

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

**APOT/195/2024
With CS/189/2016
IA No. GA/1/2024**

**PRADEEP KUMAR JAIN AND SONS (HUF)
-VS-
SRI SRI ISWAR MAHADEB AND ORS**

And

**APOT/196/2024
With CS/190/2016
IA No. GA/1/2024**

**SHRUTI JAIN
-VS-
SRI SRI ISWAR MAHADEB AND ORS**

And

**APOT/197/2024
With CS/191/2016
IA No. GA/1/2024**

**MRS. KUSUM JAIN
-VS-
SRI SRI ISWAR MAHADEB AND ORS**

And

**APOT/198/2024
With CS/192/2016
IA No. GA/1/2024**

**RAAGINI SAREES PRIVATE LTD
-VS-
SRI SRI ISWAR MAHADEB AND ORS**

And

**APOT/199/2024
With CS/193/2016
IA No. GA/1/2024**

DEEP KUMAR JAIN

**-VS-
SRI SRI ISWAR MAHADEB AND ORS**

And

**APOT/200/2024
With CS/194/2016
IA No. GA/1/2024**

**PRADEEP KUMAR JAIN
-VS-
SRI SRI ISWAR MAHADEB AND ORS**

**BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
-AND-
The Hon'ble JUSTICE MD. SHABBAR RASHIDI**

For the Appellants : Mr. Sakya Sen, Sr. Adv. (V.C.)
Mr. Shiv Ratan Kakrania, Adv.
Mr. Tanuj Kakrania, Adv.
Ms. Shreya Goenka, Adv.
Ms. Sairak Goenka, Adv.

For the Respondent : Ms. Somali Mukhopadhyay, Adv.

HEARD ON : 17.07.2026

DELIVERED ON : 17.07.2026

DEBANGSU BASAK, J.:-

1. Six appeals are taken up analogously as the issues raised in the six appeals are similar.
2. In all the six appeals suits for eviction were filed in 2016. Defence of the defendant therein was struck off under Section 7(3) of the West Bengal Premises Tenancy Act, 1997.
3. In all the six appeals, the defendants applied under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of the plaint.

The application for rejection of the plaint stood dismissed by the impugned judgments and orders under appeal.

4. Learned Senior Advocate appearing for the appellants submits that, the plaint does not disclose a cause of action as against the appellants. He refers to the pleadings in the plaint.
5. Learned Senior Advocate appearing for the appellants submits that, the disputes involved are commercial disputes within the meaning of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015. He submits that, at the time of filing of the suit for eviction, the immovable property was used as a show room which obviously involves commerce. Consequently, he submits that, the suit was filed before the Court which did not possess requisite jurisdiction. On that ground alone, the plaint should be rejected with all interim orders passed therein vacated.
6. Learned Senior Advocate appearing for the appellant submits that, the suit was filed under the provisions of the West Bengal Premises Tenancy Act, 1997. He submits that, the suit property is governed by the provisions of the Transfer of Property Act and that, no notice under Section 106 of the Transfer and Property Act was issued.
7. Learned Senior Advocate appearing for the appellants submits that, the statutory rights can be waived and that, the plaintiffs in the suit waived such statutory right.
8. In response to a query of the Court, learned Senior Advocate appearing for the appellants submits that, the appellants are not paying any occupation charges in respect of the property in

occupation. However, the appellants are ready to pay occupation charges if so directed.

9. Respondents in the appeals are represented.

10. So far as the 1st, 3rd and 4th grounds sought to be urged in the appeal are concerned, they may be decided at the trial of the suit. It is not a scenario under Order VII Rule 11 of the Code of Civil Procedure, 1908.

11. On a meaningful reading of the plaint, it cannot be said that the plaint does not disclose a cause of action. The plaintiffs are seeking eviction of tenants from an immovable property. The applicable law governing the tenancy may be decided at the trial of the suit. Whether there was any waiver of any statutory right may be decided at the trial of the suit.

12. The 1st, 3rd and 4th grounds urged are not the issues which can be decided under Order VII Rule 11 of the Code of Civil Procedure, 1908, in the facts and circumstances of the present case.

13. Respondents agree with the appellants that, the suit filed involves a commercial dispute within the meaning of the Act of 2015. The suit was filed in 2016. Commercial Division of the High Court was constituted by the notification dated July 16, 2016. As to whether or not Section 12A of the Act of 2015 is mandatory was decided by the High Court in **AIR 2021 Cal 190 (Laxmi Polyfab Pvt. Ltd. -Vs- Eden Realty Ventures Pvt. Ltd. and Another)**. **Laxmi Polyfab Pvt. Ltd. (Supra)** was decided on April 7, 2021. It is of the view that, suits filed prior to December 11, 2020 will not be dismissed on the ground of non compliance of Section 12A of the

Act of 2015 as the relevant notification of the standard operating procedure for under taking pre litigation mediation was not published.

14. **Laxmi Polyfab Pvt. Ltd. (Supra)** was noted in **(2022) 10 Supreme Court Cases 1 (Patil Automation Private Limited And Others -Vs.- Rakheja Engineers Private Limited)**. There the Hon'ble Supreme Court held that, Section 12A of the Act of 2015 was mandatory. So far as High Court declaring Section 12A of the Act of 2015 to be mandatory, the date of such decision was held to govern such respective High Court.
15. In **SLP (C) No. 8111 of 2026 (Shri Balaji Industrial Engineering Ltd. -Vs- Steel Authority Of India Ltd. -IISCO Steel Plant)** Hon'ble Supreme Court observed that, when a commercial suit is taken up by a Judge in the non-commercial division but such Judge is with the determination of the Commercial Division, then, such decision of such Court cannot be faulted.
16. Applying the ratio of **Patil Automation Private Limited And Others (Supra)** read with **Laxmi Polyfab Pvt. Ltd. (Supra)** in the facts and circumstances of the present case, therefore, the suits involving commercial disputes filed prior to December 11, 2020 not complying with Section 12A of the Act of 2015 cannot be held to be instituted incorrectly.
17. The present suit was instituted in 2016 which is prior to December 11, 2020. Consequently, non compliance of Section 12A of the Act of 2015 will not vitiate the filing of the present suit.

18. Since the disputes in the suits involves commercial dispute as agreed between the parties, it would be appropriate that, we invoke our powers under Section 15 of the Act of 2015. In such exercise, we direct transmission of the records of CS/189/2016, CS/190/2016, CS/191/2016, CS/192/2016, CS/193/2016 and CS/194/2016 along with all connected applications from the Non-Commercial Division to the Commercial Division. On such transmission, the department will treat CS/189/2016, CS/190/2016, CS/191/2016, CS/192/2016, CS/193/2016 and CS/194/2016 along with connected applications to be disposed of in the non commercial division. No doubt the department will renumber CS/189/2016, CS/190/2016, CS/191/2016, CS/192/2016, CS/193/2016 and CS/194/2016 in the Commercial Division on transmission of such records.
19. Accordingly, all the six appeals along with the connected applications are dismissed, without any order as to costs.

(DEBANGSU BASAK, J.)

20. I agree

(MD. SHABBAR RASHIDI, J.)