

OD-12

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

**APD/9/2025
WITH CS/244/2008
IA No.GA/1/2025**

KAMALES MALLIK

Versus

**OCTAVIUS TEA AND INDUSTRIES LTD. (FORMERLY KNOWN AS
OCTAVIUS STEEL AND CO. LTD.) AND ORS.**

Present :

The Hon'ble Justice Debangsu Basak

-And-

The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant : *Mr. Kushal Chatterjee, Adv.*
Mr. Arindam Paul, Adv.
Ms. Debarati Das, Adv.
Ms. Sohini Choudhury, Adv.
Mr. Sujato Ghosh, Adv.
Ms. Eshika Nandy, Adv.

For the Respondent No.1 : *Mr. D. N. Sharma, Sr. Adv.*
Mr. Altamas Alim, Adv.
Mr. S. R. Saha, Adv.

For the Respondent : *Mr. Mainak Bose, Sr. Adv.*
Nos.2, 6, 11, 12 & 13 *Ms. Pallavi Sengupta, Adv.*

For the Respondent : *Ms. Ishita Chakraborty, Adv.*
Nos.3, 4, 5 & 10

For the Respondent No.8 : *Mr. A. P. Gomes, Adv.*

For the Respondent No.15 : *Mr. Subhendu Bandopadhyay, Adv.*

HEARD ON : 24.04.2026

DELIVERED ON : 24.04.2026

DEBANGSU BASAK, J.:-

1. The appeal is at the behest of the plaintiff and directed against the judgment and decree dated January 9, 2024 passed in CS/244/2008.
2. By the impugned judgment and decree, learned Single Judge, dismissed the suit as not maintainable.
3. Learned Advocate appearing for the appellant submits that, the subject-matter of the suit involves a commercial dispute within the meaning of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015. He draws the attention of the Court to the pleadings in the plaint. He submits that, the defendants were using the tenanted premises for commercial exploitation inasmuch as offices were being run by the defendants.
4. Learned Advocate appearing for the appellant, relies upon **2026 : CHC-OS : 121-DB (Starlift Services Pvt. Ltd. vs. Syama Prasad Mookherjee Port, Kolkata)** in support of the contention that, since the impugned judgment and decree was passed in the Non-Commercial Division, the decree is a nullity.
5. Learned Advocate appearing for the respondent nos.2, 6, 11, 12 and 13 submits that, the suit was originally filed when the Act of 2015 did not come into force. She submits that, in view of Section 4 of The High Court Commercial Courts Practice Directions, 2021

the suit was required to be transferred to the Commercial Division by the registry. Failure of the registry to do so should not visit the respondents with consequences. Reliance is placed on **2022 (1) CLJ (Cal) 308 (Dr. Dilip Choudhury vs. Pratishruti Projects Ltd. & Ors.)** in this regard.

6. We find from the records that, appellant as the plaintiff filed a suit for eviction, mesne profit as well as property tax, municipal dues from the respondent. Appellant also prayed for perpetual injunction.
7. Appellant was appointed as a receiver in a suit for partition with regard to the estate of Manick Lall Mullick (since deceased).
8. The plaint case is such that initially a lease was executed in respect of the property where the tenancies are located. Subsequent to such lease deed, there was transfer of tenancy. Essentially, the entire property covered under the lease deed was being used as office space. The present respondents, at least at the time of filing of the suit, were utilizing the tenanted portions for commercial exploitation by running office therefrom.
9. For the purpose of Court-fees, the suit was valued in excess of Rs.4 crores. In such view, the suit involves a commercial dispute within the meaning of Section 2(1)(c)(vii) of the Act of 2015. It is also of the specified value within the meaning of the Act of 2015.

- 10.** Suit was filed in 2008 when obviously the Act of 2015 did not come into effect. With the Act of 2015 coming into effect on and from October 23, 2015, the suit was required to be transferred to the Commercial Division. Practice Directions of 2021 in Section 4 provides for transfer of a suit involving a commercial dispute of the specified value pending in the Non-Commercial Division subsequent to the Act of 2015 coming into effect.
- 11.** Practice Directions of 2021, however, are to be read as subservient to Section 15 of the Act of 2015 and not in derogation therewith. Section 15(5) of the Act of 2015 allows parties to apply for transfer of the suit, involving a commercial dispute of a specified value in the event the Registry fails to do so in terms of Section 15(1) to (4) thereof.
- 12.** In the facts and circumstances of the present case, the suit was not transferred from the Non-Commercial Division to the Commercial Division as on the date when the impugned judgment and decree was passed.
- 13.** We considered the issues as to the effect of the provisions of the Act of 2015 on a proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 subsequent to the establishment of the Commercial Division as also the effect of the judgment and order passed by the Non-Commercial Division after establishment of a

Commercial Division in a proceedings filed before the coming into effect of the Act of 2015 and involving a commercial dispute within the meaning of the Act of 2015.

14. The second issue as noted in the preceding paragraph was answered by us in ***Starlift Services Pvt. Ltd. (supra)*** by holding that such judgment and order passed by the Non-Commercial Division after the establishment of the Commercial Division, in a proceeding filed before coming into effect of the Act of 2015 and involving a commercial dispute within the meaning of the Act of 2015 to be a nullity.
15. In the case of ***Dr. Dilip Choudhury vs. Pratishruti Projects Ltd. & Ors.***, the suit was initially filed in the Non-Commercial Division. On the Act of 2015 coming into effect, it was transferred to the Commercial Division. Written statement in such suit was not filed. Case management under Section 15 of the Act of 2015 was not done subsequent to the suit being transferred to the Commercial Division. Therefore, the Court proceeded to undertake the exercise under Section 15 of the Act of 2015 so far as the case management is concerned and allowed filing of the written statement. Factual matrix in the present case is different.
16. In such circumstances, the impugned judgment and decree being nullity is set aside.

- 17.** It would be appropriate to direct the Registry to transfer CS/240/2008 from the Non-Commercial Division to the Commercial Division. All pending applications if any, in such suit should also be transferred. Immediately on transfer of CS/244/2008 to the Commercial Division, the Registry will proceed to re-number the same in the Commercial Division. On completion of re-numbering of CS/244/2008 in the Commercial Division, Department will treat CS/244/2008 as disposed of. Registry will deal with the pending applications in CS/244/2008 *mutatis mutandis*.
- 18.** We further clarify that we did not enter into the merits in the disputes *inter se* the parties. All points raised are kept open.
- 19.** With the aforesaid directions, APD/9/2025 is disposed of without any order as to costs.

(DEBANGSU BASAK, J.)

- 20.** I agree.

(MD. SHABBAR RASHIDI, J.)

A/s.