

OD-13

CS/3/2019  
IA NO. GA/6/2022  
IN THE HIGH COURT AT CALCUTTA  
ORDINARY ORIGINAL CIVIL JURISDICTION  
ORIGINAL SIDE

MAHARSHI COMMERCE LIMITED

Vs.

RAJIV R. BALANI & ORS.

BEFORE :

The Hon'ble JUSTICE KRISHNA RAO

Heard On: 31.10.2022

Order On: 10.11.2022

Appearance:

Mr. Sabhyasachi Chowdhury, Adv.  
Mr. Avinash Kankani, Adv.  
Ms. A. Laha, Adv.  
Mr. Suman Majumder, Adv.  
...for the plaintiff

Mr. Rupak Ghosh, Adv.  
Mr. Sankarsan Sarkar, Adv.  
Mr. Abhijit Sarkar, Adv.  
Mr. Abhik Chitta Kundu, Adv.  
...for the defendants

ORDER

Defendant has filed the instant application praying for an order for returning/transferring the plaint to appropriate Court/Division having jurisdiction to try, determine or entertain the instant suit.

Counsel for the defendant submits that the plaintiff has filed the instant suit praying for eviction, recovery of possession and for mesne profit against the defendant.

Counsel for the defendant has referred paragraphs 2, 3, 5, 6, 8, 9, 10, 11, 13, 16 and 18 of the plaint and submits that from the pleading of the plaint, it is established that the schedule property is a shop room covering an area of 390 sq.ft. in the ground floor of the Premises No. 18, Rabindra Sarani, Kolkata in which the defendant is running the business.

Ld. Counsel for the defendant has also referred the documents filed by the plaintiff at the time of filing of the suit and by referring the same, it was contended that in the correspondence between the plaintiff and the defendant, it is crystal clear that the defendant is running business in the schedule premises.

Ld. Counsel for the defendant has relied upon Section 2(1)(c)(vii) and submits that it is the admitted case of the plaintiff, the defendant is running business in the schedule premises and thus the suit is not maintainable before this Court and the plaint is required to be returned to the plaintiff to file the same before the appropriate court.

Ld. Counsel for the defendant has relied upon the following judgments:

- i. (1955) 1 SCR 117 (Kiran Singh & Others -versus- Chaman Paswan and Ors.).*
- ii. (2020) 15 SCC 585 (Ambalal Sarabhai Enterprises Limited -versus- K. S. Infraspace LLP & Another).*
- iii. Unreported Judgment passed by the Hon'ble High Court of Gujarat at Ahmadabad in the case of (M/s. Kushal Limited Through Auto Sign and Managing Director -versus- M/s. Tirumala Technocast Private Limited) dt. 10.06.2022.*

Per Contra, Mr. Choudhury representing the plaintiff submits that as per Section 2(1)(c)(vii), an agreement between the parties is required to say that the plaintiff had let out the premises to the defendant for business and the defendant is running the business in the said premises but in the instant case there is no agreement between the parties.

Mr. Choudhury had referred paragraphs 3, 7, 12, 13, 15, 17 and 20 and submits that it is the specific case of the plaintiff that the plaintiff had let out the premises to Mr. B. G. Harchandani, Mr. D. G. Harchandani and J. G. Harchandani being the partners of M/s. Getco Electricals.

Mr. Choudhury further contended that only after enquiry the plaintiff came to know that Mr. B. G. Harchandani, Mr. D. G. Harchandani and J. G. Harchandani were not associated with the business of defendant no. 3 and they have handed over the possession of the suit schedule property to the defendant no.1 and 2 and there is no relationship with the defendant no.1 and 2.

Mr. Choudhury further submitted that the defendants are in illegal possession of the suit property and there is no relationship with the plaintiff and the defendants and there is no agreement between the plaintiff and the defendants and thus Section 2(1)(c)(vii) is not applicable in the instant case and accordingly the plaintiff has filed the instant suit before this court.

Mr. Choudhury further submitted that the defendant had earlier filed an application challenging the maintainability of the suit being G.A. 2 of 2019 though on the some other ground but the said application was also rejected by this Court.

Mr. Choudhury had relied upon the judgment reported in (2010) 9 SCC 129 (Vinaykishore Punamchand Mundhada & Another -versus- Shri Bhumi Kalpataru & Another).

Heard, the Ld. Counsel for the respective parties, considered the application, documents and the judgments relied by the parties.

Now, the question is whether the dispute between the parties in the instant suit is covered under Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 or not.

Upon reading of the entire plaint it reveals that it is admitted case of the plaintiff that the suit schedule property consists of shops and offices and is mainly used for commercial purposes. It is also admitted that the plaintiff had let out the premises to Mr. B.G. Harchandani, Mr. D.G. Harchandani and J.G.

Harchandani who are the partners of M/s. Getco Electricals for the purpose of shop. It is also admitted by the plaintiff that the plaintiff was issuing rent receipts in the name of defendant no. 3 under the impression that Mr. B.G. Harchandani, Mr. D.G. Harchandani and J.G. Harchandani were still the partners of defendant no. 3 who is in occupation of the suit premises.

In support of the contention, the counsel for the plaintiff has relied upon the judgment of *Vinaykishore Punamchand Mundhada and Another (Supra)* and submits that once it is established that none of the previous partners of firm continued to be the partners of the newly constituted firm, it becomes clear that the firm is altogether different firm consisting of new partners who were inducted into possession by the previous tenant.

In the instant application only the question whether the premises is being used for commercial purpose or not and whether the defendants are tenants or illegal occupier or not is to be decided during the hearing of the suit and thus the judgment is distinguishable.

The only dispute raised by the plaintiff that there is no agreement between the plaintiff and the defendants and the defendants are in illegal possession of the suit premises and as per section 2(1)(c)(vii) of the Commercial Courts Act and agreement is required.

The judgment relied by the defendant in the case of *Ambalal Sarabhai Enterprises Limited (Supra)* it is held that :

**“36.** *A perusal of the Statement of Objects and Reasons of the Commercial Courts Act, 2015 and the various amendments to the Civil Procedure Code and insertion of new rules to the Code applicable to suits of commercial disputes show that it has been enacted for the purpose of providing an early disposal of high value commercial disputes. A purposive interpretation of the Statement of Objects and Reasons and various amendments to the Civil Procedure Code leaves no room for doubt that the provisions of the Act require to be strictly construed. If the provisions are given a liberal interpretation, the object behind constitution of Commercial Division of Courts viz. putting the matter on fast track and speedy resolution of commercial disputes, will be defeated. If we take a closer look at the Statement of Objects and Reasons, words such as “early” and “speedy” have been incorporated and reiterated. The object shall be fulfilled only if the provisions of the Act are interpreted in a narrow sense and not hampered by the usual procedural delays plaguing our traditional legal system.*

**37.** *A dispute relating to immovable property per se may not be a commercial dispute. But it becomes a commercial dispute, if it falls under sub-clause (vii) of Section 2(1)(c) of the Act viz. “the agreements relating to immovable property used exclusively in trade or commerce”. The words “used exclusively in trade or commerce” are to be interpreted purposefully. The word “used” denotes “actually used” and it cannot be either “ready for use” or “likely to be used” or “to be used”. It should be “actually used”. Such a wide interpretation would defeat the objects of the Act and the fast tracking procedure discussed above.”*

In the instant case, it is admitted by the plaintiff that the plaintiff had initially let out the shop room to Mr. B.G. Harchandani, Mr. D.G. Harchandani and J.G. Harchandani who were the partners of M/s. Getco Electricals and still the defendant no. 3 is running his business in the said shop though Mr. B.G. Harchandani, Mr. D.G. Harchandani and J.G. Harchandani are not the partners but the defendants no.1 and 2 are the partners and thus this Court is of the view that defendants are using the suit schedule property for business purpose and would constitute a commercial dispute.

In view of the above, this Court has no jurisdiction to proceed with the instant suit.

In the judgment reported in (2014) 1 SCC 648 (Oil and Natural Gas Corporation Ltd. -vs- Modern Construction and Company), the Hon'ble Supreme Court held that :-

*“17. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order 7 Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of [Section 14](#) of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same.*

*21. Thus, the respondent cannot take the benefit of its own mistake. The respondent instituted the suit in the civil court at Mehsana which admittedly had no jurisdiction to entertain the suit. In spite of the fact that the civil suit stood decreed, the High Court directed the court at Mehsana to return the plaint in view of the provisions of Order 7 Rule 10 CPC. Thus, the respondent presented the plaint before the Civil Court at Surat on 3-2-1999.”*

The above judgment is confirmed by the Hon'ble three Judge's Bench in the case reported in (2020) 12 SCC 667 (EXL Careers and Another -vs- Frankfinn Aviation Services Private Limited) and held that : -

*“16. We find no contradiction in the law as laid down in Modern Construction pronounced after consideration of the law and precedents requiring reconsideration in view of any conflict with Joginder Tuli. Modern Construction (supra) lays down the correct law. We answer the reference accordingly.*

**20.** *The statutory scheme now becomes clear. In cases dealing with transfer of proceedings from a Court having jurisdiction to another Court, the discretion vested in the Court by Sections 24(2) and 25(3) either to retry the proceedings or proceed from the point at which such proceeding was transferred or withdrawn, is in marked contrast to the scheme under Order 7 Rule 10 read with Rule 10-A where no such discretion is given and the proceeding has to commence de novo.”*

Considering the settled position of law, the plaint of the instant suit is return to the plaintiff to present it before the Court having competent jurisdiction.

G.A. No. 6 of 2022 is thus disposed of.

(KRISHNA RAO, J.)

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