

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE**

**APOT/167/2026
IA NO: GA-COM/1/2026**

**ORIENT TRADING AND INVESTMENT CO.
VS
UNITED CONSULTANTS (INDIA) LLP.**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE ARYAK DUTT

For the Appellant : Mr. Shounak Mukhopadhyay, Adv.
Mr. Chitresh Sarawagi, Adv.

HEARD ON : 29.09.2026

DELIVERED ON : 29.09.2026

DEBANGSU BASAK, J.:-

- 1.** Appellant assails the order dated July 14, 2026 passed in IA No. GA-COM/1/2026 in CS-COM/43/2026.
- 2.** Learned Advocate appearing for the appellant submits that, the appellant filed a suit for eviction on the ground, *inter alia*, that, the defendant as lessee failed to vacate the premises despite notice under Section 106 of the Transfer of Property Act, 1882 dated December 24, 2024 being served.
- 3.** Learned Advocate appearing for the appellant submits that, the appellant is seeking *ex parte* ad interim order of injunction against the respondent in the suit. He submits that, by the impugned order, the learned Trial Judge held that, the issue as to whether, a suit for

eviction premised upon non-compliance of notice under Section 106 of the Transfer of Property Act, 1882 is maintainable in the Commercial Division or not, is pending consideration before the Hon'ble Supreme Court in Civil Appeal No. 4660 of 2021.

4. Relying upon **2026 SCC Online Cal 8715 (Xclusive Inn Private Limited and Others Vs. Anjana Guha and Others)**, learned Advocate appearing for the appellant submits that, the issue was considered by the Co-ordinate Bench. He submits that, the Co-ordinate Bench considered the decision rendered in **2025 SCC Online Cal 5076 (T. E. Thomson & Company Limited Vs. Swanalatha Chopra Nee Kapur)** and held that, the decision of *T. E. Thomson & Company Limited (supra)* being rendered by a Special Bench is binding upon the Division Bench. On the same analogy, he submits that, the decision of the *T. E. Thomson & Company Limited (supra)* is binding upon the learned Single Judge. The learned Single Judge erred in not granting *ex parte* ad interim order of injunction.

5. Since, the appellant is seeking to obtain *ex parte* ad interim order of injunction and since, the impugned order refused to grant such *ex parte* ad interim order of injunction by holding that, the issue of maintainability of the suit is pending before the Hon'ble Supreme Court, we find the present appeal to be maintainable.

6. We are proposing to dispose of the appeal *ex parte* in view of the fact that, the appellant sought *ex parte* ad interim order of injunction before the learned Trial Judge.

7. **T. E. Thomson & Company Limited (supra)** considered a reference which answered as follows:-

“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 jural 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 immovable 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.”

8. *Xclusive Inn Private Limited and Others (supra)* considered the *T. E. Thomson & Company Limited (supra)* and held as follows:-

“50. The decision of the coordinate Bench in T. E. Thomson & Company Limited (supra) is binding on us. It has held that, the lease agreement has to be looked into and considered for deciding the nature and character of the jural relationship since the decision there on is required for evaluating the validity of the notice under Section 106 of the Transfer of Property Act, 1882.”

9. A Special Leave Petition being SLP (C) No. 26786 of 2026 (***Xclusive Inn Private Limited and Others Vs. Anjana Guha and Others***) was disposed of by an order dated August 12, 2026 holding that, the Supreme Court was not inclined to interfere with the order of the Co-ordinate Bench rendered in *Xclusive Inn Private Limited and Others (supra)*.

10. A decision of the Special Bench rendered in *T. E. Thomson & Company Limited (supra)* is binding both on us as also on the learned Single Judge. Till such time, the issue is finally decided by a Court superior to the Court rendering *T. E. Thomson & Company Limited (supra)*, the same continues to remain binding on us as also on the learned Trial Judge.

11. A decision on the subject matter which is governed by the ratio of *T. E. Thomson & Company Limited (supra)* cannot be postponed on the ground of such issue is being considered by the Hon’ble Supreme

Court and till such time such ratio is not upset by the Hon'ble Supreme Court, the suit will not proceed.

12. Viewed from another perspective, when, an issue decided by the High Court is pending before the Supreme Court, and decision of the High Court is binding upon the learned Trial Judge, a decision on the merits of the matter cannot be kept in abeyance on the plea that the issue is receiving consideration of the Hon'ble Supreme Court. In such circumstances, a litigant will be rendered remediless for no fault of his own.

13. In the facts and circumstances of the present case, although the appellant may be entitled to an *ex parte* ad interim order of injunction, the appellant is now being rendered forum less in view of the decision as rendered by the impugned order.

14. In such circumstances, we set aside the impugned order and remand the injunction petition for fresh consideration before the learned Trial Judge.

15. APOT/167/2026 is disposed of accordingly.

(DEBANGSU BASAK, J.)

16. I agree.

(ARYAK DUTT, J.)