

**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**

**APD 11 of 2023**

**WITH**

**CS 83/2019**

**INDIAN OIL CORPORATION LIMITED**

**VS**

**JAYANTA KRISHNA DATTA AND ANOTHER**

|                    |   |                                                                                                                                                        |
|--------------------|---|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the Appellant  | : | Mr. Anirban Ray, Ld. Sr. Adv.<br>Mr. Amit Kr. Nag, Adv.<br>Mr. Partha Banerjee, Adv.<br>Mr. Debraj Shaw, Adv.                                          |
| For the Respondent | : | Mr. Abhrajit Mitra, Sr. Adv.<br>Mr. Sarvapriya Mukherjee, Adv.<br>Mrs. Iram Hassan, Adv.<br>Mr. Samriddha Sen, Adv.<br>Mr. Himangshu Bhawsinghka, Adv. |

Hearing Concluded on : February 12, 2026

Judgement on : March 12, 2026

**DEBANGSU BASAK, J.:-**

**1.** Appellant has assailed the judgment and decree dated February 17, 2023 passed in IA GA No. 1 of 2019 in CS No. 83 of 2019.

**2.** Learned Senior Advocate appearing for the appellant has contended that, the impugned judgment and decree ought to be

set aside since, the same was passed in a suit involving a commercial dispute within the meaning of the Commercial Courts Act, 2015. He has contended that suit was not filed in the Commercial Division therefore, accordingly, learned Single Judge has erred in exercising jurisdiction over the subject suit.

**3.** Learned Senior Advocate appearing for the appellant has contended that, by two registered indenture of leases both dated September 10, 2008, the respondents leased two immovable properties. The respondents had contended in the plaint that, two leases expired by efflux of time and consequently, the appellant became a trespasser. He has pointed out that, the immovable property is being used for running petrol pump and that, lease deed dated September 10, 2008 mentions the same. Consequently, he has contended that, the dispute involved in the suit is a commercial dispute within the meaning of Section 2(1)(c)(vii) of the Act of 2015. He has relied upon **2020 Volume 15 Supreme Court Cases 585 (Ambalal Sarabhai Enterprises Limited vs. K. S. Infraspace LLP and Another)** in support of such contention.

**4.** Relying upon **2025 SCC OnLine Calcutta 5076 (T. E. Thomson & Company Limited vs. Swarnalata Chopra Nee Kapur and Another)** learned Senior Advocate appearing for the

appellant has contended that, the lease deeds can be looked into and considered by the Court in suit for eviction. According to him, the ratio in **1998 Volume 7 Supreme Court Cases 184 (Raptakos Brett and Company Limited Versus Ganesh Property)** is not attracted and in any event was considered in **T. E. Thomson & Company Limited (supra)**.

**5.** Learned Senior Advocate appearing for the appellant has contended that, in defending an application under Chapter XIII A of the Original Side Rules, a defendant is required to establish the existence of triable issue in order to receive an order for filing written statement unconditionally. He has contended that, the plea of the thika tenancy raised is a triable issue. He has contended that, the suit property is a thika tenancy within the meaning of Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981.

**6.** Learned Senior Advocate appearing for the respondents has contended that, there is no commercial dispute within the meaning of Act of 2015 involved in the suit. In support of such contention, he has contended that, the fact that the lease deeds dated September 10, 2008 expired by efflux of time on August 02, 2018 is not in dispute. Consequently, the appellant has become a tenant-in-sufferance which is akin to that of a trespasser having

no contractual right with the land owner. In support of such contention, he has relied upon **2000 Volume 3 Supreme Court Cases 250 (Haldiran Bhujawala and Others Versus Anand Kumar and Deepak Kumar and Others)**, **1995 Volume 5 Supreme Court Cases 698 (R.V. Bhupal Prasad Versus State of Andhra Pradesh)** and **1998 Volume 7 Supreme Court Cases 184 (Raptakos Brett and Company Limited Versus Ganesh Property)**.

**7.** Comparing Section 69(2) of the Partnership Act, 1932 with Section 2(1)(c)(vii) of the Act of 2015, learned Senior Advocate appearing for the respondent has submitted that, similar words have been used in both the statutes. In this regard, he has relied upon **AIR 1965 SC 101 (Mangilal Versus Sugan Chand Rathi and Another)**. He has also relied upon Craies on Statute Law 6<sup>th</sup> Edition.

**8.** Learned Senior Advocate appearing for the respondent has contended that, the authorities cited on behalf of the appellant are not attracted in the facts and circumstances of the present case.

**9.** The respondent had filed a suit for eviction of the appellant from the suit property being CS No. 83 of 2019. In such suit, the

respondent had applied under Chapter XIII A of the Original Side Rules for a decree for eviction.

**10.** In the plaint, the respondents had claimed to be joint owners of two immovable properties. They had claimed that, the two registered lease deeds both dated September 10, 2008 were executed by which, the appellant was granted lease of the suit property. The respondents had pleaded in the plaint that, negotiations were held after the expiry of the lease for enhancement of rent which failed. The respondent had thereafter filed the suit for the purpose of evicting the appellant.

**11.** The issue that has fallen for consideration is whether, the suit as framed, involves a commercial dispute within the meaning of the Act of 2015 or not.

**12.** According to the appellant, the suit involves a commercial dispute within the meaning of Section 2(1)(c)(vii) of the Act of 2015. According to the appellant, the valuation of the suit is far in excess of the minimum Specified Value under the Act of 2015 for a suit to be filed for the Commercial Division. Other ingredients of Section 2(1)(c)(vii) of the Act of 2015 have been satisfied.

**13. *Ambalal Sarabhai Enterprises Limited vs. K. S. Infraspace LLP and Another (supra)*** has laid down that, the

provisions of the Act of 2015 are to be strictly construed. It has held that, immovable property involved must be used for commerce or trade in presenti to come within such definition.

**14.** In order to come within the purview of Section 2(1)(c)(vii) of the Act of 2015, it has to be established that, there exists an agreement, in relation to an immovable property, used exclusively for trade or commerce. In the facts and circumstances of the present case, the suit properties are immovable properties in respect of which, there were two lease deeds. The suit properties were and still are used as a petrol pump.

**15. *T. E. Thomson and Co Ltd (supra)*** has decided the issues that were referred to it, as follows: –

*“122. In view of the aforesaid discussion we accept the submission of Mr. Anindya Kumar Mitra, the learned Amicus Curie and answer the questions in the manner following:*

*Q. (a) Whether after issuance of notice under Section 106 of the Transfer of Property Act, 1882, the defendant or the parties cannot rely on the agreement/lease deed as the case may be?*

*Answer-The lease agreement is to be looked into and considered for deciding the nature and character of jural relationship of landlord and tenant between the parties, that is to say, whether the lease agreement is for manufacturing or agricultural purpose, upon which will depend validity of notice under Section 106 of T P Act. The answer is in the negative.*

*Q.(b) Whether only on the basis of the case initiated under Section 106 of the Transfer of Property Act, 1882, it can be said that Court cannot look into the agreement between the parties*

*and thus, the suit cannot be treated as commercial suit in terms of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015?*

*Answer - This question is included by necessary implication in question (a) and is answered in the negative.*

*(c) Whether if the Explanation Clause of Section 2(1)(c) of the Commercial Courts Act, 2015 taken into consideration along with the Section 106 of the, 1882, the suit can be treated as commercial suit in terms of the lease agreement/rent agreement entered between the parties?*

*Answer - Yes. Explanation clause is an integral part and parcel of the Section 2(1)(c)(vii) of the said Act and has to be taken into consideration for deciding whether it is a commercial dispute or not. Explanation is very relevant because it reflects legislative intent that a commercial dispute will not cease to be commercial dispute, even if recovery of immoveable property is claimed, which will not change the character of a dispute if it has been held to be commercial dispute under Section 2(1)(c) (vii) of the said Act.”*

**16. *Raptakos Brett and Co Ltd(supra)*** has considered the issue of maintainability of a suit for eviction by an unregistered partnership firm as owner of an immovable property, in the context of bar under Section 69 (2) of the Indian Partnership Act, 1932 and the right of an unregistered partnership firm to sue on the basis of a contract. It has held that, where the suit is based on a composite cause of action, one part referring to breach a specific covenant of lease by the erstwhile tenant on account of its failure to deliver possession to the plaintiff and the expiry of the term of lease and the second part was based on the failure of

the defendant to comply with the statutory obligation under Section 108 (q) and Section 111 (a) of the Transfer of Property Act, 1882, then, although the suit was barred under Section 69 (2) of the Act of 1932 to the extent of the first part of the cause of action, the second part of the cause of action was however not barred. It has held that, a suit of such a nature is maintainable at the instance of an unregistered partnership firm, and was not barred under Section 69 (2) of the Act of 1932.

**17. *Haldiram Bhujiawala (supra)*** has held that, a suit is not barred by Section 69 (2) of the Act of 1932 if a statutory right or common law right is being enforced. In the facts and circumstances of the present case, the plaintiffs have not claimed that they were enforcing a common law right in the suit.

**18. *R. V. Bhupal Prasad (supra)*** has noted the distinctions between a tenant holding over or a tenant at will and a tenant at sufferance. It has held that, where a lease stands determined by efflux of time, and the lessee continues in possession thereafter in contravention of the terms of the lease, and without acquiescence from the lessor, such possession is neither lawful nor legal. It has held that, such a lessee, after expiry of the terms of the lease by efflux of time, is a tenant at sufferance whose possession is akin to a trespasser, though initially he had lawful

entry. It has also held that, a tenancy at sufferance does not create a relationship of landlord and tenant.

**19. *Mangilal (supra)*** has decided a decree for eviction passed against a tenant governed by the provisions of the Madhya Pradesh Accommodation Control Act, 1955. It has noticed that, Section 4 of the Act of 1955 provided that no suit shall be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the grounds set out in that Section. It has held that, the provisions of Section 4 of the Act of 1955 were in addition to those of the Act of 1882 and that, before a tenant can be evicted by the landlord, there must be compliance of both the provisions of Section 106 of the Act of 1882 and Section 4 of the Act of 1955.

**20.** Craies on Statute Law, 6<sup>th</sup> edition has observed that, similar words in two statutes should have same meaning. In the facts of this case, the words “arising out of” used in Section 69 (2) of the Act of 1932 and Section 2 (1) (c) of the Act of 2015 have been highlighted to contend that, those words should partake the interpretation given in ***Raptakos Brett and Co Ltd (supra)***.

**21.** In the facts and circumstances of the present case, the plaintiffs have pleaded in the plaint that, there were two lease deeds which contained the same clause obligating the appellant

to yield and deliver up vacant possession. The plaintiffs have pleaded that, on the expiry of the initial period fixed under the lease, negotiations had been entered into for the purpose of renewal of the lease. Such negotiations had however failed. It has also been pleaded in the plaint that, the appellant as the tenant made over payments as rent subsequent to the expiry of the initial period of the lease. The plaintiffs have claimed that, they returned such payments allegedly on account of rent.

**22.** As in *Raptakos Brett and Co Ltd (supra)* where the plaintiff had a composite cause of action, the respondents herein as plaintiffs although one has filed the suit on the basis of composite cause of action. The failure of the appellant to act in terms of the clause of the lease deeds requiring it to yield and deliver vacant possession is a part of the cause of action of the respondents. In the facts and circumstances of the present case, the statutory right of eviction has arisen out of the two lease deeds, which according to the plaintiffs had expired by efflux of time. The appellant having failed to discharge its obligation under the two lease deeds to make over possession on the expiry of the lease deeds, gave rise to the statutory right of the respondents to sue for eviction, under the provisions of the Act of 1882. That

apart, there is an issue of holding over as appearing from the pleadings in the plaint.

**23.** The right to approach the Commercial Court is circumscribed by the provisions of the Act of 2015. Section 12A of the Act of 2015 which prescribes mandatory pre institution mediation is recognised to be mandatory in nature. Institution of a suit involving a commercial dispute within the meaning of the Act of 2015 after the Act of 2015 coming into effect without complying with Section 12A, is now judicially recognised to be an invalid institution of the plaint of dismissal of the suit. That being so, Section 12A of the Act of 2015 vests all parties to the lis a valuable right of pre institution mediation, subject to the plaintiff not seeking any urgent interim relief. None of the parties to the lis can waive the mandatory provision of pre institution mediation, so long the plaintiff does not seek urgent interim relief. However, if the plaintiff seeks urgent interim relief, it need not undertake a pre-institution mediation. In such an eventuality, the right of pre institution mediation of the parties is withdrawn by the Act of 2015. Such eventuality does not encompass the doctrine of waiver. It transmutes the mandatory pre institution mediation right.

**24.** The observations made in ***Raptakos Brett and Co Ltd (supra)*** that, non-compliance of statutory obligation by the defendant when made the subject matter of a corresponding legal right of the erstwhile landlord cannot be said to be giving rise to enforcement of any contractual right of the plaintiff arising from the expired contract of tenancy, in our view, should not be read to mean that, it has advocated that, the contract of tenancy or lease can never ever be looked into for the purpose of adjudicating whether or not, such statutory right arose for the erstwhile landlord. In our view, the expired contract of lease is a crucial piece of evidence in order to establish the corresponding statutory right of the landlord to seek eviction.

**25.** ***T. E. Thomson and Co Ltd (supra)*** have also held that, the expired lease deed is required to be considered in a suit for eviction on the ground of expiry of the terms of lease.

**26.** In our view therefore, all three ingredients of Section 2 (1) (c) (vii) of the Act of 2015 stand satisfied in the facts and circumstances of the present case. Commercial disputes have arisen, between the parties to the suit, in respect of two several lease deeds, relating to the suit properties, which are used presently in commerce. The plaintiffs have pleaded that, the appellant is selling oil and lubricants from the suit premises

which establishes its commercial user. The plaintiffs did not seek urgent interim relief in the suit. Suit was instituted after coming into effect of the Act of 2015.

**27.** The issue therefore framed in paragraph 11 herein, is answered by holding that, the suit involves a commercial dispute within the meaning of the Act of 2015.

**28.** Having answered such issue, and the suit having been filed in the non-commercial division of the High Court subsequent to the Act of 2015 coming into effect, the suit is not maintainable in such jurisdiction. The impugned judgment and order dated February 17, 2023 has therefore been passed by a Court not having jurisdiction.

**29.** Consequently, APD 11 of 2023 is allowed. Judgment and decree dated February 17, 2023 passed in CS No. 83 of 2019 is set aside.

**30.** In course of hearing of the appeal we had enquired of the respondents as to whether they would invite the Court to apply provision of Order VII Rule 10 of the Code of Civil Procedure, 1908. The response was that the appeal may be heard and disposed of on merits.

**31.** Consequently, since the respondents are not inviting return of plaint, and since the suit as filed is before Court which lacks

jurisdiction and in view of non-compliance with Section 12A of the Act of 2015, C.S No. 83 of 2019 is dismissed.

**[DEBANGSU BASAK, J.]**

**32.** I agree.

**[MD. SHABBAR RASHIDI, J.]**