In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Sandip Kumar De

F.M.A.T. No.408 of 2026
+
CAN 1 of 2026

Rajashi Developers Pvt. Ltd.

-Versus-

Rajaniklal Sales Pvt. Ltd. and Others

For the appellant	:	Mr. Anirban Roy, Mr. Debjit Basu, ... Advs.
For the respondent no.1	:	Mr. Aniruddha Chatterjee, Sr. Adv., Ms. Jyoti Singh, Mr. Parikshit Lakhotia, Mr. Anirban Saha, ... Advs.
Heard on	:	08.10.2026
Reserved on	:	08.10.2026
Judgment on	:	15.10.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal arises out of a suit for declaration that the plaintiff/respondent no.1-Company is a *bona fide* monthly tenant under the defendant no.1/respondent no.2 in respect of the suit premises, for permanent injunction restraining the defendants and their men and agents from disturbing and/or dispossessing the plaintiff-company in respect of the

suit premises, and for consequential reliefs. In connection with the said suit, the plaintiffs/respondent no.1 took out an application for temporary and ad interim injunction restraining the defendants and their men and agents from creating any sort of obstruction and/or hindrance from using the suit premises.

2. By the impugned order, the learned Trial Judge directed both parties to maintain status-quo in respect of the nature, character and possession of the suit premises.

3. Learned counsel appearing for the defendant no.4/appellant submits that the suit is palpably barred by limitation and, as such, the learned Trial Judge erred in law in granting ad interim injunction in the form of status quo without considering such aspect of the matter. In support of his contention, learned counsel places reliance on Paragraph No.16 of the plaint, which is the cause of action paragraph, where it has been averred that the cause of action of the suit arose on February 6, 2023, and thereafter on subsequent dates. The suit, it is pointed out, was filed on September 3, 2026, beyond the limitation period of three years from the date on which the right to sue first accrued, as contemplated under Article 14 of the Schedule to the Limitation Act, 1963. In support of his contentions, learned counsel cites *Calcutta Landing & Shipping Co. Limited v. Manbasa Devei and Others*, reported at *2022 SCC OnLine Cal 1623*.

4. It is next argued that throughout the plaint, the plaintiff/respondent no.1 has claimed tenancy under one Mrs. J. D. Mehra and, on her demise, under her heirs. However, the heirs of the alleged original landlady have not been

brought on record, thus rendering the suit bad for non-joinder of necessary parties.

5. Thirdly, it is argued that the suit does not disclose a proper cause of action in view of the contradictory claims made therein. Although in the body of the claim it has been claimed that Mrs. J. D. Mehra was the original landlady and thereafter the plaintiff has become a tenant under her heirs, in Relief (a) of the plaint, which is the principal relief, the plaintiff has claimed to be a monthly tenant under defendant no.1, who is in no way related to Mrs. J. D. Mehra. Thus, in view of such inherent contradiction, no cause of action for filing the suit is disclosed.

6. Learned counsel for defendant no.4/appellant next argues that the suit is evidently commercial in nature, coming within the purview of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 (hereinafter referred to as "the CC Act"). The said provision envisages disputes arising out of agreements relating to immovable properties used exclusively in trade and commerce to come within the ambit of 'commercial disputes'. From the plaint itself, it would be evident that the plaintiff/respondent no.1 is a commercial entity, admittedly running a commercial enterprise, which would be evident from its name as well. In the plaint, it has further been admitted that the suit premises is being used for its godown purpose since induction. Thus, there cannot be any manner of doubt that the suit property is used exclusively for trade and commerce. Section 12 of the CC Act provides that the 'specified value' would be determined by the valuation of the immoveable property which is the subject-matter of the suit. The suit

property herein, as described in the plaint, is a godown situated on the ground floor at Premises No.59A, Park Street, P.S. – Park Street, Kolkata – 700 016, which is a posh and prime locality of the city. Thus, the valuation of the property would definitely be much above Rs.3,00,000/-, which is the starting point of the pecuniary jurisdiction of commercial courts in the City Civil Court at Calcutta, where the suit has been filed. Hence, it is argued that the learned Trial Judge, acting in the capacity of an ordinary civil court as opposed to a commercial court, did not have the jurisdiction to grant the interim prayer.

7. Lastly, learned counsel for the appellant argues that the relief granted in the impugned order, directing both parties to maintain status quo in respect of the nature and character of the suit property even apart from possession, is beyond the relief sought in the suit as well as the injunction application, which reliefs are restricted to a protective order only in respect of the possession of the plaintiff/respondent no.1.

8. Thus, it is contended that the impugned order ought to be set aside.

9. Per contra, learned senior counsel appearing for the plaintiff/respondent no.1 argues that the question of limitation is a mixed question of fact and law at best, and the cause of action of the suit is a bundle of facts which ought to be ascertained from a composite reading of the entire plaint. From the said perspective, it is argued that the cause of action of the suit is not confined to the complaint lodged by the plaintiff on February 6, 2023. It is pointed out that as per Paragraph No.8 of the plaint, the premise of such complaint, lodged by the plaintiff/respondent no.1, was a letter received by

the plaintiff from the defendant no.1, claiming himself to be a purchaser and asking the plaintiff-Company not to pay rent to anyone. Per se, the same could not be construed as a threat to the tenancy of the plaintiff, requiring the declaration as sought for in the suit. In the subsequent paragraphs of the plaint, allegations have been made that the defendants are claiming themselves to be owners of the property and seeking dispossession of the plaintiff, upon which the suit was necessitated. In Paragraph No.12 of the plaint, it has been pleaded that the defendant nos.1, 3 to 4 are constantly threatening to the plaintiff's representative to hand over possession in respect of the suit premises, which prompted the plaintiff to lodge another complaint with the police on September 2, 2026, which was the immediate trigger for filing the suit. Thus, it is argued that the cause of action for seeking declaration of the plaintiff's tenancy rights, which is the principal relief, arose within the limitation period prior to filing of the suit.

10. Secondly, it is contended by the plaintiff/respondent no.1 that non-joinder of parties, at the worst, is a curable defect and, as such, cannot be a ground for refusal of injunction. Even otherwise, it is argued that the non-impleadment of the heirs of the original landlady cannot be a valid ground to vitiate the suit in any manner, since they are not necessary parties to the suit at all.

11. As to the apparent contradiction in the pleadings and the relief, it is argued by learned senior counsel for the respondent no.1 that the enumeration of defendant no.1 instead of defendant no.2 in Prayer (a) of the plaint is obviously a typographical error and has to be read in conjunction with the

rest of the pleadings, which clearly mention that the plaintiff is a tenant under the heirs of the original landlady, Mrs. J. D. Mehra.

12. Learned senior counsel next argues that nowhere within the four corners of the plaint has it been pleaded that the suit property is used exclusively for trade and commerce. It is contended that the description of the user of the suit property as a godown of the appellant does not *ipso facto* render the same to be a property used for commercial purposes. As per the cause title of the plaint, the business of the plaintiff/respondent no.1-Company is being run from elsewhere than the suit premises.

13. It is further argued that the valuation of the suit being Rs.100/- only, it cannot also be said that the dispute is a commercial dispute above the specified value.

14. Lastly, learned senior counsel argues that in view of the nature of the suit, the injunction granted by the learned trial Judge was in aid of the final reliefs and as such, it cannot be said that it was beyond the prayers of the plaintiffs.

15. Heard learned counsel for the parties.

16. On a perusal of the materials before us, the following questions fall for consideration herein:

(i) Limitation;

(ii) Non-joinder;

(iii) Contradictory pleading;

(iv) Whether commercial suit;

(v) Whether reliefs beyond prayer.

17. The above questions are answered as follows:

(i) Limitation

18. At the ad interim stage, it is the pleadings made in the plaint and the injunction application and the documents filed therewith which are to be treated as sacrosanct, to consider whether, on the basis of the same, the injunction ought to be granted or not.

19. Proceeding from the said perspective, the plaint has to be read as a whole. In the "cause of action" paragraph, that is, Paragraph No.16 of the plaint, it has been averred that the cause of action arose on February 6, 2023 and thereafter on subsequent dates, lastly on September 2, 2026.

20. However, the said paragraph cannot be read in isolation from the rest of the plaint. We have to keep in mind that the principal relief sought in the suit is the declaration that the plaintiff-Company is a *bona fide* monthly tenant in respect of the suit property, with the ancillary relief of permanent injunction to protect its possession.

21. The said paragraph has to be read in conjunction with the first Paragraph No.8 of the plaint (there are two paragraphs in the plaint marked as "8"), where it has been explained as to why February 6, 2023 is of significance. As per the said paragraph, sometime in 2023, the plaintiff received a letter from the defendant no.1, claiming to be a purchaser and asking the plaintiff not to pay rent to anyone, which prompted the plaintiff to lodge a police complaint on February 6, 2023. *Per se*, the said letter cannot be construed

as a threat to the tenancy rights of the plaintiff, furnishing a cause of action for seeking a declaration of such rights. In fact, as per the pleadings in Paragraph No.8 of the plaint, by the said letter, the defendant no.1 merely sought that the plaintiff does not pay rent to anyone else, thereby implicitly accepting that the plaintiff was paying rent and, thus, was a tenant.

22. We now take up the second Paragraph No.8 of the plaint for consideration. In the said paragraph, it is alleged that on February 8, 2023, the plaintiff received a further letter from defendant no.1 dated February 6, 2023, requesting the plaintiff not to transfer the suit premises to any unauthorised person. The said letter also, *per se*, cannot furnish any cause of action on a standalone footing, since the rights and possession of the plaintiff were *prima facie* recognized by seeking to restrain the plaintiff from transferring the property to any unauthorised person.

23. In Paragraph No.9 of the plaint, it has been alleged that disputes and differences have arisen between the defendants, who are allegedly claiming themselves as owners of the property. In Paragraph No.11, it is alleged that the defendants are allegedly claiming themselves to be owners of the property and that they have every right to realize rent from the tenants of the suit building, but till date no Letter of Attornment has been issued.

24. In Paragraph No.12, it is alleged that the defendant nos.1, 3 to 4 are constantly threatening to the plaintiff's representative to hand over possession in respect of the suit premises, otherwise they would take possession by applying force, due to which the plaintiff lodged a further complaint with the police on September 2, 2026. Thus, it is in Paragraph

No.12 that a threat to the possession of the plaintiff and its tenancy rights is alleged for the first time.

25. In Paragraph No.13 of the plaint, it is alleged that due to the "aforesaid illegal acts" of the defendants, a cloud has been cast on the right, title and interest of the plaintiff over the suit premises, for which the plaintiff was being compelled to filing the suit.

26. Hence, on a comprehensive reading of the plaint, we find that the first real and immediate threat to the possession and the rights of the plaintiff in respect of the property came on September 2, 2026, which is well within the limitation period, since the suit was filed on the very next date, that is, on September 3, 2026.

27. In Paragraph Nos.11 and 12 of the plaint, the present continuous tense has been used to allege the threat to the possession and rights of the plaintiff, thus implying that there was a continuing cause of action at the juncture when the suit was filed.

28. At best, it can be said that the threat to possession of the plaintiff commenced on February 6, 2023, which has been referred to in Paragraph No.16 (the cause of action paragraph) of the plaint. Since the principal relief is of declaration of tenancy rights, for which the cause of action, as per the plaint, arose only recently before filing of the suit, it cannot be said, at least at this stage, that the suit is barred by limitation. At best, the said issue is a mixed question of fact and law, triable on evidence at the final hearing of the suit.

29. In *Calcutta Landing & Shipping Co. Limited (supra)*[1], a learned Single Judge of this Court was pleased to hold that an abstract date without any reference to the knowledge of the plaintiff about infringement of his right cannot be treated as the first date of accrual of right to sue for the purpose of reckoning the period of limitation prescribed under Article 58. The context of the case was recorded in Paragraph No.10 of the judgment, where it was observed that the plaintiff therein had asserted that the cause of action of the suit arose on different dates, of which the first was 15.10.2011.

30. In the facts of the said case, the learned Single Judge considered the governing provisions of the Limitation Act and came to his conclusions.

31. However, in view of the discussions above, specific dates have been given in the plaint of the instant suit, and a continuing cause of action has also been pleaded, subsisting till the date of filing of the suit. In view of the above discussions of the factual premise of the present case, as distinguished from the cited report, the ratio laid down therein is held to be not applicable to the present case.

32. Hence, the said argument of the appellant is turned down.

(ii) <u>Non-joinder</u>

33. In any event, non-joinder of necessary parties is a curable defect and can be rectified at any subsequent stage of the suit. Thus, the same cannot *ipso facto* denude the power of the Court to grant injunction. However, even

[1] ***Calcutta Landing & Shipping Co. Limited v. Manbasa Devei and Others*, reported at *2022 SCC OnLine Cal 1623***

otherwise, on a plain reading of the plaint, we do not find the suit, as framed, to be bad for non-joinder of the heirs of Mrs. J. D. Mehra, the alleged original landlady.

34. In Paragraph No.7 of the plaint, it has been alleged that after the death of Mrs. J. D. Mehra, Smt. Sheela Mehera Sandhu and Gloria Mehra Walker were receiving the rent from the plaintiff and issued rent receipts to the plaintiff till 2003 and subsequently, they received rent through their staff with an assurance that rent receipt would be issued, but that no such receipt was issued by them or their caretaker.

35. Thus, there is no categorical admission that, on the demise of the original landlady, she left behind the said Smt. Sheela Mehera Sandhu and Gloria Mehra Walker as her heirs, nor that she had any other heir.

36. Even if we construe the acceptance of rent by the said two persons as a claim of their heirship of the original landlady, throughout the plaint, not a single aspersion has been cast against the said heirs of Mrs. J. D. Mehra. There is not a single pleading that the said two persons ever challenged the tenancy rights and possession of the plaintiff in respect of the suit property. The present suit is not one for declaration of title in respect of the suit property but merely the tenancy rights of the plaintiff and an injunction protecting the possession of the plaintiff. Hence, as per the averments made in the plaint, the threat to such status and possession of the plaintiff was not issued at any point of time by the original landlady Mrs. J. D. Mehra or her heirs.

37. Accordingly, we do not find any reason to hold that the heirs of the original landlady Mrs. J. D. Mehra are necessary or even proper parties to the suit, as framed.

38. In any event, one Helen Mehra has been impleaded as defendant no.2. Although the pleading in Paragraph No.2 of the plaint is somewhat vague, a reference has been made to defendant no.2, connecting her to the original landlady Mrs. J. D. Mehra. Thus, the said Helen Mehra, supposedly an heir of Mrs. J. D. Mehra, has already been impleaded in the suit.

39. Hence, the argument of the appellant as to non-joinder of necessary parties also falls flat.

(iii) Contradictory pleading

40. It is true that in Prayer (a) of the plaint, the plaintiff has sought a declaration of its tenancy rights under defendant no.1. However, read in proper perspective, the same is quite obviously a typographical error.

41. The reliefs in a suit cannot be divorced from and read in isolation of the rest of the plaint. Throughout the plaint, the plaintiff has pleaded tenancy rights under the original landlady Mrs. J. D. Mehra. The plaintiff has also referred to an earlier suit instituted by the said Mrs. J. D. Mehra against the plaintiff for permanent injunction, which was dismissed for default on February 9, 1987. In Paragraph No.2 of the plaint, it has been averred that the plaintiff-Company was regularly paying monthly rent to the said Mrs. J. D. Mehra but has impleaded one Helen Mehra as defendant no.2, without directly disclosing the connection between Mrs. J. D. Mehra and Helen Mehra.

Although somewhat unhappily and vaguely drafted, Paragraph No.2 indicates that the plaintiff had been paying monthly rent regularly to defendant no.2, Helen Mehra up to the year 2003. Even otherwise, the plaintiff has categorically pleaded throughout the plaint, particularly in Paragraph Nos.1 to 7 thereof, that it was a tenant under Mrs. J. D. Mehra and in Paragraph No.2 of the plaint has sought to connect defendant no.2, Helen Mehra, with the said Mrs. J. D. Mehra by pleading that rent was being continuously paid to the said Helen Mehra at least till 2003.

42. Thus, it is evidently to be construed on a plain and meaningful reading of the plaint as a whole that the plaintiff claims tenancy at present under defendant no.2, Helen Mehra, and not under defendant no.1. Nowhere within the four corners of the plain, has the plaintiff claimed tenancy under defendant no.1; rather, the plaintiff has, in a way, disputed the right, title and interest of the alleged purchaser, the defendant no.1, in respect of the subject-property. Thus, the first relief in the plaint has to be construed in proper perspective, in conjunction with the entire body of the plaint. In the said relief, the *bona fide* monthly tenancy of the plaintiffs/respondent no.1 has been claimed in respect of the suit property, albeit erroneously under the defendant no.1 instead of defendant no.2.

43. The said defect is curable and does not vitiate the entire pleadings of the plaint and the injunction application. Indeed, if the first relief in the plaint were to be construed literally, it would go against the grain of the entire plaint case. However, since a harmonious construction of the plaint is possible, and as it is always open to the plaintiff to subsequently seek an

amendment of the plaint to rectify the first prayer, it would be premature to hold conclusively, at this early stage of the suit, that the relief sought in the plaint is contradictory with the pleadings.

44. Thus, this issue is also decided against the appellant.

(iv) Whether commercial suit

45. Section 2(1)(c)(vii) of the CC Act categorically provides that disputes arising out of agreements relating to immovable property used extensively in trade and commerce are commercial disputes within the purview of the said Act. The argument of the plaintiff, that the suit valuation would determine whether the suit is commercial in nature, cannot be accepted. The valuation of a suit is determined by the reliefs claimed therein, within the matrix of the Suits Valuation Act, and the West Bengal Court Fees Act, whereas the 'specified value', for the purpose of determining whether a suit involves a commercial dispute or not, is governed by Section 12 of the CC Act, which is agnostic of the reliefs claimed in a suit and/or the valuation of the suit. The only determinant under Section 12 is the value of the property which is the subject-matter of the dispute.

46. However, the threshold consideration for applying the test of specified value under Section 12 is whether the dispute is of "commercial dispute" under Section 2(1)(c) of the CC Act in the first place. Undoubtedly, the cause title of the plaint reveals that the plaintiff/respondent no.1 is a company with the word "Sales" as a part of its name, and has its registered office at 17, Old China Bazaar Street, P.S – Hare Street, Kolkata – 700001, and an office

at 32, Park Mansion, at 57A, Park Street, Kolkata. It is also admitted that its godown is situated in the suit premises on 59A, Park Street.

47. In Paragraph no.6 of the plaint, it has been categorically stated that plaintiff-Company was and is using the suit premises for its godown purpose since induction. However, on a plain reading of the said paragraph, it cannot be ascertained beyond doubt that the godown itself is a part and parcel of the business enterprise run by the appellant. In fact, despite its name, nowhere within the four corners of the plaint or the injunction application has it been specifically admitted that the plaintiff is actually and currently carrying on any trade or commercial endeavour, which is still alive and, if so, the nature of its transactions. Per se, the user of the suit premises for the purpose of godown does not indicate beyond reasonable doubt that the said user has proximate nexus with any trade or commerce.

48. At this stage, thus, it would be premature to hold that the suit involves a commercial dispute within the contemplation of Section 2(1)(c)(vii) of the CC Act. Indeed, the said issue can be thrashed out by the parties at the trial of the suit or at a later stage, during trial on evidence, but cannot be conclusively decided at the premature stage of consideration of grant of ad interim injunction.

49. Thus, this issue is also decided against the appellant.

(v) Whether reliefs beyond prayer

50. The relief of permanent injunction sought in the plaint as well as the prayers made in the injunction application are restrictive in nature, confined to a

protection in respect of its possession and enjoyment of the suit property. Nowhere has the plaintiff claimed any injunction regarding the nature and character of the suit premises.

51. Thus, the appellant is justified in arguing that the impugned order grants reliefs beyond the prayers of the plaintiff, inasmuch as imposition of status quo in respect of the nature and character of the suit property is concerned. This court is also of the view that, in the absence of any corresponding prayer by the defendants, the learned Trial Court exceeded its jurisdiction in imposing status quo on the plaintiff as well.

52. However, from the materials before us and the pleadings made in the plaint and the injunction as well as from the considerations of the learned trial Judge as reflected in the impugned order, it is evident that the parameters for grant of ad interim injunction in respect of the plaintiff's possession of the suit property have been substantially satisfied.

53. Thus, the impugned order has to be sustained in respect of the possession of the plaintiff in respect of the suit property but cannot be extended to the nature and character thereof.

CONCLUSION

54. In view of the above findings, F.M.A.T. No.408 of 2026 is partially allowed, thereby modifying the impugned order, bearing Order No.02 dated September 5, 2026, passed by the learned Judge, Fifth Bench, City Civil Court at Calcutta, in Title Suit No.1993 of 2026, to the extent that the defendants, including the present appellant as well as present respondent

nos.2 to 5, shall now remain restrained by an order of injunction from disturbing the peaceful possession of the plaintiff/respondent no.1 in respect of the suit property in any manner whatsoever till disposal of the temporary injunction application in the Trial Court.

55. However, insofar as the imposition of status quo on the plaintiff and the status quo in respect of nature and character of the suit premises, in respect of both the plaintiff and the defendants, are concerned, the said portions of the impugned order stand set aside.

56. The defendants, including the appellant, shall file their respective written objections to the temporary injunction application in the trial Court at the earliest. The learned Trial Judge shall make all endeavour to dispose of the injunction as expeditiously as possible, preferably within December 24, 2026 in the event the written objections are filed within November 30, 2026.

57. Consequentially, CAN 1 of 2026 is also disposed of.

58. There will be no order as to costs.

59. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Sandip Kumar De, J.)