiff in the suit.

39. Chapter VIII Rules 6 and 7 of the Original Side Rules have specified the time limit for lodging the writ of summons in the suit. They have also specified that, on the expiry of the time period specified for lodging the writ of summons, the office of the Sheriff cannot accept the writ of summons without express leave being granted by the Court in this regard. Respondent No. 1 as the plaintiff has not applied for such leave till date. Respondent No. 1 as the plaintiff has not obtained any leave to lodge the writ of summons till date.

40. Chapter VIII Rule 15 of the Original Side Rules has prescribed the method of entering appearance of a defendant in suit. It has prescribed that, a defendant shall enter appearance to a writ of summons. Chapter VIII Rule 16 has specified the consequences of default of entering appearance of a defendant within the time mentioned in the writ of summons for such appearance. Chapter VIII Rule 17 has granted liberty to a defendant to enter appearance, without leave, at any time before the suit has been set down in the warning list of undefended suits. Rule 18 has dealt with notice of entering appearance while Rule 19 has provided for appearance with special leave.

41. These Rules of Chapter VIII of Original Side Rules has one common thread that is, the entering of appearance by the defendant and that the same is to a writ of summons. Lodgement of the writ of summons with the Sheriff and the service thereof on the defendant in a suit, is a sine qua non for a valid appearance to be entered into by a defendant in such suit.

42. In a given case, a defendant can waive the service of the writ of summons on it by the plaintiff. However, lodgement of the writ of summons which is a mandate under the Original Side Rules cannot be waived by the defendant.

43. In the facts and circumstances of the present case, writ of summons has not been lodged far less served upon the appellant as the defendant. Question therefore of the defendant having entered appearance, validly, in the suit does not arise.

44. ***Tarit Appliances (P) Ltd. (supra)*** has held that, Article 137 of the Limitation Act, 1963 applies to Chapter XXXVIII Rule 46 of the Original Side Rules for the purpose of enlarging the time to file the writ of summons.

45. A learned Single Judge of this Hon'ble Court in ***Bhairu Ratan Pachisia & Ors. (supra)*** has considered Chapter VIII Rules 6 and 7 as well as Chapter XXXVIII Rule 46 thereof. It has held that, on a conjoint reading of Rules 6 and 7 of Chapter VIII and Rule 46 of

Chapter XXXVIII, the Sheriff is not to accept any writ of summons, taken out or delivered to him after expiry of 14 days from the date of filing of the plaint unless otherwise ordered by the Court. It has noticed ***Tarit Appliances (P) Ltd. (supra)*** and held that, the power of the Court to entertain an application for extension of time to take out and deliver the writ of summons to the Sheriff is subject to Article 137 of the Limitation Act, 1963 which is three years.

46. A Co-ordinate Bench in ***East Bengal Steam Services Ltd. (supra)*** has considered provisions of the Original Side Rules and Order IX Rule 2 of the Code of Civil Procedure, 1908. It has held that, Order IX Rule 2 of the Code of Civil Procedure, 1908 applies to a suit in the Original Side. It has also noted Chapter VIII and Rules 6 and 7 thereof of the Original Side Rules. In the facts of that case, the Co-ordinate Bench has upheld the order of the learned Single Judge dismissing the suit for the failure of the plaintiff therein to lodge the writ of summons.

47. Respondent No. 1 has contended that, Order IX Rule 2 of the Code of Civil Procedure, 1908 was amended with effect from July 1, 2002 and since the suit was of 2000, neither the amended provision of Order IX Rule 2 nor Order VII Rule 9 would apply. We are unable to accept such contention as parties do not have a vested right in the procedure governing a suit. Procedural amendments to the Code of

Civil Procedure, 1908 apply to pending cases unless demonstrated to be unjust. Penal provisions akin to presently subsisting were existing in the unamended Order IX Rule 2 of the Code of Civil Procedure, 1908. The amendments introduced cannot be classified as unjust.

48. Another Co-ordinate Bench in ***Hindusthan Motors Limited (supra)*** has held that, a Court can dismiss the suit if no step is taken by the plaintiff having the carriage of the proceeding. At the same time, it has held that, a Court can condone the laches on the part of the plaintiff in not taking steps. It has referred the questions as to whether the defendant had acquired any valuable right due to the delayed service of the writ of summons and whether the Court in the given circumstances was entitled to condone such delay to a Larger Bench.

49. A Division Bench of the Bombay High Court in ***Tardeo Properties Pvt. Ltd. (supra)*** has construed the rules governing its procedure. It has held that, when the records establish that the writ of summons was never served, mere filing of the Vakalatnama would not establish to the contrary.

50. The learned Single Judge in ***Bengal Chand Company (supra)*** has held that an illegality in the service of process did not give the Court jurisdiction over the defendant.

51. *Iridium India Telecom Ltd. (supra)* has held that, where there is a conflict between the provisions of the Code of Civil Procedure, 1908 and the Rules framed by the High Court then, the Rules framed under Clause 37 of the Letters Patent, 1865 will prevail.

52. In view of the discussions above, it has to be held that, the writ of summons of the suit was never served upon the defendant, as the same was never lodged.

53. On the parity of the reasoning as that of *Tardeo Properties Pvt. Ltd. (supra)*, entering of appearance by filing a Vakalatnama by the appellant is of no consequence and at least it does not waive the requirement of the plaintiff to lodge the writ of summons.

54. In view of the discussion above, the third issue is answered by holding that the writ of summons in CS 340 of 2000 was never lodged by the plaintiffs being the respondent No. 1 herein.

55. A period in excess of three years has elapsed since the suit was filed. Therefore, in view of *Tarit Appliances (P) Ltd. (supra)* which was subsequently followed, the present suit could not have been proceeded with on January 24, 2023 when the suit was directed to appear in the Commercial Division or on the date of the impugned order.

56. In the circumstances of the present case the concerned suit was liable to be dismissed and should have been so for not lodging the writ of summons within the time specified for lodging the same. Therefore, there could not have been a pending suit on January 24, 2023 when the suit was directed to appear in the Commercial Division or on March 28, 2023 when the impugned order was passed or on July 5, 2023 when the suit was directed to be placed in the Commercial Division.

57. Out of the two essential jurisdictional facts for valid exercise of powers under Section 15 of the Act of 2015, one was absent in the facts of the present case. By reason thereof, exercise of powers under Section 15 of the Act of 2015 was without jurisdiction, on January 24, 2023 or subsequently on July 5, 2023.

58. The fourth issue is consequently answered by holding that, CS 340 of 2000 was not validly subsisting for it to be transferred to the Commercial Division under Section 15 of the Act of 2015 by reason of non-lodgement of the writ of summons within the time specified.

(iv) Adjudication of a matter where a Court lacks jurisdiction

59. *Garden Reach Shipbuilders and Engineers Limited* (*supra*) has considered the issue of allocation of business for a learned Judge to decide. It has observed that, any order which a

Bench-comprising of two Judges or a Single Judge-may choose to make in a case that is not placed before them/him by the Chief Justice of the High Court or in accordance with his Lordship's directions, such an order is wholly without jurisdiction. It has also held that, an adjudication, beyond allocation, is void and such adjudication has to be considered a nullity.

60. *Garden Reach Shipbuilders and Engineers Limited (supra)* has noticed an authority of the Calcutta High Court, namely, ***All India Reporter 1990 Calcutta 168 (Sohal Lal Baid vs. State of West Bengal)***. There the Division Bench has held that, “the power and jurisdiction to take cognizance of and to hear specified categories or classes of cases and to adjudicate and exercise any judicial power in respect of them is derived only from the determination made by the Chief Justice in exercise of his constitutional, statutory and inherent powers and from no other source and no cases which is not covered by such determination can be entertained, dealt with or decided by the Judges sitting singly or on a Division Courts till such determination remains operative.” It has also held that, a judgment pronounced by a Court without investment of jurisdiction is void.

61. In the facts and circumstances of the present case, on the date of impugned order there was the order dated January 24, 2023

directing transfer of the suit to the Commercial Division. Therefore, on the date of the impugned order there was no suit before the learned Single Judge in the non-commercial Division to pass the impugned order.

62. The learned Single Judge concerned, on the date of the impugned judgment and order was having determination/allocation of business both for non-commercial as also commercial matters. However, the instant suit and the application in which the impugned judgment and order was passed had appeared in the list relating to Non-Commercial Division. Assuming that the suit had stood validly transferred to the Commercial Division by virtue of the order dated January 24, 2023 then, the suit along with the applications had appeared in a wrong list.

63. A Co-ordinate Bench has in ***Surajit Sen (supra)*** held that, when, a suit pertains to a commercial dispute and has to be regarded as a commercial suit whether or not the inter-locutory Court was alive to the such fact, when the application for rejection of the plaint was decided, the Court and parties remained bound by the Act of 2015 to act in accordance therewith. It has also held that, with the coming into effect of a Commercial Division under the Act of 2015, it was the duty of the Court or its Department to indicate matters which pertained to commercial disputes. The fact that no

such bifurcation of matters has been made would not imply that upon the setting up of the Commercial Division, the Act of 2015 would not affect matters pertaining to commercial disputes.

64. *Surajit Sen (supra)* has held that, since Original Side Courts with regular determination functions both as Commercial Courts and as Original Side Courts dealing with other civil matters, there is no requirement, in such a situation, for any application to be made for transfer from one Court to the another as the same Judge or the same Bench would be taking both commercial and non-commercial Original Side matters, in the same Court room for the entire day. In the facts of that case, the Co-ordinate Bench has held that, no appeal can be entertained from an order rejecting an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 in view of Section 15 of the Act of 2015.

65. In the facts and circumstances of this case, the learned Judge had two lists bifurcating the Commercial and non-Commercial matters. Notwithstanding such bifurcation of matters, the suit had appeared in the wrong cause list.

66. Another Co-ordinate Bench in ***Sabri Properties Pvt. Ltd. and Others (supra)*** has held that, an appeal under Clause 15 of the Letters Patent, 1865 was abridged by Sections 15 and 21 of the Act of 2015. In the facts of that case, the Court has held that the suit

was a commercial cause and therefore an appeal was maintainable only under Section 13 of the Act of 2015.

67. A Division Bench of the Madras High Court in ***Aarur Tamilnadan (supra)*** has held that, Clause 15 of the Letters Patent, 1865 becomes redundant in suits governed by the Act of 2015.

68. Decision of a Court in the non-Commercial Division is amenable to appeal under Clause 15 of the Letters Patent, 1865. Appeal against a decision in a Court in the Commercial Division is governed by Section 13 of the Act of 2015. In such a scenario applicability of Clause 15 of the Letters Patent, 1865 is ousted.

69. Exercise of powers of transfer under Section 15 of the Act of 2015 is by a Court in the non-Commercial Division. Section 13 of the Act of 2015 governs appeals from orders and decrees of the Commercial Court or the Commercial Division as the case may be. Section 13 of the Act of 2015 cannot be construed to mean that a decision of the Court in the non-Commercial Division is also governed thereby.

70. An order of transfer of a suit to the Commercial Division is passed under Section 15 of the Act of 2015. However, the same is passed by a Court other than a Commercial Division or a Commercial Court, as the case may be. Therefore, the order of transfer though passed under Section 15 of the Act of 2015 not

being made by a Commercial Division or a Commercial Court as the case may be, will not be visited by the rigours of Section 13 of the Act of 2015. Such an order would be governed by Clause 15 of the Letters Patent, 1865 if passed by the High Court.

71. The first order of transfer dated January 24, 2023 being a nullity, there being no pending suit to be transferred, the suit was never validly transferred to the Commercial Division. There being no valid transfer, subsequent orders passed in the suit are amenable to judicial scrutiny under Clause 15 of the Letters Patent, 1865.

Conclusion

72. In such context, the present appeal is maintainable. The second issue is answered accordingly.

73. The fifth issue is answered by holding that, the suit did not survive the expiry of a period three years from the date of its filing being August 28, 2000. Therefore, on and from August 28, 2003, there was no pending suit in the eye of law for it to be transferred to Commercial Division. Department will treat CS 340 of 2000 presently numbered as IP (COM) 43 of 2024 and all interlocutory applications pending therein to be dismissed.

74. The impugned judgment and order is set aside. APO 126 of 2023 along with all connected applications are disposed of accordingly, without any order as to costs.

[DEBANGSU BASAK, J.]

75. I agree.

[MD. SHABBAR RASHIDI, J.]