

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

APOT 313 of 2025

CS 191 of 2022

IA NO. GA/1/2026

Auto Fuel & Services

VS

Amalgamated Fuels Limited & Anr.

For the Appellant	:	Mr. Anirban Ray, Sr. Adv. Mr. Debraj Shaw, Adv. Ms. Anamika Pandey, Adv.
For the Respondent No. 1	:	Mr. Avinash Kankani, Adv. Mr. Sarosij Dasgupta, Adv. Ms. Shree Chatterjee, Adv.
Hearing Concluded on	:	February 12, 2026
Judgement on	:	March 12, 2026

DEBANGSU BASAK, J.:-

- 1.** Appellant has assailed the judgment and order dated September 25, 2025 passed in GA 1 of 2023 in CS No. 191 of 2022.
- 2.** By the impugned judgment and order, learned Single Judge has dismissed the application of the defendant no. 2

praying for rejection of the plaint and in the alternative dismissal of the suit.

3. Learned Senior Advocate appearing for the appellant has referred to the pleadings in the plaint. He has submitted that, the subject matter of the suit relates to disputes arising out of an agreement relating to an immovable property used exclusively in trade and commerce as defined under Section 2(1)(c)(vii) of the Commercial Courts Act, 2015. The suit property is presently being used as a petrol pump operated by the appellant under the defendants no. 1 in the suit.

4. Learned Senior Advocate appearing for the appellant has contended that, by a registered deed of lease dated December 5, 1952, Burmah Shell Oil Storage and Distribution Company Limited being the predecessor-in-interest of the defendant no. 1 was granted a lease in respect of the immovable property concerned. He has pointed out that, the plaintiff in the suit contended that, the lease expired by efflux of time and that, after the lease having expired by efflux of time, the lessee had paid rent/occupation charges to the lessor. He has pointed out that, by a Deed of Conveyance dated February 19, 1998, the immovable property was conveyed in favour of the plaintiff. He

has referred to the recital of such conveyance and contended that, such conveyance noted that there were existing tenancies.

5. Learned Senior Advocate appearing for the appellant has contended that, since the parameters specified under Section 2(1)(c) (vii) of the Act of 2015 stands satisfied, and in view of the **2020 Volume 15 Supreme Court Cases 585 (Ambalal Sarabhai Enterprises Limited vs. K. S. Infraspace LLP and Another)** the suit is one involving a commercial dispute.

6. 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, a lease agreement has to be looked into and considered for deciding the nature and character of the jural relationship. Even in cases initiated under Section 106 of the Transfer of Property Act, 1882, a Court has to take the agreement between the parties into consideration. A suit involving the termination of tenancy by a notice under Section 106 of the Act of 1882 would therefore involve the issue of valid determination of existing jural relationship. He has contended that, learned Single Judge has

mis-construed and mis-applied the ratio of ***T. E. Thomson & Company Limited (supra)***.

7. Learned Senior Advocate appearing for the appellant has contended that, since the factum of a writ petition was pleaded in the plaint, the same gets incorporated by reference. Such fact can be relied upon in an application under Order 7 Rule 11 of Code of Civil Procedure, 1908. In support of such contention he has relied upon ***2012 Volume 8 Supreme Court Cases 706 (Church of Christ Charitable Trust and Educational Charitable Society vs. Ponniamman Educational Trust)***.

8. Learned Senior Advocate appearing for the appellant has contended that the immovable property concerned is a thika property. In support of such contention, he has referred to various materials on record. He has also relied upon Section 5(3) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 in this regard.

9. Learned Advocate appearing for the plaintiff has contended that, the defendant no. 1 in the suit has contended that, the immovable property was a thika tenancy. The appellant has traced its title through the defendant no. 1. Therefore, according to him the defendants have themselves

acknowledged that, there was no lease existing at the material point of time when, the suit was filed. He has contended that the plaintiff filed the suit for eviction on the ground of the defendants not having any right, title and interest to occupy the suit premises and not on the ground of expiry of the lease deed.

10. Learned Advocate appearing for the plaintiff has drawn the attention of the Court to the various pleadings of the plaint. He has contended that, there was a writ petition filed for the purpose of seeking declaration that, the suit property was a thika tenancy. Therefore, the defendants including the appellant have accepted that there was no lease between the parties. The Ministry has sought eviction of the defendants as trespassers of the suit property.

11. Learned Advocate appearing for the plaintiff has contended that since there was no lease between the parties and that being the accepted position, there was no agreement between the parties to give rise to a commercial dispute in respect of an immovable property used in trade or commerce, within the meaning of Section 2(1)(c)(vii) of the Act of 2015. Consequently, according to him, learned Single Judge has

correctly dismissed the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908.

12. The respondent No. 1 in this appeal, as the plaintiff filed the suit against two defendants, namely the respondent No. 2 in the appeal as the defendant No. 1 and the appellant as the defendant No. 2, for eviction and mesne profits.

13. The plaintiff has described the appellant as a partnership concern and to be a dealer under the defendant no. 1 running a petrol pump at the suit premises. The plaintiff has stated that, by an indenture of lease dated December 05, 1952 one Burmah Shell Oil Storage and Distribution Company Limited was granted lease in respect of a suit property. By and under the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 the interest of such company had been nationalized and acquired by the Central Government under the name Burmah Shell Refinery Limited which was ultimately known as Bharat Petroleum Corporation Limited.

14. The plaintiff has pleaded in the plaint that, Bharat Petroleum Corporation Limited continued to remain in wrongful and illegal possession and occupation of the suit premises by paying occupation charges to the predecessor-in-title of the

plaintiff. Plaintiff has also claimed that Bharat Petroleum Corporation Limited continued in occupation of the suit premises as the tenant-in-sufferance and that, plaintiff had never accepted such company as a statutory tenant.

15. Plaintiff has pleaded in the plaint that, defendant No. 1 filed a writ petition being WP No. 4052 of 1988 claiming itself to be a tikka tenant governed under the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981.

16. In the plaint the plaintiff has pleaded that, by a notice dated July 28, 2021 it had called upon the defendant No. 1 to vacate the suit premises. The defendants having continued to remain in possession are liable to be evicted and the plaintiff is entitled to a decree of eviction as also mesne profit.

17. Primarily two issues had been canvassed before the learned Single Judge on behalf of the appellant, in its application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 resulting in the impugned judgment and order. One primary ground that the appellant had canvassed is that the disputes involved in the suit were commercial disputes within the meaning of Section 2(1)(c)(vii) of the Act of 2015 and

the other is that the suit property is a thika tenancy and therefore governed by the Act of 1971.

18. So far as the Act of 2015 is concerned ***Ambalal Sarabhai Enterprises Limited (supra)*** has held that, a dispute relating to an immovable property per se may not be a commercial dispute. It has observed that, if an immovable property is used in present for the purpose of trade or commerce and there is an agreement with regard thereto between the parties, then, the same will qualify under Section 2(1)(c)(vii) of the Act of 2015. It has held that the provisions of the Act of 2015 are required to be strictly construed. It has also construed the words used under Section 2(1)(c)(vii) of the Act of 2015 and held that, such words are to be interpreted purposively. The word “used” denotes “actually used” and it cannot be either “ready for use” or “likely to be used” or “to be used”.

19. In the facts and circumstances of the present case, the entry of the appellant in the suit property was as a dealer of the defendant No. 1 in the suit. The defendant No. 1 in the suit had entered into the suit property by virtue of a registered deed of lease dated December 05, 1952. None of the appearing parties before us have contended that, the suit property is not being

used for the purpose of commerce presently. A petrol pump is being run at the suit property by the appellant, as a dealer of the defendant No. 1 at the suit property. One of the ingredients of Section 2(1)(c)(vii) therefore stands satisfied.

20. Entry into the suit property by the defendant No. 1 through whom the appellant before us is claiming right to occupy the suit property is on the basis of a registered lease deed dated December 05, 1952. Whether or not such lease deed has expired by efflux of time entitling the plaintiff to file a suit for eviction or whether or not, the plaintiff is entitled to a decree for eviction as prayed for, on the basis of the claim that the defendants are trespassers in the suit property are issues which have fallen for consideration in the suit.

21. T. E. Thomson & Company Limited (supra) has answered the reference which it considered in the manner following:-

“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 jurial 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.”

22. Church of Christ Charitable Trust and Educational Charitable Society (supra) has held that, the Court must scrutinize averments made in the plaint and if the same do not disclose clear right to a material basis to sue and only creates illusion of cause of action of closer profiting, such plaint should be rejected.

23. In the facts and circumstances of the present case, plaintiff has sought eviction of the defendants from an immoveable property as also mesne profit from them on the basis that they are trespassers. The defendants are in possession and occupation of the suit property and the appellant as the defendant No. 2 is carrying on a business of petrol pump thereat. That the immovable property is being used for commercial purposes presently has been acknowledged at the Bar.

24. Three ingredients have to be fulfilled under Section 2(1)(c)(vii) of the Act of 2015 for the dispute to assume the character of a commercial dispute within the meaning of the Act of 2015. The three ingredients are :-

- i. the dispute must arise out of an Agreement

- ii. relates to an immoveable property, and
- iii. the immoveable property is exclusively used
for trade or commerce, presently

25. In order for a dispute between the parties to fall within the meaning of a commercial dispute as defined under Section 2(1)(c)(vii) of the Act of 2015, such dispute must arise out of an agreement concerning an immoveable property used presently for trade or commerce.

26. Plaintiff has acknowledged that, there was a registered lease deed in respect of the immoveable property concerned. Plaintiff has acknowledged that, subsequent to the expiry of such lease, the predecessor-in-title of the plaintiff had accepted rent/occupation charges from the defendant No. 1. The issue as to whether, a new tenancy has come into being post the expiry of the registered deed has been raised in the plaint.

27. Plaintiff has pleaded in the plaint that the defendant No. 1 raised the plea of thika tenancy in a writ petition. Issue of thika tenancy is yet to be finally adjudicated amongst the parties. Such an issue is still at large. At least on the basis of the pleading made in the plaint it cannot be conclusively

pronounced that, the issue of thika tenancy stands finally decided.

28. The issue as to whether, there was expiry of the registered lease and that, subsequent to the expiry of the registered lease, a new tenancy has come into being or not, looms large in the suit. Therefore, there is an issue with regard to the right to occupy the immoveable property concerned, raised by the plaintiff itself in the plaint. Such an issue necessarily involves an interpretation of the registered lease deed as also the conduct of the parties subsequent thereto. The suit therefore involves a dispute arising out of a registered lease concerning an immovable property used presently for commerce.

29. On the strength of the pleading of the plaint, it can be said that, issue of interpretation of an agreement between the parties to the suit, in respect of an immoveable property which is being presently used for commerce exists. In such circumstances, in our view, the suit involves a commercial dispute within the meaning of Section 2(1)(c)(vii) of the Act of 2015.

30. *T. E. Thomson & Company Limited (supra)* has held that, subsequent to the issuance of a notice under Section 106

of the Transfer of Property Act, 1882, a 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. In the facts of the present case, the plaintiff has claimed that, it is seeking eviction of the defendants including the appellant herein, from the suit property as trespassers. Nonetheless, as noted above, the plaintiff in the plaint refers to a registered lease deed which, as we have held, is required to be considered in order to decide the nature and character of jural relationship between the parties.

31. Section 12A of the Act of 2015 has mandated pre-institution mediation. Mandatory pre-institution mediation, stipulated under Section 12A of the Act of 2015, comes to the benefit of all the parties to the suit. None of the parties to the suit should be allowed to overcome such provisions of the law by a claim which cannot be sustained on the face of pleadings of the plaint. In a scenario under Order 7 Rule 11 of the Code of Civil Procedure, 1908 where, statements made in the plaint are to be taken into consideration. Plaint, even in the case of Order 7 Rule 11 of the Code of Civil Procedure, 1908 cannot be read so as to defeat the valuable right.

32. The suit was instituted in the non-commercial division of the High Court, subsequent to the Act of 2015 coming into effect.

33. In such circumstances, suit could not have been received by the non-commercial division in view of the provisions of the Act of 2015.

34. Plaint in CS 191 of 2022 is rejected.

35. This order will however not prevent the plaintiff from filing a suit for eviction and mesne profit on the self-same cause of action before the appropriate forum.

36. APOT 313 of 2025 is allowed. Connected applications, if any, stand disposed of.

[DEBANGSU BASAK, J.]

37. I agree.

[MD. SHABBAR RASHIDI, J.]