

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Commercial Division

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FAT 270 of 2023

M/s. Xclusive Inn Private Limited & Ors.

Vs.

Anjana Guha & Ors.

For the Appellants	: Mr. Aniruddha Chatterjee, Sr. Adv. Mr. Sounak Bhattacharya, Adv. Mr. Sounak Mondal, Adv. Mr. A. Halder, Adv. Mr. Anirban Saha Roy, Adv. Ms. Bipasha Bhattacharyya, Adv.
For the respondents	: Mr. Anirban Roy, Adv. Mr. Ashim Kumar Roy, Adv. Mr. Debjit Basu, Adv. Mr. Mrinmoy Mukherjee, Adv.
Hearing Concluded on	: July 3, 2026
Judgement on	: July 9, 2026

DEBANGSU BASAK, J.:-

1. Appellant has assailed the judgment and decree being No. 29 dated July 10, 2023 passed in Title Suit No. 5 of 2021 by the learned Commercial Court at Rajarhat.
2. By the impugned judgment and decree, learned Judge has allowed the application under Order XIII-A read with

Order XII Rule 6 of the Code of Civil Procedure, 1908 filed by the respondents and passed a summary judgment and decree of eviction against the appellants.

3. Learned Senior Advocate appearing for the appellants has contended that, the subject matter of the suit cannot be classified as involving a Commercial dispute within the meaning of the Commercial Courts Act, 2015. Consequently, he has contended that, the Court before which the suit was instituted did not have requisite jurisdiction to try, enter and determine the suit far less pass the impugned judgment and decree of eviction.

4. Elaborating on his contention that, the subject matter of the suit did not involve a commercial dispute within the meaning of the Act of 2015, learned Senior Advocate appearing for the appellant has drawn the attention of the Court to the plaint. He has submitted that, the suit was for eviction. An eviction suit, according to him, does not involve a commercial dispute within the meaning of the Act of 2015.

5. Learned Senior Advocate appearing for the appellants has contended that, the explanation to Section 2(1)(c) of the Act of 2015 does not allow a suit for eviction simplicitor to be

treated as a suit involving a commercial dispute within the meaning of the Act of 2015.

6. Learned Senior Advocate appearing for the appellant has relied upon **2020 (15) SCC 585 (Ambalal Sarabhai Enterprises Limited Vs. K.S. Infraspace LLP and Another)** in support of his contention as to what would constitute a commercial dispute within the meaning of Section 2(1)(c)(vii) of the Act of 2015.

7. Referring to **2021 3 ICC 482 (Deepak Polymers Private Limited Vs. Anchor Investments Private Limited)** learned Senior Advocate appearing for the appellants has contended that, the issue as to what would constitute a commercial dispute within the meaning of Section 2(1)(c)(vii) of the Act of 2015 was referred to a larger Bench by a learned Single Judge in **2024 SCC OnLine Cal 8985 (T.E. Thomson & Company Limited Vs. Swanalatha Chopra Nee Kapur and Another)**. He has contended that, such reference was answered in **2025 SCC OnLine Cal 5076 (T.E. Thomson & Company Limited Vs. Swanalatha Chopra Nee Kapur and Another)** He has contended that, a Special Leave Petition was carried against the decision of the Division Bench rendered in

T.E. Thomson & Company Limited (supra). Hon'ble Supreme Court has granted stay of the operation of such decision.

8. Learned Senior Advocate appearing for the appellant has contended that, the learned Trial Court has erred in invoking the provisions of the judgment on admission and summary judgment in the facts and circumstances of the present case. He has contended that, the appellants did not make any admission in the pleadings for a decree of eviction to be passed on the basis of admission.

9. Learned Senior Advocate appearing for the appellants has contended that, lease deed was executed between the parties. The appellants had entered the tenanted premises as a tenant on April 17, 2008. Subsequent to the expiry of the lease, appellants had paid enhanced rent to the respondent. Respondents had accepted such enhanced rent.

10. Learned Senior Advocate appearing for the appellants has pointed out that, simultaneously with the tenancy agreement, an agreement for maintenance was also entered into between the parties on April 17, 2008.

11. Learned Senior Advocate appearing for the appellants has contended that, the appellant is required to be treated as a tenant by holding over subsequent to the expiry of the period of lease. He has pointed out that, no notice under Section 106 of the Transfer of Property Act, 1882 was issued. In any event, he has contended that, although, the plea of holding over was taken by appellants before the learned Trial Judge, the learned Court did not allude thereto. The learned Judge has also not alluded to the point taken by the appellants that the landlords accepted the enhanced rent from the appellants. Learned Judge has not discussed the issue of holding over in the impugned judgment and decree.

12. Learned Senior Advocate appearing for the appellants has referred to Section 116 of the Transfer of Property Act, 1882 and contended that, the subject lease stood renewed from year to year. He has also referred to the written statement of the appellants and in particular to various paragraphs therein.

13. On the issue of the subject matter of the suit, learned Advocate for the respondents has drawn the attention of the Court to paragraph 8 of the written statement where, the

appellants acknowledged that the appellants were using the tenanted premises for commercial purpose of hotel cum restaurant bar.

14. Learned Advocate appearing for the respondents has contended that, in view of the admission of user of the tenanted property for commercial purpose of running a hotel cum restaurant bar the subject matter of the suit was therefore rightly classified under Section 2(1)(c)(vii) of the Act of 2015. The subject matter of the suit is therefore a commercial dispute within the meaning of the Act of 2015. In support of such contention, he has relied upon ***Ambalal Sarabhai Enterprises Limited (supra)*** as also the decision of the Division Bench in ***Deepak Polymers Private Limited (supra)***.

15. Learned Advocate appearing for the respondents has contended that, filing of the suit for eviction is a notice under Section 106 of the Transfer of Property Act, 1882 and that, no separate notice is required to be issued. In such context, he has relied upon ***2008 (2) SCC 728 (Nopany Investments (P) Ltd. Vs. Santokii Singh (HUF)*** and ***2021 SCC OnLine Del 2785 (Ashok Kumar Bagga Vs. Rajvinder Kaur)***

16. Learned Advocate appearing for the respondents has drawn the attention of the Court to the prayers in the plaint. He has submitted that, the respondent claimed recovery of possession as prayer (a) recovery of arrears license fee as prayer (b), and mesne profits as prayer (c) amongst other prayers. He has contended that, in the application under Order XIII A read with Order XII Rule 6 of the Code of Civil Procedure, 1908, a decree for possession was granted by the learned Trial Judge. He has contended that, the Trial Judge was justified in doing so in the facts and circumstances of the present case.

17. Referring to the pleadings in the written statement particularly in a portion of paragraph 15, thereof learned Advocate for the respondents has contended that, the appellants claimed that it made excess payment. He has contended that, the stand of excess payment of license fees and the claim of holding over are contrary to each other and cannot be sustained.

18. Learned Advocate appearing for the respondents has relied upon **2026 SCC OnLine SC 744 (Reliance Eminent Trading and Commercial Private Limited Vs. Delhi**

Development Authority) on the issue of Order XIII A of the Code of Civil Procedure, 1908. He has contended that, the learned Trial Judge has correctly followed the guidelines tabulated thereunder. He has referred to the portion of the impugned judgment and decree where the Trial Judge has noted invoking Order XIII A of the Code of Civil Procedure, 1908.

19. Relying upon **2012 (11) SCC 405 (Payal Vision Limited Vs. Radhika Choudhary)**, learned Advocate appearing for the respondents has contended that, in a suit for recovery of possession from a tenant which is not protected under the provisions of the Rent Control Act, what is required to be established is the existence of jural relationship of landlord and tenant and the termination of the tenancy either by lapse of time or notice under Section 106 of the Transfer of Property Act, 1882. Once such parameters have been complied with, the Court can pass a decree under Order XII Rule 6 of the Code of Civil Procedure, 1908.

20. Learned Advocate appearing for the respondents has contended that, parameters of Order XIII A and Order XII Rule 6 of the Code of Civil Procedure, 1908 were complied with. The

requirements of obtaining decree for eviction have been complied with by the respondent as the plaintiffs. Therefore, according to him, the impugned judgment and decree do not suffer from any infirmity requiring any interference.

21. Respondents had filed a suit for eviction, arrears of rent and mesne profits and other reliefs against the appellants, before the Commercial Court at Rajarhat which was registered as Title Suit No. 5 of 2021.

22. In the plaint, the respondents have claimed that, one Tarun Kumar Guha was the lessee in respect of schedule A property under one Biswanath Laha. Tarun Kumar Guha, during his lifetime had inducted the appellants in the schedule B property which is a portion of schedule A, as tenants at monthly license fee of Rs. 28,000/- for the purpose of running a hotel cum restaurant bar and a night club. Apart from such tenancy agreement, Tarun Kumar Guha, during his lifetime had also entered into an agreement for maintenance for schedule B tenanted property with the appellants under which the appellants were to pay maintenance of fee of Rs. 60,000/- per month. The parties had entered into such agreements on April 17, 2008. The two agreements had

provided that the appellants would vacate the schedule B property on or before March 16, 2018.

23. Tarun Kumar Guha had expired on December 28, 2013. The respondents as heirs of legal representatives of Tarun Kumar Guha, since deceased have filed the subject suit. In the suit the respondents have claimed eviction of the appellants, arrears of license fees and mesne profits from the appellants.

24. The respondents have claimed that, the appellants continued to remain in the tenanted property in breach of the agreement dated April 17, 2008. The tenancy had come to an end on March 16, 2018. Appellants had assured that they would vacate the tenanted premises by the end of December 2020. Appellants, however, had not done so. The respondent had revoked the license of the appellants to occupy the tenancy premises.

25. The respondents had allowed the appellants to occupy and use schedule C property as Kitchen of a hotel and dance bar. The respondents had allowed the appellants to construct a small room as security guard rooms, such portion the

respondents described as the schedule D property in the plaint.

26. The respondents had called upon the appellants to handover vacant peaceful possession in the months of December 2020, January 2021 and on January 15, 2021. The appellants have failed to do so.

27. The respondent had valued the suit in excess of 30,00,000/-. In the written statement, the appellants had in paragraph 8 acknowledged as follows:-

“8.....the defendant are using the aforesaid property for commercial purpose of hotel cum restaurant bar”.

28. Appellants have claimed that they paid enhanced rate of rent on and from the month of January 2021 to the respondents. The appellants have claimed they had made excess payment on account of rent. At the hearing of the appeal, the appellants have claimed that they are tenants by holding over.

29. Essentially in the written statement, the appellants had acknowledged that there existed a jural relationship of landlord and tenant between the parties. They had accepted

the two agreements dated April 17, 2008. They had also accepted that the two agreements expired by efflux of time on March 16, 2018. Stand of the parties to the suit have diverged with regard to the events happening subsequent to March 16, 2018.

30. Respondents have filed an application which was stated to be under Order XIII A read with Order XII Rule 6 of the Code of Civil Procedure, 1908. In such application the respondents have prayed for summary judgment and decree on admission for possession as prayer (a) and summary judgment and decree on admission for mesne profits as prayer (b).

31. The appellants have filed a written objection to such an application. In such written objection, the appellants have reiterated their stand taken in the written statement including the paragraph 8 thereof. Appellants have made such reiteration in paragraph 8 of the written objection.

32. All commercial disputes do not fall within definition of commercial dispute as has been defined in Section 2(1)(c) of the Act of 2015. Commercial Courts and Commercial Divisions established under the provisions of the Act of 2015

have been empowered to decide suits involving commercial disputes which are within the meaning of the Act of 2015.

33. A Commercial Court or a Commercial Division must have subject matter jurisdiction to receive and decide a suit or proceeding under the Act of 2015. Twin ingredients have to be simultaneously satisfied for a Commercial Court or the Commercial Division to assume subject matter jurisdiction over the suit or proceeding. Such twin ingredients are:-

- (i) value of the subject matter of the suit must be as per the Specified Value as prescribed, and
- (ii) the subject matter of the suit must involve a commercial dispute within the meaning of Section 2(1)(c) of the Act of 2015.

34. Apart from the territorial and subject matter jurisdiction of such Commercial Courts, the pecuniary jurisdiction of such Court is also important. A Commercial Court will have jurisdiction to decide the suit provided, it has territorial jurisdiction and the subject matter involves commercial disputes within the meaning of the Act of 2015, and the subject matter of the suit is of the Specified Value as prescribed under the Act of 2015. The Act of 2015 has defined

Specified Value in Section 2(1)(i). Specified Value so defined has to be understood in conjunction with Section 12 of the Act of 2015.

35. So far as the State of West Bengal is concerned, the notification dated March 20, 2020, has prescribed the Specified Value for commercial disputes to be a sum of Rs. 30,00,000/- and above.

36. In the facts and circumstances of the present case, the suit filed by the respondents has been valued in excess of Rs. 30,00,000/- which is as per the prescribed Specified Value under the Act of 2015. The parties have not disputed that the Commercial Court has territorial jurisdiction.

37. In the facts and circumstances of the present case, therefore, the respondents have satisfied two of the conditions for the Commercial Court to assume jurisdiction, that is, the Specified Value for the suit, and territorial jurisdiction.

38. As noted above, the suit filed by the respondents is one for eviction, arrears of license fees and mesne profits. All claims made in the suit are based on a written agreement of tenancy and a written agreement for maintenance. Therefore, there are written agreements relating to immovable properties

involved in the suit. Parties have acknowledged the existence of such written agreements. Respective claims of the parties in the suit are based on such written agreements. Both set of parties to the suit have based their rights and respective claims on the two written agreements dated April 17, 2008, amongst others.

39. The respondents as the plaintiffs have alleged that the suit property was being used for commerce. The appellants in their written statement as well as the written objection have acknowledged the suit property to be used for commercial purpose. Both have agreed that, the suit property is being used commercially as a hotel cum restaurant and a bar. The agreement dated April 17, 2008 had allowed the suit property to be used for a hotel cum restaurant and a bar.

40. Explanation to Section 2(1)(c) of the Act of 2015 prescribe that, a commercial dispute shall not cease to be a commercial dispute merely because it also involves an action for recovery of immovable property or for realization of monies out of immovable properties given as security or involves any other reliefs pertaining to the immovable properties. We are concerned with explanation (a) only in the facts and

circumstances of the present case. Explanation (a) to Section 2(1)(c) clarifies that, a suit involving recovery of possession, immovable property will not cease to one involving a commercial dispute merely because a decree for eviction is sought for.

41. *Ambalal Sarabhai Enterprises Limited (supra)* has held as follows:-

“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.

42. Two conditions have to be simultaneously fulfilled for a suit relating to an immovable property to partake the character of a commercial dispute and fall within the jurisdiction of the Commercial Court or the Commercial Division as the case may be. The subject matter of the suit

must involve agreement relating to the immovable property and the concerned immovable property must be used for trade or commerce. It must be actually used so. Intention to use it in future or being ready to be used for trade or commerce will not suffice.

43. Once the two conditions noted in the preceding paragraphs are satisfied, the suit thus can justifiably be classified as one involving a commercial dispute within the meaning of Section 2(1)(c)(vii) of the Act of 2015. Suit for eviction is a specie of the genus of suits relating to immovable property involving a commercial dispute within the meaning of Section 2(1)(c)(vii) of the Act of 2015.

44. Explanation (a) to Section 2(1)(c) of the Act of 2015 recognizes that there can be a suit for eviction in respect of an immovable property where the disputes involved in the suit can fall within the meaning of a commercial dispute as defined in Section 2(1)(c). It therefore explains that such dispute in the suit will not cease to be commercial dispute merely because the suit involves an action for recovery of immovable property or realization of monies out of immovable property

given on security or involves any other relief pertaining to the immovable property.

45. Explanation (a) facilitates the consideration of any relief relating to the immovable property including a relief for eviction, when the dispute involved in the suit is a commercial dispute within the meaning of the Act of 2015. Any other interpretation would be misreading the express provisions of Section 2(1)(c) and the Explanation (a) thereto of the Act of 2015.

46. In the facts and circumstances of the present case, as noted above on the date of institution of the suit, the immovable property concerned was being used for commerce and admitted to be so by the appellants herein in their written statement and their written objection.

47. Learned Single Judge in ***Deepak Polymers Private Limited (supra)*** has held that, the suit arising out of the statutory right under Section 106 of the Transfer of Property Act, 1882 having no direct nexus with the lease agreements did not satisfy the pre-condition of applicability of Section 2(1)(c)(vii) of the Act of 2015.

48. Another Single Judge in ***T.E. Thomson & Company Limited (supra)*** after doubting the view of ***Deepak Polymers Private Limited (supra)*** referred three issues to the Larger Bench.

49. On reference the Division Bench in ***T.E. Thomson & Company Limited (supra)*** has answered the reference 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 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.

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.

51. In the facts and circumstances of the present case, both parties have acknowledged two separate agreements to be executed by them. Out of the two, parties have agreed to one governing lease/tenancy agreement while the other for maintenance of the tenancy premises. Parties have acknowledged that, the agreements dated April 17, 2008, governing the tenancy had expired. As has been noted above, there are divergence in the view of the respective parties with regard to the events happening subsequent to the expiry of the agreement dated April 17, 2008.

52. Apart from the claim of eviction, the respondents as the plaintiffs have claimed arrears of license fees and mesne profits in the suit. The suit therefore of the respondents is not simplicitor for eviction but also have money claims. Respondents have based their money claims on the agreement for tenancy and maintenance both dated April 17, 2008 amongst other documents.

53. In view of the explanation to Section 2(1)(c) of the Act of 2015, the suit involved, is not a simplicitor suit for eviction but have prayers which resonates on the money claims. The respondents have based their money claims on the

agreements governing the rent and maintenance payable. The agreements relate to an immovable property used in commerce.

54. In such factual matrix, given the prayers in the plaint, the subject matter of the suit, therefore, involves a commercial dispute within the meaning of Section 2(1)(c)(vii) of the Act of 2015. The ingredients for a Commercial Court to assume jurisdiction, having been satisfied, the suit was correctly instituted, before the Commercial Court.

55. In this regard, one must not lose sight of the provisions of Section 6 of the Act of 2015 which has laid down the jurisdiction of the Commercial Court. Once the territorial and subject matter jurisdiction have been established, the suit is maintainable only before the Commercial Court in terms of Section 6 of the Act of 2015.

56. The quantum of rent under the agreement dated April 17, 2008 by itself and the subsequent rent enhancements, in any view, have taken the tenancy out of the purview of protection under the West Bengal Premises Tenancy Act, 1997. The tenancy is therefore governed under the provisions of the Transfer of Property Act, 1882.

57. In the plaint, respondents as the plaintiff have pleaded oral notice under Section 106 of the Transfer of Property Act, 1882 to be given. Appellants have contended that no notice under Section 106 of the Transfer of Property Act, 1882 was issued prior to the institution of the suit, and therefore, the suit must fail.

58. *Nopany Investments (P) Ltd. (supra)* has considered the necessity of a notice to quit under Section 106 of the Transfer of Property Act, 1882, prior to the filing of the suit for eviction. It has held as follows:-

22.In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the decision of this Court in V. Dhanapal Chettiar v. Yesodai Ammal.

59. On the strength of the ratio laid down in ***Nopany Investments (P) Ltd. (supra)***, the institution of the suit by the respondents cannot be faulted on the ground that no notice under Section 106 of the Transfer of Property Act, 1882, was

issued prior to the institution of the suit, assuming one disbelieves the claim of oral notice. As has been noted above, the suit is governed by the provisions of the Transfer of Property Act, 1882, as the appellants are not entitled to the protection of eviction under the provisions of the West Bengal Premises Tenancy Act, 1997 in view of the quantum of rent payable.

60. *Payal Vision Limited (supra)* has considered the provisions of Order XII Rule 6 of the Code of Civil Procedure, 1908 in a suit for recovery of possession from a tenant whose tenancy was not protected under the Rent Control Act. It has held that, the plaintiff in suit for eviction of a tenant whose tenancy is not protected under the Rent Control Act is required to establish existence of jural relationship of landlord and tenant between the parties and termination of tenancy either by lapse of time or by service of notice under Section 106 of the Transfer of Property Act, 1882 to obtain a decree on the basis of judgement on admission.

61. Applying the ratio of ***Payal Vision Limited (supra)*** in the facts and circumstances of the present case, the appellants have admitted the jural relationship of landlord

and tenant between the parties. As has been held above, tenancy is not protected under the West Bengal Premises Tenancy Act, 1997. Filing of the suit itself is a notice to quit on the tenant on the strength of ***Nopany Investments (P) Ltd. (supra)***. Therefore, the respondents as the plaintiff have made out a case for grant of relief under Order XII Rule 6 of the Code of Civil Procedure, 1908.

62. Respondents had filed the application in which, the impugned judgment and decree was passed under Order XIII A read with Order XII Rule 6 of the Code of Civil Procedure, 1908. Learned Trial Judge has acknowledged it to be so in the impugned judgment and order. Parties had proceeded on such basis also before the learned Trial Judge.

63. *Reliance Eminent Trading and Commercial Private (supra)* has laid down guidelines to be complied with while considering the application for summary judgment under Order XIII A of the Code of Civil Procedure, 1908. It would be apposite to refer to paragraph 59 thereof which is as follows:-

59. Therefore, while considering an application for summary judgment under Order XIII-A of the CPC, the following non-exhaustive guidelines have to be complied-

(i) That the procedural mandate under Order XIII-A, CPC be strictly complied.

(ii) The Court should consider,

(a) Whether Plaintiff has no real prospect of succeeding on the claim or issue; or

(b) Whether the defendant has no real prospect of successfully defending the claim or issue; and

(iii) The Court should also consider whether there is no other reason why the case or issue(s) should be allowed to go to trial.

(iv) While ascertaining above, the Court does not have to take everything on the face value, but it must also not conduct a mini trial at the same time.

(v) That the Court has to differentiate between a cause of action/defence respectively, which is a real as opposed to fanciful prospect.

(vi) That the Court ought to grasp the nettle, when dealing with the summary judgement applications to decide short points of law and interpretations.

(vii) The Court must take into account not only the evidence before it but also the evidence that can reasonably be expected to be led/available at the trial.

(viii) That the Court's usage of power under Order XIII-A, CPC is exceptional as it cuts short the process of trial and ought to be exercised where oral evidence and full trial is not required.

(ix) In order to ascertain the need for full trial over summary judgment, the Court has to see whether, in the interest of justice it is more suited to conduct trial to-

- (a) Weigh the evidence,*
- (b) Evaluate the credibility of a deponents,*
- (c) Draw reasonable inference from the evidence.*

64. *Reliance Eminent Trading and Commercial Private*

(supra) has also noted that, use of summary judgment is not against the interest of justice if it leads to a fair and just result as it would serve the guidelines of timelines, affordability and proportionality in light of the litigation as a whole.

65. Scope and area of operation of Order XII Rule 6 and Order XIII A of the Code of Civil Procedure, 1908 are different. While Order XII Rule 6 is available to every suit filed under Section 9 of the Code of Civil Procedure, 1908, Order XIII A applies only to suits involving commercial disputes within the meaning of the Act of 2015 and tried by a Commercial Court or a Commercial Division. However, it has no application in a suit under Order XXXVII of the Code of Civil Procedure, 1908 filed before the Commercial Court or the Commercial Division. Order XIII A of the Code of Civil Procedure, 1908 is, however, not shackled by the requirement of an admission for it to be invoked, as in Order XII Rule 6 scenario.

66. Notwithstanding no admission being made by the defendant, a Court exercising powers under Order XIII A of the

Code of Civil Procedure, 1908 can pass a summary judgment if it considers the plaintiff not to have any real prospect of succeeding on the claim or the defendant not to have any real prospect of successfully defending the claims or when the Court is of the view that there is no compelling reason as to why the claim should not be disposed of before recording of oral evidence.

67. As noted above both the parties to the suit have traced their respective claims from the agreements dated April 17, 2008. Both have acknowledged that the agreement dated April 17, 2008 expired by efflux of time on March 16, 2018. The tenancy not being protected under the West Bengal Premises Tenancy Act, 1997 is an admitted fact. In any events, such fact is established by the admitted agreement dated April 17, 2008. Filing of the suit for eviction is itself a notice under Section 106 of the Transfer of Property Act, 1882. There is no real prospect of the appellants defending the claim of eviction of the respondents, in the suit. The conduct of the parties subsequent to March, 16, 2018, taking the claims of the appellants to the highest, brings about a new tenancy. That new tenancy is also governed by the Transfer of Property Act,

1882 and is not afforded any protection from eviction under the West Bengal Premises Tenancy Act, 1997. The plea of holding over subsequent to March 16, 2018 by the appellants also does not impede a decree for eviction under Order XIII A of the Code of Civil Procedure, 1908 as the appellants are liable to be evicted under the Transfer of Property Act, 1882, even in such a scenario. The subject suit is not under Order XXXVII of the Code of Civil Procedure, 1908 for the ouster of applicability of Order XIII A to apply.

68. In the facts and circumstances of the present case, nothing has been placed on record before us to establish that, the guidelines in paragraph 59 of ***Reliance Eminent Trading and Commercial Private (supra)*** have been breached by the learned Trial Judge.

69. ***Ashok Kumar Bagga (supra)*** has applied the ratio of ***Nopany Investments (P) Ltd. (supra)*** with regard to a notice under Section 106 of the Transfer of Property Act, 1882. It has also noted, various authorities of the Supreme Court and the Delhi High Court on the issue of judgment of admission in respect of a suit for eviction. It had upheld the decree for eviction on the basis of admission in the facts of that case.

70. In the facts and circumstances of the present case, therefore, the learned Trial Judge has correctly applied the provisions of Order XIII A read with Order XII Rule 6 of the Code of Civil Procedure, 1908 and passed a decree for eviction. We have found no grounds to interfere with the impugned judgment and decree.

71. FAT 270 of 2023 is dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

72. I agree.

[MD. SHABBAR RASHIDI, J.]