

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
AN APPEAL FROM JUDGMENT AND ORDER PASSED IN ITS
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

**APD/2/ 2024
WITH CS/26/2021
GA/2/2024**

**M/s. BENGAL INDUSTRIAL CORPORATION
Versus
RAJASTHAN FERTILIZERS AND CHEMICAL CORPORATION LIMITED**

Present :

The Hon'ble Justice Debangsu Basak

-And-

The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant : *Mr. Sourav Kumar Mukherjee, Adv.*
Ms. Sahana Pal, Adv.
Mr. Souhardya Mitra, Adv.

For the Respondent : *Ms. Urmila Chakraborty, Adv.*
Mr. Amit Meharia, Adv.
Ms. Paromita Banerjee, Adv.
Mr. Tamoghna Chattopadhyay, Adv.

HEARD ON : 13.02.2026

DELIVERED ON : 13.02.2026

DEBANGSU BASAK, J.:-

1. The appeal is against the judgment and order dated July 14, 2023 passed in CS No. 26 of 2021.

- 2.** The appeal is at the behest of the defendant in a suit for eviction. Appellant suffered a decree of eviction by the impugned judgment and order.
- 3.** Learned advocate appearing for the appellant submits that, the suit involves commercial disputes within the meaning of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015. He refers to the pleadings of the plaint. He submits that the suit was premised upon an agreement dated September 14, 2018. The agreement relates to a tenancy created in respect of an office space in an office block. He submits that, as on the date of institution of the suit, the suit property was used for commercial purposes. Secondly, according to him, the suit involves commercial dispute. In support of such contention he relies upon (2020) 15 SCC 585 (Ambalal Sarabhai Enterprises Ltd. vs. K. S. Infraspace LLP &Anr.).
- 4.** Learned advocate appearing for the appellant submits that, the suit was filed on January 29, 2021. He submits that, the Act of 2015 came into effect on and from October 23, 2015. Initially, there was a notification specifying the specified value under the Act of 2015. Subsequently by a notification dated March 20, 2020, the specified value was re-organized. By reason of such notification, specified value for a High Court suit is Rs.10 lakhs and above. He refers to the valuation of the suit as made by the plaintiff in the plaint. He

submits that, the suit is above the specified value under the Act of 2015.

5. Learned advocate appearing for the appellant submits that, the suit was instituted on January 29, 2021. According to him, the plaintiff did not file any application seeking urgent interim reliefs.
6. Learned advocate appearing for the appellant submits that, the impugned judgment and order was passed in the non-commercial division while the suit involved commercial disputes. Therefore, according to him, the impugned judgment and order is wholly without jurisdiction.
7. Relying upon **AIR 2021 Cal 190 (Laxmi Polyfab Pvt. Ltd. vs. Eden Realty Ventures Pvt. Ltd. & Anr.), (2022) 10 SCC 1 (Patil Automation Pvt. Ltd. vs. Rakheja Engineers Pvt. Ltd.)** and **(2025) 9 SCC 424 (Dhanbad Fuels Pvt. Ltd. vs. Union of India & Anr.)**, learned advocate appearing for the appellant submits that, the suit is no longer maintainable.
8. In response to a query of the Court, learned advocate appearing for the respondent submits that, the suit property is presently used as an office by the appellant.
9. Learned advocate appearing for the respondent submits that, the respondent filed an application for execution. Respondent received

possession of the suit premises from the appellant. She submits that, the respondent is entitled to the mesne profit as prayed for.

- 10.** Learned advocate appearing for the respondent draws the attention of the Court to the impugned judgment and order. She submits that several applications were considered by the impugned judgment and order. One of such application was GA/2/2022 which was an application for urgent interim relief.
- 11.** Learned advocate appearing for the respondent, on instruction, submits that, the respondent is applying under Order VII Rule 10 of the Code of Civil Procedure, 1908 for transfer of the suit from the non-commercial division to the commercial division, in the event the Court is pleased to hold that the suit involves a commercial dispute.
- 12.** Three applications were disposed of by the impugned judgment and order. GA/2/2022 was filed by the plaintiff with a prayer for deposit of outstanding rent along with interest and for occupational charges as well as physical possession of the property. GA/3/2022 was filed by the plaintiff praying for final judgment and decree for eviction and recovery of vacant possession. GA/5/2022 was filed by the appellant seeking rejection of the plaint.

- 13.** Issue that has fallen for consideration in the appeal is, whether, the plaint as it stands involves a commercial dispute or not within the meaning of Section 2(1)(c)(vii) of the Act of 2015.
- 14.** We frame the issue as noted above in view of Section 15 of the Act of 2015. Section 15 of the Act of 2015 provides for a transfer mechanism of a suit involving commercial dispute. Section 15 of the Act of 2015, apart from allowing the parties to apply for transfer of a suit from the non-commercial division to the commercial division, also obligates the Court to decide on such issue in a suit filed before it so as to find out whether the issues in the suit involve commercial dispute or not. This obligation, in our view, is akin to Section 3 of the Limitation Act, 1963. Notwithstanding none of the parties raising such an issue, it is the obligation of the Court to decide whether the disputes involve a commercial dispute within the meaning of Section 2(1)(c)(vii) of the Act of 2015 or not in an appropriate case.
- 15.** On a reading of the plaint, taking all statements in the plaint to be true and correct, we find that, the plaintiff in the suit sought eviction of the appellant from an immovable property. Three aspects are required to be satisfied in order to attract Section 2(1)(c)(vii) of the Act of 2015, namely, an agreement relating to an immovable property used exclusively for trade or commerce.

Ambalal Sarabhai Enterprises Ltd. (*supra*) is of the view that the Act of 2015 is strictly construed. It is also of the view that the immovable property must be used for trade or commerce at present.

16. Under Section 2(1)(c)(vii) of the Act of 2015, any dispute arising out of an agreement relating to an immovable property used exclusively for trade or commerce will be treated as a commercial dispute. In the facts and circumstances of the present case, there is an agreement dated September 14, 2018, pleaded by the plaintiff in paragraph 4 of the plaint by which, the appellant was inducted as a tenant in respect of an office block. It is admitted at the Bar that, the tenancy is in respect of an office space. The tenancy was being used as office space at the time of institution of the suit.
17. Therefore, in our view all three ingredients of Section 2(1)(c)(vii) of the Act of 2015 stands satisfied in the facts and circumstances of the present case. Consequently, the suit involves a commercial dispute within the meaning of the Act of 2015.
18. The valuation of the suit is within the specified value incorporated by the notification dated March 20, 2020. The suit was, therefore, required to be filed in the commercial division of the High Court. Suit was, however, instituted on January 29, 2021 in the non-commercial division of the High Court.

19. Laxmi Polyfab Pvt. Ltd. (*supra*) considered the following issues as noted in paragraph 3 thereof.

3. The following issues have arisen for consideration :-

(1) Is Section 12A of the Commercial Courts Act, 2015 mandatory or directory?

(2) What is the interplay of Section 12A and Section 15 of the Commercial Courts Act, 2015 in a suit involving a commercial dispute within the meaning of Section 2(1)(c) of the Act of 2015 filed in the 5 Ordinary Original Civil Jurisdiction of a High Court subsequent to the date of notification of the Specified Value ?

(3) In view of the provisions of Section 12A of the Commercial Courts Act, 2015 can a suit of the Specified Value involving a commercial dispute within the meaning of the Act of 2015 be transferred to the Commercial Division of the Ordinary Original Civil Jurisdiction of this Hon'ble Court?

(4) If the answer to the preceding issue is in the affirmative then what are the procedure and the modalities for the transfer?

(5) Can a suit filed in the Commercial Division of the High Court be transferred to the Ordinary Original Civil Jurisdiction of the High Court on finding that the suit does not involve a commercial dispute within the meaning of the Act of 2015 ?

(6) If the answer to the preceding issue is in the affirmative then what would be the procedure and modality for the same.

(7) How should proceedings under the Arbitration and Conciliation Act, 1996 be dealt with in respect of the previous issues?

20. Laxmi Polyfab Pvt. Ltd. (*supra*) answered issues nos.2 to 4 in paragraph 77, which is as follows:

77. *The second to the fourth issues that have fallen for consideration can be answered in the manner following: –*

(A) Suits involving a commercial dispute filed in the Ordinary Original Civil Jurisdiction subsequent to the date of the notification of the Specified Value are not maintainable in such jurisdiction in view of provisions of section 7 of the Act of 2015.

(B) In the event, in a suit governed by scenario (A) above, the plaintiff applies for transfer, the same can be granted under Order VII Rule 10 of the Code of Civil Procedure, 1908

(C) On an order under Order VII Rule 10 of the Code of Civil Procedure, 1908 being passed, the plaint has to be returned to the plaintiff to be filed before the appropriate forum.

(D) The rigors of Section 12 A of the Act of 2015 will apply to the suit returned under Order VII Rule 10 of the Code of Civil Procedure, 1908 for it to be instituted before the Commercial Division on its presentation.

21. In the facts and circumstances of the present case, issue nos.2 to 4 of **Laxmi Polyfab Pvt. Ltd.** (*supra*) are involved in this appeal.

22. Patil Automation Pvt. Ltd. &Ors. (*supra*) considered various authorities. It also considered **Laxmi Polyfab Pvt. Ltd.** (*supra*). With regard to the 2nd to 4th issues as noted in **Laxmi Polyfab Pvt. Ltd.** (*supra*) it is of the following view:

113. *Having regard to all these circumstances, we would dispose of the matters in the following manner:*

113.1 We declare that [Section 12A](#) of the Act is mandatory and hold that any suit instituted violating the mandate of Section 12A must be visited with rejection of the plaint under Order VII Rule 11. This power can be exercised even

suo moto by the court as explained earlier in the judgment. We, however, make this declaration effective from 20.08.2022 so that concerned stakeholders become sufficiently informed.

113.2 *Still further, we however direct that in case complaints have been already rejected and no steps have been taken within the period of limitation, the matter cannot be reopened on the basis of this declaration. Still further, if the order of rejection of the complaint has been acted upon by filing a fresh suit, the declaration of prospective effect will not avail the plaintiff.*

113.3 *Finally, if the complaint is filed violating Section 12A after the jurisdictional High Court has declared Section 12A mandatory also, the plaintiff will not be entitled to the relief.*

23. In view of paragraph 113.3 of **Patil Automation Pvt. Ltd. &Ors.**

(supra) and the ratio of **Laxmi Polyfab Pvt. Ltd.** *(supra)* declaring Section 12-A of the Act of 2015 to be mandatory, the suit filed in the non-commercial division of the High Court in this case, cannot be maintained.

24. Dhannad Fuels Pvt. Ltd. *(supra)* considers **Patil Automation Pvt. Ltd. &Ors.** *(supra)* and is of the view that Section 12-A of the Act of 2015 is mandatory.

25. Laxmi Polyfab Pvt. Ltd. *(supra)* was delivered on April 7, 2021. The instant suit was instituted on January 29, 2021.

- 26.** During the course of hearing of the appeal, learned advocate appearing for the plaintiff/respondent prays for return of the plaint under Order VII Rule 10 of the Code of Civil Procedure, 1908. In view of such prayer, we direct the plaint of CS/26/2021 be returned to the plaintiff for presentation before the appropriate forum. We clarify that, the forum before which plaint of CS/26/2021 is presented, will, no doubt, take into consideration the relevant law applicable at the time of presentation of such plaint.
- 27.** During the pendency of the suit and the appeal, parties arranged their affairs in a particular manner. It will be open to the parties to take appropriate steps before the appropriate forum with regard to change in circumstances that the parties underwent during the pendency of the suit and the appeal.
- 28.** In view of the discussion above, the impugned judgment and order dated July 14, 2023 is set aside purely on the ground that the Court passing such judgment and order lacked jurisdiction to decide on the issues raised.
- 29.** Consequent upon our decision to set aside the impugned judgment and order purely on the ground of lack of jurisdiction, issues raised by the parties are kept open.

30. APD/2/2024 along with the connected application is disposed of.

(DebangsuBasak, J.)

31. I Agree.

(Md. ShabbarRashidi, J.)