RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Civil Writ Petition No. 18805/2024

CNR: RJHC010873552024 | URN: CW / 36136U / 2024

Rajasthan High Court
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M/s Shree Vinayak Hotels And Resorts, Through Its Partner And Authorized Signatory Sanjay Sethi S/o Deep Chand Sethi, Aged 39 Years, Resident Of Plot No.23 Shriram Nagar, Jothwada, Jaipur, Presently Residing At Desert Tulip Hotel And Resort, Plot No.4, Hotel Complex, Jodhpur Road, Nh 15, Jaisalmer (Raj.).

----Petitioner

Versus

1. Desert Tulip Hotel And Resorts Pvt. Ltd., Company Registration No. U55101Mh2014Ptc254, Registered Address, 301, Aakruti Building, Sadanand Niwas, Kewas Road, Jogeshwari (East), Near Jogeshwari Police Station, Mumbai (Maharashtra) - 400060 Through Director.
2. Arjun Das Sonaji, R/o C/211, Raj Mahal Cooperative Housing Society Ltd., Kewas Road, Near Municipal Garden, Jogeshwari (East), Near Jogeshwari Police Station, Mumbai (Maharashtra) -400060 Director Tulip Hotel And Resorts Pvt. Ltd., Company Registration No. U55101Mh2014Ptc254.
3. Kishan Arjun Das Doyal, R/o Near Jain Temple, In Front Of Bank Of Baroda, 704, A.k. Apartment, Kewas Road, Near Municipal Garden, Jogeshwari (East), Near Jogeshwari Police Station, Mumbai (Maharashtra)-400060 At Present R/o 98 Indra Colony, Jaisalmer-345001 (Raj.) Director Desert Tulip Hotel And Resorts Pvt. Ltd., Company Registration No. U55101Mh2014Ptc254.
4. Khetan Arjun Das Doyal, R/o 703, Acharya Gunoday Ashish Cooperative Housing Society Ltd., Plot No. 138-P, Hardev Society, Kewas Road, Near Municipal Garden, Jogeshwari (East), Mumbai (Maharashtra)- 400060 Director Desert Tulip Hotel And Resorts Pvt. Ltd., Company Registration No. U55101Mh2014Ptc254.

----Respondents

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For Petitioner(s) : Mr. Sanjeev Johri,Sr.Adv.
Assisted b My. Lalit Parihar
Mr. Shubhankar Johari
Mr. Gaurav Vatvani
Mr. Mohit Pareek
Mr. Praful Khichad

For Respondent(s) : Mr. Akshat Verma
Mr. Chirag Mathur
Mr. Nikhil Saran
Mr. Manan Bafna

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HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable-

Date of Conclusion of Arguments : 03/08/2026

Date on which Order is Reserved : 03/08/2026

Full Order or Operative Part : Full Order

Date of Pronouncement : 13/08/2026

By the Court:-

Grievance-

1. By way of the present writ petition under Articles 226 and 227 of the Constitution of India, the petitioner has laid challenge to the order dated 02.08.2024 passed by the learned Rent Tribunal, Jaisalmer in RCT Case No.10/2024, *M/s Shree Vinayak Hotels v. Desert Tulip Hotel & Ors.*, whereby the application preferred by the respondents under Order VII Rule 11 CPC was allowed and the petition filed by the

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petitioner under Section 18 of the Rajasthan Rent Control Act, 2001 (in short "The Act of 2001") was directed to be returned under Order VII Rule 10 CPC for presentation before the competent Commercial Court, as also to the judgment dated 23.10.2024 passed by the learned Rent Appellate Tribunal, Jaisalmer in Rent Appeal No.04/2024, whereby the appeal preferred by the petitioner against the aforesaid order dated 02.08.2024 came to be dismissed and the same was affirmed.

2. The learned Rent Tribunal proceeded on the premise that, since the premises in question had been leased for the purpose of running a commercial hotel and were being exclusively used for trade or commerce, the dispute arising from the Lease Agreement fell within the ambit of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 (in short "The Act of 2015") and was triable by the Commercial Court.

3. The learned Appellate Tribunal, upon consideration of the pleadings, statutory provisions and the authorities relied upon by both sides, concurred with the said reasoning and held that the present case was distinguishable from ordinary landlord-tenant disputes as the premises were being actually and exclusively used for commercial hotel operations.

4. The petitioner, being aggrieved by the aforesaid concurrent findings, has approached this Court seeking quashing and

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setting aside of both the order dated 02.08.2024 and the judgment dated 23.10.2024.

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Facts-

5. The facts giving rise to the present writ petition are that the petitioner, as lessee, and respondent No.1, as lessor, executed a duly registered Lease Agreement dated 10.08.2022 in respect of the premises in question for a fixed period of four years and eleven months commencing from 01.09.2022 and continuing up to 01.08.2027, at an annual lease consideration of ₹50,00,000/-, exclusive of electricity, water and GST, incorporating various covenants relating to the lease, consideration, termination, dispute resolution and other obligations. The premises were taken for running a commercial hotel and, after taking possession, the petitioner claims to have incurred approximately ₹2 crores towards basic requirements, maintenance, painting, promotion, repairs and other expenses and commenced hotel operations under the name and style of *M/s Shree Vinayak Hotels & Resorts*. The rent was payable quarterly in advance and the petitioner claims to have regularly paid the stipulated rent along with GST. According to the petitioner, the relationship of landlord and tenant continued to subsist between the parties and the rent up to August 2024 had also been paid in advance.

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6. According to the petitioner, in April 2024 respondent No.3 started exerting pressure upon it to increase the annual rent from ₹50,00,000/- to ₹1,00,00,000/- with effect from June 2024, which demand was declined by the petitioner on the ground that the rent was payable in accordance with the registered Lease Agreement. Thereafter, the respondents issued notice dated 13.05.2024, followed by emails/notices dated 15.05.2024 and 18.05.2024, allegingly with a view to secure vacation of the premises. The petitioner submitted replies thereto on 15.05.2024, 17.05.2024 and 20.05.2024 and also furnished, on 24.05.2024, an account of the loss which it claimed would be suffered upon premature vacation of the hotel. The petitioner alleges that despite the same, the respondents threatened to forcibly dispossess it and take possession of the premises without compensating the petitioner. Apprehending forcible dispossession otherwise than by due process of law, the petitioner instituted a petition under Section 18 of the Act of 2001 before the learned Rent Tribunal, Jaisalmer seeking protection against dispossession and interference with its possession and hotel operations. The learned Rent Tribunal initially passed an interim order dated 26.06.2024 restraining the respondents from dispossessing the petitioner except in accordance with law.

7. Thereafter, the respondents filed an application under Order VII Rule 11 CPC, contending that the dispute was not triable

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by the Rent Tribunal but fell within the jurisdiction of the Commercial Court. The petitioner opposed the application, asserting that the dispute was essentially one between landlord and tenant, that Section 18 of the Act of 2001 conferred jurisdiction upon the Rent Tribunal and that the provisions of the Act of 2015 could not oust such jurisdiction. The petitioner also contended that questions involving mixed questions of law and fact could not appropriately be decided at the threshold under Order VII Rule 11 CPC. The learned Rent Tribunal, however, by order dated 02.08.2024, accepted the respondents' application. The learned Tribunal considered the petitioner's own pleadings that the premises had been taken on registered lease for the purpose of running a commercial hotel and were actually being used for hotel operations. It examined Section 2(1)(c)(vii) of the Act of 2015, relating to agreements concerning immovable property used exclusively in trade or commerce, and, relying upon the judgments cited before it, held that the dispute arising out of the Lease Agreement constituted a commercial dispute triable by the Commercial Court. Consequently, relying upon the principle laid down by the Hon'ble Supreme Court in *Oil and Natural Gas Corporation Ltd. v. Modern Construction and Company*, (2014) 1 SCC 648, the learned Rent Tribunal directed return of the petition under Order VII Rule 10 CPC for presentation before the competent court.

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8. Aggrieved by the order dated 02.08.2024, the petitioner preferred Rent Appeal No.04/2024 before the learned Rent Appellate Tribunal, reiterating that the relationship between the parties was admittedly that of landlord and tenant; that the Rent Tribunal had itself granted interim protection on 26.06.2024; that disputes relating to tenancy, in areas where the Act of 2001 applies, fall within the jurisdiction of the Rent Tribunal; and that the judgments relied upon by the respondents concerning commercial disputes were distinguishable. The respondents, on the other hand, maintained that the premises were being used exclusively for commercial hotel operations and that the Lease Agreement consequently fell within Section 2(1)(c)(vii) of the Act of 2015. The learned Appellate Tribunal, by judgment dated 23.10.2024, examined the pleadings, the Lease Agreement, Section 2(1)(c)(vii) and the authorities relied upon by both sides. It held that although an ordinary landlord-tenant dispute may fall within the jurisdiction of the Rent Tribunal, the present case stood on a different footing because the disputed immovable property was a hotel and was actually being used exclusively for trade or commerce. It further held that the authorities relied upon by the petitioner were distinguishable on account of the different factual nature of the present dispute and found the order dated 02.08.2024 to be lawful, just and proper.

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9. Accordingly, the learned Rent Appellate Tribunal concluded that the Lease Agreement relating to the hotel premises constituted a commercial dispute within the meaning of Section 2(1)(c)(vii) of the Act of 2015 and that the Commercial Court possessed jurisdiction to adjudicate the dispute. It consequently held that the learned Rent Tribunal had rightly accepted the respondents' application under Order VII Rule 11 CPC and had rightly directed return of the petition under Order VII Rule 10 CPC for presentation before the competent court. The appeal was accordingly dismissed and the order dated 02.08.2024 was affirmed. The petitioner, being dissatisfied with the aforesaid concurrent findings, has invoked the extraordinary writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, seeking quashing of the judgment dated 23.10.2024 and the order dated 02.08.2024.

Written Submission and Reply of Counsels for the Parties-

10. Learned counsels for the petitioner submitted that the relationship between the parties is essentially that of landlord and tenant, notwithstanding the nomenclature of lessor and lessee in the Lease Agreement dated 10.08.2022, and that the respondents themselves have admitted the premises to be rented premises in their pleadings. It was contended that, in view of Sections 18 and 29 of the Act,

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2001 of the dispute falls exclusively within the jurisdiction of the Rent Tribunal and could not have been returned under Order VII Rule 11 CPC; that mere commercial use of the premises does not convert a landlord-tenant dispute into a commercial dispute or confer jurisdiction upon the Commercial Court, particularly in view of Section 11 of the Act of 2015(Bar of Jurisdiction of Commercial Courts and Commercial Divisions). Learned counsel further submitted that the petitioner was not in default of payment of rent and that the Lease Agreement could not be terminated merely for the convenience of the lessor before expiry of the stipulated lease period. Reliance was placed upon the judgments in *Subhash Chander v. Bharat Petroleum Corporation Ltd. [(2022) 11 SCC p.561]*, *Suresh Shah v. Hipad Technology [(2021) 1 SCC p.529]*, *Booz Allen v. SBI Home Finance [(2011) 5 SCC p.532]* and *LRs of Late Ramesh Chandra v. City Pulse Enterprise LRs of Late Ramesh Chandra v/s City Pulse Enterprise" [2026 SCC OnLine Raj.4142 (DB Judgment of Hon'ble Raj. High Court, Jodhpur), decided on 12.05.2026]*, to contend that disputes concerning statutory tenancy protection are exclusively triable under the Rajasthan Rent Control Act and are not amenable to the jurisdiction of the Commercial Court or an arbitrator. It was, therefore, urged that the impugned orders dated 02.08.2024 and 23.10.2024 be quashed and set aside.

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11. Learned counsel for respondent No.1 submitted that the writ petition is not maintainable as no jurisdictional or supervisory error is apparent in the concurrent orders passed by the learned Rent Tribunal and the Appellate Rent Tribunal. It was contended that the petitioner has suppressed the material notice dated 13.05.2024 terminating the Lease Agreement and has sought to introduce issues of arbitration and anti-suit injunction which were neither raised nor decided before the courts below. It was further submitted that the petitioner's own pleadings establish that the premises are exclusively used for running a hotel and, therefore, the dispute squarely falls within Section 2(1)(c)(vii) of the Commercial Courts Act, 2015. The dispute arises directly from the terms and termination of the Lease Agreement and cannot be converted into a mere landlord-tenant dispute by nomenclature. Reliance was placed upon *Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP & Anr.*, (2020) 15 SCC 585, and dismissal of the writ petition was accordingly prayed for.

Issue-

12. The principal issue arising for consideration in the present writ petition is whether the dispute concerning the petitioner's apprehended eviction/dispossession from the leased premises pursuant to the alleged premature termination of the registered Lease Agreement dated

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10.08.2022, and the consequential protection sought against eviction otherwise than in accordance with law, is a landlord-tenant dispute falling within the jurisdiction of the Rent Tribunal under the Rajasthan Rent Control Act, 2001, or constitutes a "commercial dispute" within the meaning of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015, merely because the leased premises are being exclusively used for running a commercial hotel.

13. Having heard learned counsel appearing for the parties at considerable length, and having given my anxious and in-depth consideration to the record of the case, including the impugned order dated 02.08.2024 passed by the learned Rent Tribunal, Jaisalmer, the impugned judgment dated 23.10.2024 passed by the learned Rent Appellate Tribunal, Jaisalmer, the registered Lease Agreement dated 10.08.2022, the pleadings of the parties before the courts below , more particularly the petitioner's own averments in the petition under Section 18 of the Act of 2001 and the case-law cited at the Bar, this Court deems it appropriate to examine and record its observations on the controversy under the following heads, seriatim, arranged in the sequence in which they logically bear upon and lead to the ultimate determination of the principal issue:

HEAD-I : Statement of Object, Reason and Nature of the Rajasthan Rent Control Act, 2001.

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HEAD-II : Statement of Object, Reason and Nature of the Commercial Courts Act, 2015.

HEAD-III : Commercial Use of Premises is Squarely Within the Contemplation of the Rajasthan Rent Control Act, 2001.

HEAD-IV : The Statutory Bar under Section 11 of the Act of 2015 vis-à-vis a Special Statute — the Rule of Harmonious Construction.

HEAD-V : The True Nature of the Present Dispute — Relationship Over Activity.

HEAD-VI : Distinguishing Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP and the other authorities relied upon by Respondent No.1.

HEAD-VII : Findings on the Principal Issue, Conclusion and Relief.

HEAD-I

Statement of Object, Reason and Nature of the Rajasthan Rent Control Act, 2001

14. The Rajasthan Rent Control Act, 2001 was enacted to consolidate and rationalise the law relating to control of eviction from, letting of, and rents for, certain premises in the State of Rajasthan, replacing the erstwhile Rajasthan Premises (Control of Rent and Eviction) Act, 1950. It is, in its essential character, a piece of beneficial and protective social-welfare legislation, enacted to correct the inherent

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inequality of bargaining power between landlords and tenants and to shield tenants from arbitrary rent enhancement and forcible or extra-legal dispossession, while simultaneously preserving legitimate remedies of landlords through a specialised, summary and expeditious forum.

15. The special and exclusive character of the forum created under the Act of 2001 is manifest from Section 18(1) thereof, which opens with a non obstante clause and provides that, notwithstanding anything contained in any other law for the time being in force, in the areas to which the Act extends, only the Rent Tribunal and no civil court shall have jurisdiction to hear and decide petitions relating to disputes between landlord and tenant and matters connected therewith and ancillary thereto. The proviso thereto further directs that in deciding such petitions, the Rent Tribunal shall have due regard to the provisions of the Transfer of Property Act, 1882 and the Indian Contract Act, 1872, in the same manner as would a civil court seized of the lis. The ouster is reinforced by Section 29 of the Act of 2001, which independently confers upon the Act an overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force.

16. It is thus a doubly fortified special statute-

first, by the express exclusion of civil court jurisdiction under Section 18(1), and

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second, by the general repugnancy clause under Section 29 , a legislative architecture that leaves little room for equivocation regarding the Legislature's intent that landlord-tenant disputes falling within its four corners are to be adjudicated by no forum other than the Rent Tribunal constituted thereunder.

It bears emphasis that Section 18 is itself the very provision under which the petitioner instituted the original petition seeking protection against forcible dispossession otherwise than in due course of law, underscoring that the Legislature envisaged precisely such protection, against precisely such self-help, being adjudicated by the specialised forum and no other.

HEAD-II

Statement of Object, Reason and Nature of the Commercial Courts Act, 2015

17. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 was enacted with the avowed object of constituting dedicated Commercial Courts, Commercial Divisions and Commercial Appellate Divisions for the speedy disposal of high-value commercial disputes, so as to improve the ease of doing business in the country, instil investor confidence and align India's contract-enforcement regime with international best practices. The Hon'ble Supreme Court, in *Ambalal Sarabhai*

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Enterprises Ltd. v. K.S. Infraspace LLP & Anr., (2020) 15 SCC 585, has itself articulated that the object underlying the establishment of Commercial Courts is to ensure that commercial disputes are disposed of expeditiously, fairly and at reasonable cost to litigants engaged in trade and commerce, thereby furthering the economic growth of the country.

18. What requires to be underscored, however, is the essential nature of the Act of 2015: it is, at its core, a forum and procedure-creating statute. It does not purport to create new substantive rights inter se landlord and tenant, nor does it purport to withdraw or curtail statutory protections conferred upon tenants under special rent legislations. Its function is to identify disputes of a defined commercial character and specified value and channel them into a fast-track procedural regime. Section 2(1)(c) of the Act of 2015 defines "commercial dispute" by an inclusive and illustrative enumeration of categories, of which clause (vii)- agreements relating to immovable property used exclusively in trade or commerce, is but one specie, and, as will be demonstrated under Head-III below, one that cannot be read so as to swallow whole a field already and expressly occupied by a special rent statute.

HEAD-III

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Commercial Use of Premises is Squarely Within the Contemplation of the Rajasthan Rent Control Act, 2001

19. A further and, in the opinion of this Court, decisive dimension to the controversy is that the Act of 2001 does not treat commercial user of demised premises as an alien or extraneous circumstance falling outside its protective scheme, quite to the contrary, it expressly contemplates, defines, and regulates tenancies of a commercial or business character within its own text.

20. Section 2(f) of the Act of 2001, which defines "premises", expressly includes within its ambit any building or part of a building let or intended to be let for use "as a residence or for commercial use or for any other purpose". The Legislature has thus, at the very threshold of the enactment, turned its mind to commercial tenancies and consciously brought them within the fold of the Act, rather than confining the statute's protective umbrella to residential lettings alone.

21. This legislative design is reinforced elsewhere in the very body of the Act. Section 2(i)(ii)(b)[tenant definition] makes distinct provision for succession to a tenancy, upon the death of the tenant, in respect of "premises let out for commercial or business purposes", a provision that would be wholly redundant were commercial tenancies not within the Act's

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contemplation. Similarly, the execution provisions[1] of the Act of 2001 calibrate differential rates of mesne profits payable by a tenant who fails to vacate after a certificate for recovery of possession , a higher rate being prescribed for premises let out for commercial purposes as against residential purposes. Far from suggesting exclusion, this differential treatment is itself testimony to the fact that the Legislature has consciously legislated for, and regulated the incidents of, commercial tenancies within the four corners of the Act of 2001.

22. This position finds judicial affirmation in *Puran Indoria v. Balashram Society, 2012 SCC OnLine Raj 2648*, where a Coordinate Bench of this Court, examining a ground of eviction under Section 13(1)(i) of the old *Rajasthan Premises (Control of Rent and Eviction) Act, 1950* , a provision held to be pari materia with Section 14(1)(h) of the Delhi Rent Control Act, 1958 , held that the Act draws no distinction between residential and commercial premises for the purposes of the grounds of eviction contemplated thereunder.

23. The consequence that flows from this is of considerable significance to the present controversy: commercial user of tenanted premises is not a circumstance extrinsic or antithetical to the Act of 2001; it is an eventuality expressly provided for and regulated by the very statute whose

1 Section 20.Execution of the Orders.

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jurisdiction is sought to be displaced in favour of the Commercial Court. It would, therefore, be self-contradictory to hold that the presence of commercial activity upon leased premises operates to eject the dispute out of a statute that itself defines, legislates for, and applies with equal force to such very category of tenancy. The reasoning of the courts below , that because the petitioner runs a hotel business, the dispute ceases to be one to which the Act of 2001 applies - proceeds, with respect, upon a premise the statute itself contradicts.

HEAD-IV

The Statutory Bar under Section 11 of the Act of 2015 vis-à-vis a Special Statute

24. Section 11 of the Act of 2015 is a self-denying, non obstante provision. It stipulates that, notwithstanding anything contained in the Act, a Commercial Court or a Commercial Division shall not entertain or decide any suit, application or proceeding relating to a commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force. The very existence of Section 11 demonstrates that Parliament itself contemplated and guarded against the situation now confronting this Court: that the mere commercial colouring of a dispute cannot, by itself, override

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a specific ouster of civil court jurisdiction engrafted in a special statute occupying the field.

25. Section 18(1) of the Act of 2001, read with Section 29 thereof, constitutes precisely such an express or, at the very lowest, necessarily implied bar on the jurisdiction of the civil court contemplated by Section 11 of the Act of 2015. It follows, ex necessitate, that even assuming arguendo that the lease of the subject premises bears a commercial hue on account of the hotel business conducted thereon , a circumstance that, as demonstrated under Head-III, the Act of 2001 itself expressly contemplates and regulates , Section 11 operates as a jurisdictional dam, restraining the Commercial Court from wading into waters that the Legislature has expressly reserved for the Rent Tribunal alone. To hold otherwise would be to read Section 2(1)(c)(vii) in isolation, divorced from Section 11, and would render the latter provision otiose, a construction abhorrent to the settled canon that a statute must be read as an integrated whole and no provision thereof treated as surplusage.

26. This conclusion is further fortified by the salutary maxim *generalia specialibus non derogant*- general provisions do not derogate from special ones and its converse formulation, *lex specialis derogat legi generali*- a specific law overrides a general law . The Act of 2015 is a general statute of procedural application across myriad categories of

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commercial dealings; the Act of 2001 is a special statute confined to the specific and narrower field of control of rent and eviction, a field which, as shown above, expressly extends to commercial tenancies. Where the two operate on overlapping terrain, it is the special enactment and more particularly, its express non obstante ouster that must prevail, unless the later general statute discloses an unmistakable legislative intent to pro tanto repeal or curtail the special law. No such intent is discernible from the text, scheme, or Statement of Objects and Reasons of the Act of 2015, which is conspicuously silent on rent-control legislation where tenant can seek redressal of his grievance against forcible eviction or extra-legal dispossession.

HEAD-V

The True Nature of the Present Dispute — Relationship Over Activity

27. It is a well-settled interpretative discipline that in determining the forum properly seized of a lis, the Court must look not at the nomenclature employed by the parties in their contract, nor at the incidental character of the activity carried on upon the premises, but at the pith and substance of the real controversy between them. That the demised premises are used for running a commercial hotel is not, and never was, in dispute, it stands admitted on all hands, including by Respondent No.1 in its own pleadings

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before the courts below. It is, however, a secondary and, for present purposes, a subordinate circumstance. The primary and, indeed, the only fact in controversy between the parties is the character of their relationship and the legal consequence flowing from its purported termination.

28. It is equally undisputed, and indeed expressly conceded by the respondents, that the relationship subsisting between the parties is that of lessor and lessee under a duly registered Lease Agreement dated 10.08.2022, stipulating a fixed term of four years and eleven months, commencing 01.09.2022 and expiring only on 01.08.2027. The petitioner's grievance, as pleaded, is that the respondents, through the notice dated 13.05.2024 and the communications dated 15.05.2024 and 18.05.2024 that followed, sought to bring about a mid-term, premature termination of that tenancy, a termination which, on the petitioner's case, is not contemplated by, and runs contrary to, the express covenants agreed between the parties under the registered Lease Agreement itself.

29. The Court is, therefore, required to maintain a clear conceptual distinction between the business which the lessee may carry on from the demised premises and the juridical relationship pursuant to which the premises came to be possessed by the lessee. The former may undoubtedly be commercial in character; the latter does not, merely by reason of such commercial user, cease to be a lease. The fact

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that the lessee has chosen to conduct the business of a hotel from the leased premises is a fact concerning the user to which the premises have been put. It is not, by itself, determinative of the nature of the contract between the lessor and the lessee or of the cause of action giving rise to the present proceedings.

30. This distinction assumes particular significance while construing Section 2(1)(c)(vii) of the Commercial Courts Act, 2015. The statutory expression refers to agreements relating to immovable property used exclusively in trade or commerce. The expression "exclusively" cannot, in my considered view, be severed from the remainder of the statutory phrase and construed as though the mere factum of commercial utilisation of an immovable property automatically transmutes every dispute arising out of the tenancy into a commercial dispute. Such an interpretation would substantially enlarge the statutory expression beyond its legislative purpose and would render the nature and substance of the underlying agreement and the actual cause of action wholly irrelevant.

31. The emphasis supplied by the expression "used exclusively in trade or commerce" is upon the nature and character of the use of the immovable property, but the statutory requirement cannot be converted into a rule that every landlord-tenant dispute concerning premises which happen

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to be commercially used is, without more, a commercial dispute. The expression has to be understood in the context of the statutory definition as a whole, and particularly in the light of the nature of the agreement which is sought to be brought within clause (vii) of Section 2(1)(c) of the Act of 2015, the rights asserted thereunder and the dispute which actually falls for adjudication. The provision cannot be read as creating a jurisdictional fiction whereby the commercial character of the tenant's subsequent activity effaces the foundational relationship of landlord and tenant.

32. To put the matter differently, there is a fundamental distinction between an agreement for the lease of premises which the lessee proposes to use in the conduct of its independent business versus an agreement whose substantive subject-matter is the conduct, management, operation, administration or commercial exploitation of a business itself. In the former category, the immovable property is the subject of the lease and the business is the lessee's own affair. In the latter category, the commercial venture or business arrangement itself may constitute the subject-matter of the contractual relationship. The present case falls, in substance and in form, within the former category.

33. The Lease Agreement dated 10.08.2022, when examined in its proper perspective, leaves little room for doubt in this

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regard. The very recitals disclose that the respondent-lessor represented itself to be the owner of and to have absolute power and possession over the property known as Desert Tulip Hotels and Resorts Pvt. Ltd., situated at Plot No.04, Hotel Complex, Jodhpur Road, NH-15, Jaisalmer, which was described as the "Leased Premises", "Demised Premises" or "Premises". The agreement thereafter proceeds upon the express footing that the petitioner, as lessee, approached the lessor to lease the Demised Premises for operation as a hotel. Thus, the foundational transaction between the parties was the leasing of identified immovable property and not the sale, transfer, partnership, management, franchise, agency or joint exploitation of an existing hotel business.

34. The recital that the lessee proposed to operate a hotel from the demised premises does not alter the legal character of the transaction. On the contrary, it merely identifies the permitted purpose or user for which the premises were leased. There is a material distinction between saying that the premises were leased for the purpose of running a hotel and saying that the lessor and lessee entered into an agreement for running, managing or commercially exploiting a hotel business jointly or inter se. The former is a lease of immovable property with a specified commercial user; the latter may constitute an entirely different species of commercial arrangement. The present agreement, read as a whole, is demonstrably of the former character.

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35. The operative covenant of the Lease Agreement further reinforces this conclusion. The lessor, in consideration of the payment of rent by the lessee, together with the covenants and agreements to be performed by the lessee, expressly "rents and leases" the Leased Property to the lessee, and the lessee correspondingly takes the same on rent and lease from the lessor. The consideration stipulated between the parties is thus expressly identified as Rent. The contractual architecture is consequently that of a conventional lease: one party grants possession of the premises and the corresponding leasehold interest in identified immovable property; the other pays rent and undertakes the contractual obligations attached to such possession.

36. The description of the "Leased Property" is equally instructive. The subject-matter of the transaction comprises the lessor's interest in the land, the buildings, structures and improvements situated thereon, together with appurtenant easements, rights and other appurtenances. The agreement therefore operates upon an identified corpus of immovable property and the lessor's interest therein. What was transferred to the petitioner was possession and enjoyment of the demised property for the agreed term upon payment of rent. The agreement did not transfer to the petitioner any proprietary interest in the business of the lessor as a going commercial concern, nor did it create an arrangement under

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which the lessor and lessee were to jointly conduct or manage the hotel business.

37. This distinction is not merely semantic; it goes to the very root of the jurisdictional inquiry. If the present agreement had, for instance, contained provisions concerning the joint conduct of the hotel business, sharing of profits and losses, appointment or control of managerial personnel, allocation of operational responsibilities, procurement and supply arrangements, management of hotel staff, fixation and regulation of business operations, sharing of customers and revenue, operation of kitchens, restaurants, bars or other hotel facilities as between the parties, or any other substantive commercial arrangement governing the manner in which the hotel business itself was to be carried on, a different question might arise. Likewise, an agreement by which the owner of a hotel business handed over the management and operation of the hotel as a going concern to another entity on terms governing the commercial exploitation and management thereof may possess a materially different juridical character.

38. But that is not the agreement which confronts the Court in the present case. There is no pleaded case that the parties entered into a partnership arrangement for carrying on the hotel business; there is no case of joint venture between the lessor and lessee; there is no case of sharing of profits

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between the lessor and lessee arising from the operation of the hotel; there is no case that the lessor retained operational control over the hotel business; nor is there any case that the parties contractually regulated, inter se, the day-to-day commercial management of the hotel as a business venture. The agreement is, in substance, concerned with the leasing of the premises, the payment of rent, the tenure of the lease, the rights and obligations of lessor and lessee, and the consequences of termination of that relationship.

39. The fact that the lessee, after obtaining possession, may utilise the premises for operating a hotel cannot alter this essential character. Once possession of the entire demised premises has been delivered to the lessee under a lease, the manner in which the lessee conducts its independent business within the four walls of the leased premises is, subject to the covenants of the lease and applicable law, essentially its own commercial affair. Whether the petitioner operates the hotel profitably or suffers losses; whether it receives ten customers or one hundred customers; how it organises its kitchen; how it recruits its employees; how it manages its housekeeping; what menu it offers; how it advertises the hotel; how it attracts tourists and guests; how it manages its rooms; what rates it charges its customers; or whether it operates the hotel continuously, intermittently, or temporarily keeps the establishment closed, are matters

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pertaining to the business of the lessee, and not to the leasehold relationship between the parties.

40. The distinction becomes even clearer if the consequences of the respondents' submission are tested. If the mere circumstance that the tenant conducts a hotel business upon leased premises were sufficient to attract Section 2(1)(c)(vii) of the Act of 2015, then the same principle would necessarily apply to every shop, office, restaurant, factory, warehouse, showroom, clinic, coaching centre, workshop or other establishment which is carried on from rented premises. In every such case, the landlord could contend that because the premises are being used exclusively for a commercial activity, every subsequent dispute concerning rent, possession, termination, eviction or protection against dispossession has ceased to be a tenancy dispute and has become a commercial dispute. Such a construction would practically obliterate the distinction between a commercial tenancy and a commercial transaction and would, in effect, make the commercial character of the tenant's business determinative of jurisdiction irrespective of the actual cause of action.

41. Such an interpretation would also produce a result difficult to reconcile with the legislative scheme of the Rajasthan Rent Control Act, 2001. As already noticed under Head-III, the Act of 2001 itself expressly recognises premises let for

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commercial use and commercial or business purposes. The Legislature, therefore, was conscious that a tenant may carry on a commercial enterprise from rented premises and yet remain a tenant for purposes of the rent-control legislation. To hold that commercial user ipso facto excludes such tenancy from the statutory forum would be to introduce, by judicial interpretation, an exclusion which the Legislature itself has not enacted.

42. The present case must, therefore, be approached by identifying the real subject-matter of the lis. The hotel business is not the subject-matter of the present proceedings. The Court is not called upon to adjudicate upon the petitioner's accounts, profitability, customer base, hotel management, supply chain, kitchen operations, staff deployment, marketing strategy, hospitality services or any other aspect of the commercial enterprise conducted by the petitioner. None of these matters constitutes the cause of action pleaded in the petition. The Court is called upon to determine whether the respondents, being the lessors, can prematurely terminate the registered Lease Agreement and thereby dispossess the petitioner from the demised premises otherwise than in accordance with law.

43. The distinction is particularly material because the petitioner has not approached the Rent Tribunal seeking adjudication of any right arising out of the conduct of the hotel business as

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against the respondents. It has approached the statutory forum asserting a possessory and tenancy right arising out of the Lease Agreement. The relief sought is protection against dispossession, interference with peaceful possession and interference with the petitioner's enjoyment of the leased premises. The hotel business is relevant only because it happens to be the petitioner's permitted use and is incidentally carried on from the premises; it is not the juridical foundation of the claim.

44. Indeed, the very nature of the relief claimed demonstrates the true character of the controversy. Paragraph 7 of the petition filed under Section 18 of the Act of 2001 sought a permanent injunction restraining the respondents from, inter alia: obstructing the petitioner's peaceful use and enjoyment of the tenanted premises; dispossessing the petitioner otherwise than through due process of law; removing the hotel business being run by the petitioner, or the articles and belongings kept therein, from the premises; carrying out any demolition or structural interference in the premises; engaging in false or malicious propaganda concerning the petitioner or its business; letting out the premises to any third person; effecting any sham or collusive alienation of the premises; and doing any of the foregoing acts, whether personally or through any servant, agent, associate, relative, successor-in-interest, attorney or employee. The entirety of this prayer is anchored in, and referable to, the incidents of

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tenancy, protection of possession, restraint against dispossession otherwise than by law, and preservation of the status quo pending adjudication of the tenancy dispute and not to any claim founded upon a purely commercial cause of action divorced from the tenancy.

45. It is in this context that the word "exclusively" occurring in Section 2(1)(c)(vii) requires careful and purposive consideration. The word cannot be read in isolation or elevated into a jurisdictional talisman. "Exclusively" qualifies the use of the immovable property; it does not, by itself, declare that every agreement under which an immovable property is commercially used is necessarily an agreement of commercial character for all purposes and irrespective of the dispute actually arising therefrom. The statutory expression must be applied to the agreement and the dispute in their proper context. The question is not merely whether the tenant happens to employ the premises in aid of a commercial enterprise; the question is whether the dispute before the Court, arising from the agreement concerning such immovable property, possesses the juridical character contemplated by the statutory definition so as to displace the special statutory forum otherwise competent to adjudicate the landlord-tenant relationship.

46. The word "exclusively" therefore cannot be permitted to perform a function which the Legislature has not assigned to

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it. It cannot convert the purpose for which premises are leased into the subject-matter of the business being conducted therefrom. A lease deed may expressly permit or require commercial user without itself becoming a contract for the conduct of commerce. The distinction is between the commercial use of the property and the commercial character of the rights and obligations which constitute the dispute. In the former case, the business is merely the mode in which the lessee enjoys and utilises the demised premises; in the latter, the commercial venture itself forms the substance of the contractual relationship.

47. The present Lease Agreement illustrates this distinction with particular clarity. The lessor has leased the premises to the petitioner for a fixed term against stipulated rent. The petitioner has acquired the right to possess and use the entire demised premises for the agreed purpose. The lessor has not retained any right to participate in the petitioner's day-to-day hotel operations merely because the premises happen to contain a hotel establishment. Once the premises were leased, the lessee became responsible for operating its own hotel business. The commercial enterprise conducted therefrom is, therefore, an activity of the lessee conducted upon the leased property; it is not an activity jointly undertaken by the lessor and lessee under the Lease Agreement.

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48. Put in its simplest juridical form, the question is not "What does the tenant do inside the premises?" but "What is the legal relationship between the parties and what dispute has arisen from that relationship?" The petitioner may run a hotel, a restaurant, a showroom or any other permitted commercial establishment. The identity of the business may change, but the legal character of the relationship with the owner remains that of lessor and lessee so long as the dispute concerns the lease, possession, rent, termination or eviction. The commercial activity carried on by the tenant cannot, by itself, supplant the tenancy relationship as the juridical foundation of the dispute.

49. This becomes apparent even from the manner in which the present dispute has arisen. The controversy did not commence because of any disagreement regarding the operation of the hotel. There is no dispute pleaded that the petitioner was required to operate the kitchen in a particular manner and failed to do so; that the parties disagreed over the number of guests to be accommodated; that the petitioner failed to share hotel revenues with the respondents; that the parties disagreed over hotel management; or that the petitioner violated a contractual obligation concerning the commercial conduct of the hotel business as such. The controversy commenced because the respondents allegedly sought to increase the rent and thereafter issued notices seeking to bring the lease

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relationship to an end before expiry of its stipulated term. The cause of action is thus unmistakably rooted in lease, rent, tenure, termination and possession.

50. The Court must also guard against conflating the commercial purpose clause of a lease with the commercial subject-matter of a contract. A clause providing that premises shall be used for a hotel merely identifies the permissible purpose of occupation. It does not necessarily amount to an agreement regulating the commercial enterprise itself. The distinction is one between the *object of the demise* and the *object of the business*. The former concerns the manner in which the demised property may be used by the tenant; the latter concerns the conduct and exploitation of the business as a commercial venture. The present Lease Agreement belongs to the first category.

51. If, for instance, the lessor and lessee had entered into an agreement under which the lessor continued to own and retain the hotel business while the lessee undertook its management and operation for consideration linked to turnover or profits, or if the parties had agreed to jointly operate the hotel, share its profits, regulate its management, determine the deployment of personnel and resources, control the manner of commercial operations and divide the economic returns of the enterprise, the commercial character of such an arrangement might stand on an entirely different

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footing. In such a case, the Court would not merely be deciding a dispute concerning the possession of immovable property between a landlord and tenant; it might be called upon to interpret and enforce obligations concerning the commercial enterprise itself.

52. No such situation arises here. The petitioner is not the manager of the respondents' hotel business under a management agreement. It is not a joint venturer with the respondents. It is not a partner of the respondents in the operation of the hotel. It is not under an arrangement whereby the respondents and the petitioner jointly conduct the hotel enterprise. The petitioner is the lessee of the premises, and the petitioner independently conducts its hotel business from those premises. The respondents' rights, as asserted in the present proceedings, flow from their position as lessors and owners of the demised property; the petitioner's rights flow from its position as lessee and lawful occupant thereof.

53. The circumstance that the leased premises themselves comprise a functioning hotel structure cannot lead to a different conclusion. What was demised was the property, including the land, buildings, structures, improvements, appurtenant rights and facilities forming part of the Leased Property. The fact that the property is physically designed or equipped for hotel use merely makes hotel operation a

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convenient or intended commercial use of the premises. It does not transform the lease of that property into an agreement for the conduct of the hotel business itself.

54. The respondents' argument, if accepted in its widest form, would lead to an anomalous consequence. A landlord who leases a fully constructed hotel building to a tenant for a fixed rent would, merely because the tenant operates a hotel therein, stand in a position materially different for jurisdictional purposes from a landlord who leases an ordinary commercial building to a tenant carrying on some other trade. The forum would then depend not upon the legal relationship or the relief sought, but upon the nature of the tenant's enterprise. Such an approach would make jurisdiction contingent upon the changing business activity of the tenant rather than upon the cause of action constituting the lis.

55. Jurisdiction, however, cannot ordinarily be made to fluctuate merely because the tenant changes the commercial activity carried on from the premises, provided such use remains within the terms of the lease and applicable law. The decisive consideration must remain the legal nature of the rights asserted and the relief claimed. If the petitioner were to change the name of the hotel, modify its menu, change its customer profile, alter its marketing strategy, temporarily suspend operations, or otherwise alter the manner in which

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it conducts its independent business, none of those events would alter the fact that the respondents are its lessors and that the dispute concerning premature termination concerns the leasehold relationship.

56. The same principle applies with even greater force where the relief sought is protection against forcible dispossession. Such a claim does not become a commercial dispute merely because the premises are commercially exploited. The immediate legal right asserted is the right to remain in lawful possession during the subsistence of the tenancy and to be dispossessed only in accordance with law. The adjudicatory exercise consequently requires examination of the lease deed, its tenure, termination provisions, alleged breach, notices and the respective rights of lessor and lessee. Those are quintessential incidents of the tenancy relationship.

57. Viewed thus, the core issue requiring adjudication resolves itself into three interlinked questions: first, whether the relationship of lessor and lessee subsists between the parties, which stands admitted; second, what the termination clauses of the registered Lease Agreement permit or prohibit by way of mid-term determination of the tenancy; and third, whether the termination actually effected by the respondents, tested against those agreed covenants and the conduct of the parties, is just and reasonable. If the termination is found to be just and reasonable, no case for

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injunction survives; if it is found to be otherwise, the petitioner would be entitled to protection. In either eventuality, the answer turns entirely upon a close construction of the lease covenants and the parties' conduct inter se as landlord and tenant, an exercise that lies squarely within the domain, and indeed the very *raison d'être*, of the Rent Tribunal constituted under the Act of 2001, and not within the domain of a Commercial Court whose concern is with commercial disputes of specified value arising from trade or commerce, not with the justness of termination of a statutorily protected tenancy.

58. There is, with respect, no persuasive reason why a Commercial Court, a forum of general commercial jurisdiction should be called upon to examine an issue for which a special tribunal has been constituted by a special statute precisely for that purpose. The circumstance that the respondents, as landlords, do not dispute that the premises are rented premises only reinforces this conclusion: since even the defendants' own case proceeds on the footing of a subsisting tenancy, the dispute cannot simultaneously be treated as one lying outside the protective sweep of the very statute that governs that tenancy.

59. The distinction between the business conducted upon the premises and the lease of the premises itself is therefore decisive. The petitioner may have invested substantial

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amounts, employed personnel, incurred expenditure, developed the hotel operations and created a commercial establishment upon the demised property. All of these circumstances may be relevant to the factual background or to the consequences which the petitioner apprehends from premature dispossession. But they do not change the source of the petitioner's possessory right. That source remains the registered Lease Agreement. The petitioner claims possession not because the respondents have entrusted their hotel business to it, but because the respondents have leased the premises to it for a fixed period.

60. It would consequently be a category error to treat every reference in the Lease Agreement to hotel operation, hotel use, allied services, restaurant, bar or the brand name under which the petitioner proposes to operate as though those stipulations constitute the commercial transaction between the parties. Such stipulations are, in their true character, incidental or ancillary to the identification of the permitted use of the demised premises. They explain why the petitioner required the premises and for what purpose the lessor agreed to lease them. They do not convert the lease into an agreement governing the commercial relationship between the parties in respect of the hotel enterprise.

61. The Court is, therefore, unable to accept the proposition that the mere words "for operation as a hotel" appearing in the

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Lease Agreement, or the fact that the petitioner actually operates a hotel from the premises, are sufficient to conclude that the dispute concerning premature termination of the lease necessarily falls within Section 2(1)(c)(vii) of the Act of 2015. Such a conclusion would overlook the distinction between commercial use of immovable property and a commercial dispute arising from a commercial arrangement concerning the business itself.

62. The expression "used exclusively in trade or commerce" must consequently receive a construction which is faithful both to its text and to the legislative scheme. It cannot be read as a blanket jurisdiction-conferring provision applicable to every dispute concerning every immovable property from which some form of trade or commerce is carried on. The statutory phrase has to be applied with reference to the substance of the agreement and the nature of the dispute. Where the agreement is fundamentally one of lease, where the parties stand in the admitted relationship of landlord and tenant, where the consideration is rent, where possession of identified immovable property has been demised for a fixed term, and where the dispute concerns premature termination and threatened dispossession, the commercial activity carried on by the tenant cannot, without more, displace the juridical character of the lis as a tenancy dispute.

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63. Finally, it must be borne in mind that were this core issue to be construed as loosely, vaguely and widely as the courts below have construed it, namely, that the presence of any commercial activity upon tenanted premises is, without more, sufficient to attract the jurisdiction of the Commercial Court, the consequence would be that virtually every dispute arising from a tenancy where commercial activity is carried on would stand diverted to the Commercial Court, leaving only tenancies let out for residential purposes within the fold of the Rent Tribunal. Such a construction cannot be sustained, if for no other reason than that Section 2(f) of the Act of 2001 itself, as demonstrated under Head-III above, expressly brings commercial-use premises within the Act's protective scheme; a construction that reads commercial tenancies out of the Rent Tribunal's jurisdiction would therefore directly contradict the very statute it purports to interpret, and would render illusory the legislative choice, deliberately made, to extend rent-control protection to commercial as much as to residential tenancies.

64. In the ultimate analysis, therefore, the question is not whether the petitioner is conducting a commercial hotel from the demised premises—that proposition is undisputed—but whether the present lis is founded upon the conduct of that commercial enterprise or upon the legal incidents of the lease under which the petitioner occupies the premises. The answer, on a conjoint reading of the Lease Agreement, the

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pleadings and the reliefs sought, is unmistakably the latter. The hotel is the petitioner's business; the premises are the subject of the lease; the respondents are the landlords; the petitioner is the tenant; the consideration is rent; and the immediate dispute concerns the respondents' asserted right to prematurely terminate the tenancy and recover possession. The commercial activity is thus the context in which the premises are used, whereas the landlord-tenant relationship is the legal foundation from which the cause of action arises.

65. Once this distinction is maintained, the jurisdictional controversy substantially resolves itself. The mere fact that the demised premises are exclusively utilised for the petitioner's hotel business cannot, standing alone, convert the registered Lease Agreement into a commercial agreement concerning trade or commerce in the sense contemplated by Section 2(1)(c)(vii) of the Act of 2015. The provision cannot be invoked merely because the tenant happens to carry on business from the leased premises. What is required is an examination of the substance of the agreement and the controversy; and when so examined, the present dispute remains one concerning the subsistence, termination and protection of a tenancy and not one concerning the management, operation, conduct or commercial exploitation of the hotel business itself.

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HEAD-VI

Distinguishing Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP and the Other Authorities Relied Upon by Respondent No.1

66. Learned counsel for Respondent No.1 has placed considerable reliance upon *Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP & Anr., (2020) 15 SCC 585.* A close examination of the said decision discloses that it is clearly distinguishable. The dispute therein arose out of civil suits for declaration and specific performance of an agreement to sell and a connected memorandum of understanding concerning industrial land, instituted before the Commercial Court, Vadodara. There was, on the facts of that case, no rent-control legislation in the field, no landlord-tenant relationship between the litigating parties, and consequently no competing special statute containing an express non obstante ouster of civil court jurisdiction analogous to Sections 18(1) and 29 of the Act of 2001. The controversy before the Hon'ble Supreme Court was confined to whether the subject-matter fell within Section 2(1)(c)(vii) of the Act of 2015 so as to attract the Commercial Court's jurisdiction as opposed to that of an ordinary civil court, both being general fora exercising jurisdiction under the Code of Civil Procedure. The question of an overriding Section 11 bar flowing from a rival special statute conferring exclusive

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jurisdiction upon a dedicated tribunal, and the further question of whether commercial user is a circumstance already contemplated and regulated by that special statute, simply did not, and could not, arise for consideration.

67. The ratio of Ambalal Sarabhai (supra) must, therefore, be confined to the field in which it was rendered , the demarcation of jurisdiction between the general civil court and the Commercial Court inter se, on the touchstone of exclusivity and actuality of commercial user. It furnishes no warrant for the wholly distinct proposition that commercial user of premises can override the statutory bar erected by Section 11 of the Act of 2015 in favour of a special forum such as the Rent Tribunal. A judgment is an authority for what it actually decides on its own facts, not for every observation that may, upon a strained reading, appear to support a proposition never in issue before the Court.

68. The remaining authorities relied upon by learned counsel for Respondent No.1 similarly do not advance the case, none being concerned with the specific interplay between Section 11 of the Act of 2015 and the dual non obstante clauses under Sections 18(1) and 29 of the Act of 2001. Conversely, the line of authority relied upon by learned counsel for the petitioner- *Suresh Shah v. Hipad Technology India (P) Ltd., (2021) 1 SCC 529* in particular, the Hon'ble Supreme Court drew a clear line between tenancies governed by a special

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rent statute conferring statutory protection, where the designated statutory forum alone possesses jurisdiction and tenancies outside such protection, where the ordinary civil court or an arbitral tribunal would possess jurisdiction; the present case, for the reasons set out under Heads III and V above, falls squarely within the former category.

69. The contention of Respondent No.1 regarding suppression of the notice dated 13.05.2024 does not survive scrutiny: the said notice is not merely referred to but forms the very gravamen of the petitioner's grievance as pleaded in paragraph 7 of the Section 18 petition, and was duly considered by both the learned Rent Tribunal and the learned Rent Appellate Tribunal. Whether the termination effected thereby was, on facts, just and reasonable is a matter going to the merits of the tenancy dispute, to be adjudicated by the Rent Tribunal upon full inquiry, and cannot be permitted to be deployed as a threshold objection to defeat the very jurisdiction that alone is competent to examine it.

HEAD-VII

Findings on the Principal Issue, Conclusion and Relief

70. On a cumulative and conjoint consideration of the aforesaid heads of discussion, this Court records the following findings: (i) the Act of 2001 is a special and protective statute doubly fortified by non obstante clauses under Sections 18(1) and

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29, conferring exclusive jurisdiction upon the Rent Tribunal over landlord-tenant disputes;

(ii) the Act of 2015 is, in essential character, a procedural and forum-allocating statute for commercial disputes of specified value, whose own Section 11 self-denies jurisdiction wherever civil court jurisdiction stands expressly or impliedly barred under any other law;

(iii) commercial user of tenanted premises is not extraneous to the Act of 2001 but is expressly defined, contemplated and regulated within its own text under Section 2(f) and allied provisions, and stands judicially affirmed in Puran Indoria (supra);

(iv) Section 18(1) read with Section 29 of the Act of 2001 constitutes precisely the bar contemplated under Section 11 of the Act of 2015, rendering the latter squarely attracted;

(v) the real and substantive controversy between the parties to the case, tested by its pith and substance and by the petitioner's own pleadings, is the legality and reasonableness of the mid-term, premature termination of a registered tenancy of fixed duration , a question of relationship and not of activity, and a quintessential rent-tenancy dispute rather than a commercial dispute simpliciter;

(vi) the decision in Ambalal Sarabhai Enterprises Ltd. (supra), rendered in a wholly different factual and statutory

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matrix devoid of any competing special forum, Section 11 bar, or statutorily contemplated commercial tenancy, is clearly distinguishable and inapplicable; and

(vii) both the learned Rent Tribunal and the learned Rent Appellate Tribunal fell into palpable jurisdictional error, apparent on the face of the record, in mechanically applying the test under Section 2(1)(c)(vii) of the Act of 2015 without adverting to the statutory bar under Section 11 thereof, without examining the Act of 2001's own express treatment of commercial tenancies, and without examining the true nature of the lis as disclosed by the petitioner's own pleadings.

71. An error going to the very root of jurisdiction , namely, the wrongful assumption that a dispute lies within the domain of the Commercial Court when it is, in truth and substance, exclusively triable by the Rent Tribunal under a special statute , is precisely the class of error that this Court is competent, and indeed obliged, to correct in exercise of its supervisory and superintending jurisdiction under Articles 226 and 227 of the Constitution of India. *Ubi jus ibi remedium* -where there is a right, there is a remedy and a litigant wrongly non-suited from the very forum created by the Legislature for his statutory protection cannot be left without recourse merely because two fora below have concurred in an erroneous view. Concurrence of findings on a

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pure question of jurisdiction, unlike a finding of fact, affords no immunity from correction where the jurisdictional premise itself is shown to be unsound.

72. In view of the foregoing discussion, this Court is of the considered opinion that the present writ petition deserves to be, and is accordingly, allowed.

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ORDER

73. The order dated 02.08.2024 passed by the learned Rent Tribunal, Jaisalmer in RCT Case No.10/2024, and the judgment dated 23.10.2024 passed by the learned Rent Appellate Tribunal, Jaisalmer in Rent Appeal No.04/2024, are hereby quashed and set aside.

74. The petition filed by the petitioner under Section 18 of the Rajasthan Rent Control Act, 2001, bearing RCT Case No.10/2024, is restored to its original number on the file of the learned Rent Tribunal, Jaisalmer, which shall proceed to adjudicate the same on merits, in accordance with law, uninfluenced by any observation made hereinabove , the said observations having been confined solely to the question of jurisdiction and the maintainability of the petition before the Rent Tribunal.

75. The interim protection granted by the learned Rent Tribunal vide order dated 26.06.2024, restraining the respondents from dispossessing the petitioner otherwise than in

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accordance with law, shall continue to remain operative and shall enure in favour of the petitioner till the suit stands finally decided.

76. The writ petition stands allowed in the above terms. No order as to costs. Stay application(s) and all other pending application(s), if any, stand disposed of accordingly.

(FARJAND ALI),J

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