

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMMERCIAL DIVISION)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

AO-COM 25 of 2025

IA No. GA-COM 1 of 2025

Shree Bajrang Land and Trading Company

Vs.

Biren Commercial Private Limited and Others

For the appellant : Mr. Jishnu Chowdhury, Sr. Adv.
Mr. Sarvapriya Mukherjee, Adv.
Mr. Varun Mothari, Adv.
Mr. A. Agarwalla, Adv.
Ms. Priyanka Garain, Adv.

For the respondents : Mr. Soumabho Ghose, Adv.
Mr. Saptarshi Mandal, Adv.
Ms. Tiana Bhattacharya, Adv.

Hearing concluded on : 22.01.2026

Judgment on : 13.02.2026

Md. Shabbar Rashidi, J.:-

1. The instant appeal, at the behest of the plaintiff in the original suit, is directed against impugned judgment and order dated

September 2, 2025 passed in GA No. 8 of 2023 arising out of CS-COM No. 45 of 2024.

2. By the impugned judgment and order, the learned Trial Judge, dismissed IA GA 8 of 2023 and refused to recall its earlier order passed on January 31, 2025 through which the original suit being CS No. 117 of 2009 was directed to be transferred to the Commercial Division and renumbered as a Commercial Suit.

3. Learned Senior Advocate appearing for the appellant submitted that the learned Single Judge failed to appreciate that the original suit was not in respect of any immovable property being exclusively used for trade and commerce and as such, the subject matter of the suit did not fall within the definition of commercial disputes within the meaning of Section 2 (1) (c) (vii) of the Commercial Courts Act, 2015.

4. Learned Senior Advocate for the appellant further submitted that the learned Single Judge overlooked the fact that the cause of action for the suit arose out of a tortious act. It was contended that the learned Trial Judge failed to appreciate that the principal relief claimed in the suit was for damages on account of slander of title. According to learned Senior Advocate, the definition of commercial disputes under Section 2 (1) (c) of the Commercial Courts Act, 2015 is exhaustive and does not include the tortious wrongs. Learned Senior Advocate also submitted that tortious wrongs not arising out of

mercantile documents, partnership disputes, supply of goods or similar transaction were not covered by the definition of commercial disputes under Section 2 (1) (c) of the Act of 2015.

5. Learned Senior Advocate for the appellant further submitted that the learned Trial Judge failed to appreciate that the case made out in the plaint would decide the nature of the suit. It cannot be decided on the basis of counterclaim made by the defendant. Learned Senior Advocate also contended that the case made out in paragraph 28 of the plaint disclosed a case of slander of title and as such, learned Single Judge was not justified in holding the suit to be a commercial suit.

6. Learned Senior Advocate also submitted that the learned Trial Judge wrongly noted the submission made on behalf of the plaintiff in the suit on January 31, 2023 that the suit was of a commercial nature. It is contended that it was learned advocate for the defendant who had appeared on such date and made a submission that the suit was in the nature of commercial suit. Learned Senior Advocate for the appellant also submitted that the learned Single Judge failed to appreciate that the principal prayers in the suit were not in respect of breach of Memorandum of Understanding. The learned Single Judge wrongly concluded that the pleadings or claim were based on Memorandum of Understanding and that prayers (c) and (d) of the plaint were consequential or incidental.

7. Relying upon **(2025) 4 Supreme Court Cases 38 (Central Bank of India and Another Vs. Prabha Jain and Others)**, learned Senior Advocate submitted that even if, prayers (a) and (b) in the plaint were held by the learned Trial Judge to be commercial disputes, it ought not have transferred the suit to commercial division in so far as prayers (c) and (d) thereof related to slander of title and surely did not fall in the realm of commercial dispute within the meaning of Section 2(1)(c) of the Act of 2015 which was well within the jurisdiction of learned Single Judge.

8. Learned Senior Advocate appearing for the appellant also submitted that by the impugned order, the learned Single Judge refused to recall its earlier order passed on January 31, 2025, through which, the original suit being CS No. 117 of 2009 was directed to be transferred to the Commercial division and renumbered as a Commercial Suit. Therefore, an appeal under Section 13 of the Commercial Courts Act, 2015 before the Commercial Appellate Division is maintainable. In support of his contention learned Senior advocate relied upon **2024 SCC OnLine Cal 494 (Prasad Ecostructure L.L.P. Vs. City Devcon Private Ltd. And Others)**.

9. On the other hand learned senior advocate appearing for the respondent contended that the instant appeal against the impugned order is not maintainable in the Commercial Appellate Division. According to learned Senior Advocate for the respondent, the

impugned order was passed by learned Single Judge in its non-commercial jurisdiction which is not appealable in terms of the provisions of Section 13 of the Commercial Courts Act, 2015.

10. Since the parties have raised a dispute as to the maintainability of the instant appeal, we think it appropriate to proceed to decide such issue before entering into the merits of the appeal.

11. The appellant filed CS No. 117 of 2009 in the Original Side of the High Court exercising ordinary civil jurisdiction which was later renumbered as CS COM No. 45 of 2024. The appellant/plaintiff filed the suit stating inter alia that the plaintiff acquired the suit properties on lease with liberty to sublet such property. Later on, the defendants/respondents approached the plaintiff for sub-lease of the suit properties. The terms and conditions of such lease having been agreed between the parties; both the parties entered into and executed a 'Memorandum of Understanding' in respect of the transaction of sub-lease. According to the agreed terms and conditions and the 'Memorandum of Understanding', the defendants/respondents advanced certain amount of money towards consideration. The remaining amount was to be paid by the lessee within specified time and was obliged to get a deed of sub-lease executed on payment of the balance consideration.

12. It was further contention of the appellant/plaintiff that inspite of several extensions of time to pay off the remaining part of consideration, the defendants/respondents failed and neglected to take steps towards payment of the balance consideration and to get the deed of sub-lease executed and registered causing substantial loss to the plaintiff/appellant. Not only that, the defendants/respondents also raised doubts with regard to the title of the plaintiff/appellant in respect of the suit properties, although, during the negotiations and at the time of execution of 'Memorandum of Understanding', the respondents were satisfied with the title of the plaintiff/appellant. By such action on the part of respondents/defendants, the appellant suffered huge loss and damages on account of a cloud cast on its title over the suit properties.

13. Upon the aforementioned facts, the appellant filed CS No. 117 of 2009 in the Original Side of the High Court exercising ordinary civil jurisdiction. In such suit, the plaintiff/appellant pleaded to the following: –

“23. The plaintiffs states that property prices have declined substantially since the time of the said memorandum of understanding. At present, if the said premises is subleased on the same terms as those agreed with the defendant No. 2, the plaintiff is not liberty to receive as consideration a sum exceeding ₹ 10 crore. The plaintiff has been deprived of the balance consideration amount of ₹13,37,50,000/- which some the plaintiff was to receive by

2 June 2008. This deprivation is not for any default of the terms of the memorandum of understanding by the plaintiff. Deprivation of receipt and user of the said sum of money has resulted in further loss to the plaintiff which is reasonably assessed at ₹5 crore only.

24. The defendant No. 1 has also committed breach of sublease by not getting it registered after execution on 16 October 2008 and why not making the balance payment and discharging further obligations under the said memorandum of understanding.”

14. The plaintiff/appellant further pleaded in his plaint to the following effect: –

“30. The said letter dated March 16, 2009 in the usual course ought to have been published to the stenographer, the typist and concerned assistant and partners of M/s Khaitan & Co, advocates. While giving instructions to issue the later the contents thereof in the usual course would have been published to the concerned assistant/secretary of the defendant No. 3 and the concerned officers of the defendant Nos. 1 and 2. The said letter has also been published to the plaintiff’s advocates, M/s L. P. Agarwalla & Co., its partners, officers and staffs. The said letter in the usual course was read by the plaintiff and its partners, assistant, secretaries and the defendants are well aware of this fact and intended the later to be published to the aforesaid persons.

31. The plaintiff has suffered loss and damages by reason of publication of the said letter dated 16 March 2009 which is reasonably assessed at ₹ 5 crore. In the alternative the plaintiff claims and enquiry into damages and decree for such sum as may be found due and payable.”

15. On the basis of the facts so pleaded in the plaint, the plaintiff prayed for the following reliefs amongst other reliefs, namely: –

- a) The decree of ₹15 crore as pleaded in paragraph 23 and 24 as against the defendants jointly and/or severally and in the alternative an enquiry into damages and decree for such sum as may be found due and payable upon such enquiry.
- b) Decree for determination as to what extent the defendant Nos. 1 and 2 are liable to the plaintiff for the loss and damages suffered by the plaintiff.
- c) Decree for ₹5 crore as pleaded in paragraph 30 above and in the alternative an enquiry to damages and decree for such sum as may be found due and payable against the defendants jointly and/or severally.
- d) Perpetual injunction restraining the defendants the agents, servants from publishing or causing to be published statements concerning the plaintiff's right title and interest in the premises No. 134A, Beliaghata Road, Kolkata – 700015 as contained in the letter dated March 16, 2009 and/or similar statements.”

16. The defendants entered appearance in the suit and filed their respective written statements. In such written statements, the defendants raised questions on the right, title and interest of the plaintiff over the suit properties. The defendants raised a counterclaim in their written statement and prayed for a decree for realization of

₹6,25,75,342/- against the plaintiff. In such suit, the defendant filed an application seeking attachment before judgment of the properties belonging to plaintiff in view of their prayer for realization of ₹6,25,75,342/- against the plaintiff. Such application was refused for which, the defendant/respondent filed an appeal being APOT 441 of 2016.

17. In pursuance of the order dated August 6, 2019 passed in APOT 441 of 2016, which was subsequently clarified by an order dated April 18, 2024, the learned Trial Judge proceeded to pass an order dated January 31, 2025 whereby the original suit being CS 117 of 2009 was directed to be transferred to Commercial Division of this Court. The suit was transferred accordingly and renumbered as CS-COM 45 of 2024. The appellant/plaintiff applied for recalling of the order dated January 31, 2025 which was refused by the impugned order.

18. As it appears, the impugned order dated September 2, 2025 was passed by learned Single Judge in CS 117 of 2009 exercising its jurisdiction under Ordinary Original Civil Jurisdiction. The instant appeal has been preferred in the Commercial Appellate Division of the High Court apparently, in terms of Section 13 of the Commercial Courts Act, 2015. Disputes with regard to maintainability of the appeal in the present form and forum, has been raised by the defendants/respondents.

19. In **Prasad Ecostructure L.L.P.** (supra), a Coordinate Bench of this Court after noting the provisions of Section 13 of the Act of 2015, observed as follows:-

“13. A reading of section 13 makes it plain that it deals with appeals from orders passed by a commercial court or a Commercial Division of a High Court. An appeal lies to the commercial appellate Court in the district if an order is passed by a court below the level of a district judge and to the commercial appellate division of the High Court when it is passed by the district judge. To attract Section 13 the order has to be passed by the court exercising the jurisdiction of a commercial court as provided in the said Act.

14. Section 15 operates in an entirely different field. If a civil court before which a suit is pending decides that the matter is not commercial in nature, by an application the Appellate Commercial Division of the High Court may be approached by a party complaining of such refusal. Then, exercising jurisdiction as a commercial court under the said Act the Appellate Division proceeds to decide whether the dispute is commercial or not.

15. As opposed to this when the civil court under Section 15 decides that the dispute is commercial and should be transferred to the commercial court and a party is aggrieved by this decision, a similar provision is not provided in Section 15.

16. To my mind when an ordinary civil court exercising the powers vested in it under Section 15 of the Commercial Courts Act, 2015 adjudicates on whether the suit is to be transferred to the commercial court or not, it continues to function as an ordinary civil court and cannot be described

as a commercial court under the said Act. Hence any order passed by it is not appealable under Section 13 of the said Act. If the civil court rules that the suit is to be transferred to the commercial court the remedy under Section 15 is also not available.”

20. As noted hereinabove, the impugned order was passed by learned Single Judge in the Commercial Division.

21. The initial order of transfer dated January 31, 2025 was passed under Section 15 of the Act of 2015 by the Non-Commercial Division of the High Court. Such order is appealable under Clause 15 of the Letters Patent, 1865. The impugned judgment and order, refusing to recall the order dated January 31, 2025 was passed by the Commercial Division. Since, the impugned judgment and order does not qualify the parameters laid down under Section 13 of the Act of 2015, we do not find the present appeal maintainable. However, we keep open the points relating to the validity and legality of the transfer of the case from the Non-Commercial Division to the Commercial Division, as made by the order dated January 31, 2025, open to be decided in an appropriate proceeding.

22. For the aforesaid reasons, we are of the view that the instant appeal being AO-COM 25 of 2025 is not maintainable and accordingly dismissed as not maintainable. We however, clarify that we have not entered into and decided the merits of the appeal. All points raised by the parties are kept open to be decided by the appropriate forum.

23. Consequently, all pending applications are disposed of.

24. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

25. I agree.

[DEBANGSU BASAK, J.]