In the High Court at Calcutta

Commercial Division Original Side

Judgment (2)

PRESENT:

THE HON'BLE JUSTICE ANIRUDDHA ROY

IA No. GA-COM/2/2025 In CS-COM/41/2025

THE NEW INDIA ASSURANCE
COMPANY LIMITED
VS
HDFC BANK LIMITED

For the plaintiff : Mr. Sabyasachi Choudhury, Sr. Adv.

Mr. Rajdeep Bhattacharya, Adv. Mr. Shreyaan Bhattacharya, Adv.

For the defendant : Mr. Sayantan Bose, Adv.

Mr. Soorjya Ganguli, Adv. Ms. Pooja Chakrabarti, Adv.

Mr. Prithwish Roy Chowdhury, Adv.

Heard on : December 23, 2025

Judgment on : December 23, 2025

ANIRUDDHA ROY, J:

FACTS:

 This is an application under Section 8 of the Arbitration and Conciliation Act, 1996 (for short "Arbitration Act") filed by the defendant/landlord in the instant suit filed by the plaintiff/lessee.

2. Inescapable facts are only stated. The premises was originally

owned by Williamson Magor. The premises was then transferred in

favour of HDFC Limited. In or about March 20, 2023 by virtue of

amalgamation/merger, HDFC Limited had merged with the

defendant and since then, the defendant is the successor in interest

of the HDFC Limited and holds right, title and interest over and in

respect of the premises.

3. The parent lease deed dated September 24, 2014 (for short "the

parent lease") was executed by Williamson Magor in favour of the

plaintiff for a tenure of nine years. Admittedly, the lease has expired

on March 31, 2023. Even though the lease has expired, the

plaintiff contends that the defendant has allowed the plaintiff to

stay and carry on its business and rent paid by the plaintiff so long

has been accepted by the defendant. The plaintiff is still in an

uninterrupted and continuous possession at the premises. The

defendant then served a notice for eviction dated September 5,

2023, inter alia, contending that in view of the operation of the

Banking Regulation Act, the premises was required to be taken

possession by the defendant and accordingly, the plaintiff was

asked to vacate the premises.

4. The plaint case shows even prior to expiry of the parent lease,

correspondences were exchanged by and between the parties, inter

alia, dated May 12, 2022, May 19, 2022 and May 26, 2022 at

pages 54 to 56 of the application, whereunder the parties have

arrived at a concluded contract for execution of renewal of the lease and/or further lease. The plaint case is that on the basis of the said correspondences, the plaintiff claims specific performance of a contract arrived at by and between the parties and therefore, claims a decree for specific performance of contract for execution of a lease in relation to the said premises with effect from **April 1, 2023**.

5. The reliefs from the plaint are quoted below:-

"The plaintiff claims:

- a) Decree of specific performance of the said contract for execution of a lease in relation to the said premises for a period of 10 years with effect from 1st April, 2023 as contained, inter alia, in the exchange of correspondence dated 12th May, 2022, 19th May, 2022 and 26th May, 2022 being Annexures 'C', 'D' and 'E' hereto;
- b) Mandatory injunction directing the defendant to forthwith execute and register a renewal deed of lease in relation to the said premises for a further period of 10 years with effect from 1st April, 2023 on similar terms and conditions as that of the said deed within such period as this period as this Hon'ble Court may deed fit and proper;
- c) Perpetual injunction restraining the defendant from interfering with and/or disturbing the possession of the plaintiff in any manner whatsoever subsequent to 31st March, 2024 and from giving any effect and/or further effect to the letters of the defendant dated 5th September, 2023 and 17th November, 2023 in any matter whatsoever;
- d) Attachment;
- e) Receiver;

- f) Costs;
- g) Further and other reliefs."

SUBMISSIONS:

- **6.** Mr. Sayantan Bose, learned Advocate appearing for the defendant/applicant, at the threshold, refers the statements made in the plaint, inter alia, from paragraphs 4, 7, 8, 10, 11, 12, 13, 14 and 15 and then he refers to the prayers from the plaint and submits that on a plain reading of the plaint, it would be evident that on the basis of the said three correspondences, the plaintiff claims renewal of the parent lease.
- **7.** He then refers to two relevant clauses from the parent lease which are quoted below:-
 - "6. That on expiry of the said period of nine years i.e. on $31^{\rm st}$ March, 2023. Both parties may enter into a fresh lease on such terms as may be mutually agreed. Such lease, if any, shall be arrived at and executed at least two months before $31^{\rm st}$ March, 2023. In case both the parties are not able to execute the lease within the aforesaid time, the lessee shall vacate the demise premises on expiry of $31^{\rm st}$ March, 2023.
 - 7. That if at any time hereafter any dispute, difference or question shall arise between the parties hereto touching the construction meaning or effect of these presents or any clause or thing herein contained or the rights, duties and liabilities of the parties hereto respectively under these presents or otherwise howsoever in relation to the Demised Premises then every such dispute, difference or question shall be referred to a single arbitrator in case the parties

agree upon one otherwise to two arbitrators one to be appointed by each party and in case of their disagreement and so far they disagree to an umpire in accordance with the provisions of the Arbitration Act, 1940 or any statutory modifications or re-enactment thereof for the time being in

force and all proceedings shall be held in Kolkata and not

elsewhere unless the parties otherwise mutually agree."

8. Referring to the above clauses from the parent lease, Mr. Sayantan

Bose, learned Advocate, appearing for the defendant submits that

on expiry of the said parent lease, on March 31, 2023, both the

parties might enter into a fresh lease on such terms as might be

mutually agreed. Such lease, if any, should have been arrived at

and executed at least two months before March 31, 2023. Since the

parties had not been able to execute the said lease within the

aforesaid period of time, the lessee being the plaintiff should have

vacated the demised premises, on expiry of March 31, 2023. He

further submits that three correspondences referred to by the

plaintiff admittedly were exchanged between the parties much prior

to the said period of two months before March 31, 2023 being the

date of expiry of the parent lease but the parties could not arrive at

any fresh lease agreement, therefore, according to Mr. Bose, the

plaintiff was liable to vacate the premises on March 31, 2023.

9. Mr. Sayantan Bose, learned Advocate then refers to the Arbitration

Clause from the lease agreement being Clause 7 thereof. He

submits that on a meaningful reading of the said Arbitration

Clause, it would be seen that it has two limbs. The first one is that

if at any time after execution of the parent lease, any dispute,

difference or question shall arise between the parties to the lease

deed, touching the construction, meaning or effect of the parent

lease or any clause or thing therein contained relating to the rights,

duties or liabilities of the parties, the same shall be referred for

arbitration. The second limb is that even if no such dispute arises

between the parties out of the said parent lease but any dispute

arises between the parties otherwise, the same shall also be

referred for arbitration.

10. On the basis of the above submissions, Mr. Bose submits that the

right of the plaintiff flows from the parent lease, as it was indicated

thereunder. Whether the renewal or execution of any further lease

will happen or not, if any dispute arises out of the same between

the parties, whether a concluded contract had been arrived at or

not, as allegedly contended by the plaintiff, the same shall also be

referred for arbitration as the expression "otherwise howsoever in

relation to the demised premises" imports for very wide meaning.

11. In the light of the above, the defendant submits that the subject

matter of the instant suit is covered by the arbitration agreement

embodied in the parent lease and the same shall be referred for

arbitration.

12. Mr. Sabyasachi Choudhury, learned Senior Advocate appearing for

the plaintiff has placed the plaint. He submits that the plaint case is

very limited to the extent that by virtue of the said three correspondences, as referred to in prayer (a) to the plaint, having being exchanged by and between the parties much prior to the expiry of the parent lease, the parties had entered into a concluded contract under which the plaintiff has been allowed to be in possession and the defendant has been accepting rent and allied charges from the plaintiff. Therefore, the plaintiff claims specific performance of the said concluded contract by executing and registering a renewal deed of lease in relation to the said premises.

- 13. Mr. Sabyasachi Choudhury, learned Senior Advocate further submits that on March 31, 2023, admittedly the parent lease has expired but even then on the basis of the said three correspondences, the plaintiff has been allowed to be in an uninterrupted and continuation possession of the premises and defendant has been accepting rent and other charges from the plaintiff. No fresh lease was executed before the parent lease expired. Therefore, the plaintiff claims execution of a fresh lease de hors the parent lease on the basis of the said correspondences.
- 14. Mr. Choudhury, learned Senior Advocate further submits that when the parties agree to execute the specific contract on a similar terms and conditions as that of an earlier contract, only the commercial terms are accepted but not the arbitration agreement, unless the arbitration agreement is accepted and incorporated specifically by and between the parties. In support, he has relied a decision *In the*

matter of: M. R. Engineers And Contractors Private Limited

Vs. Som Datt Builders Limited reported at (2009) 7 Supreme

Court Cases 696.

15. Learned Senior Advocate, Mr. Choudhury further submits that

whether the ground for eviction taken by the defendant, being the

operation of the provisions of the Banking Regulation Act, is lawful

or genuine, the same cannot be adjudicated by the arbitrator also.

16. In view of the above, learned Senior Advocate, Mr. Choudhury,

prays for dismissal of **Section 8** application.

DECISIONS

17. After considering the rival contentions of the parties and on perusal

of the materials on record, this Court finds that, the parties have

admitted the arbitration agreement embodied in the parent lease

dated September 24, 2014. It is also an admitted fact that even

today the plaintiff is in occupation of the premises and the

defendant has been accepting rent from the plaintiff.

18. At the outset, this Court reiterates the law laid down for

adjudication of a Section 8 application. If the Court before which an

action is brought in a matter which is the subject matter of an

arbitration agreement, and if a party applies to that effect before a

Court, as the defendant in the instant case, it is a mandate on the

Court to refer the subject matter of the action for arbitration.

19. Therefore, to ascertain whether the subject matter of the instant

suit is covered by the arbitration agreement or not, the statements

made in the plaint should be read as true and correct. On a

meaningful and plain reading of the plaint in the instant case, it

appears to this Court that the parent lease had expired on March

31, 2023 and much prior thereto the three correspondences,

referred to by the plaintiff, were exchanged by and between the

parties. The substance of the said correspondences are that the

plaintiff wanted a renewal of the lease for another ten years and the

landlord, then being the predecessor in interest of the defendant,

agreed in principle for renewal of the lease in favour of the plaintiff.

The terms and conditions of renewal mentioned in the

correspondences are not relevant at this stage, to discuss.

20. Further plaint case is that, the parties to the suit have acted upon

those correspondences which fructified in a concluded contract and

hence the plaintiff claims specific performance of such contract, by

way of execution and registration of a lease in relation to the

premises for a period of ten years on an from April 1, 2023, as

prayed for in prayer (a) to the plaint.

21. As the lease has admittedly expired on March 31, 2023 and since

the lease was not renewed before the expiry, subsequently there

was no scope for renewal of the lease. The parties would have to

enter into a fresh lease, if were willing to do so. The moment the

parent lease stands expired, question of renewal does not arise. The

submission made on behalf of the defendant that the plaintiff

claims renewal of the lease, is therefore, without any substance and

basis of law. Prayer (a) to the plaint shows that the plaintiff claims

for decree for specific performance of contract for execution of lease

in relation to the said premises with effect from April 1, 2023 on

the basis of the said three correspondences, which clearly shows

that the plaintiff claims for execution of a lease. The subsequent

prayers are consequential.

22. Once the lease stands to be seized and expired considering the

prayers made in the plaint, this Court is of the firm and considered

view that, the reliefs claimed by the plaintiff cannot be construed to

be claiming of any right under the said parent lease far to speak of

within the expression 'otherwise how so far in relation to the

demised premises' as embodied under Clause 7 being the

arbitration agreement between the parties to the parent lease.

23. The plaint ultimately may succeed, may fail at the trial. At this

stage while adjudicating a Section 8 application, this Court is not at

all required to consider the merit of the case and counter case of the

parties in the light of averments made in the plaint. This court shall

also not consider the probable defence of the defendant at Section 8

stage. Since the plaintiff has claimed specific performance by way of

execution of a lease agreement for a period of ten years with effect

from April 1, 2023 on the basis of the said three correspondences

already referred to above, this Court is of the considered and firm

view that, such claim of the plaintiff is not in connection with the

said expired lease which contains the arbitration clause.

- **24.** Therefore, the subject matter of the suit is not covered by the arbitration agreement between the parties.
- **25.** Consequentially, the application fails.
- **26.** The instant application being **GA-COM/2/2025** stands **dismissed**, without any order as to costs.

(ANIRUDDHA ROY, J.)

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