

OD-1

**IN THE HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction  
ORIGINAL SIDE**

**IA No. GA/2/2026  
With CS/258/2018  
In APOT/53/2026**

**MUSICAL FILMS PRIVATE LIMITED  
-VS-  
T. E. THOMSON AND COMPANY LIMITED**

**BEFORE:**

**The Hon'ble JUSTICE DEBANGSU BASAK**

**-AND-**

**The Hon'ble JUSTICE MD. SHABBAR RASHIDI**

For the Appellant : Mrs. Manju Agarwal, Sr. Adv.  
Miss Manju Manot, Adv.  
Mr. Rohit Banerjee, Adv.  
Mrs. Ruchi Hallen, Adv.

For the Respondent : Mr. Krishnaraj Thakker, Sr. Adv.  
Mr. Chayan Gupta, Adv.  
Mr. Rittick Chowdhury, Adv.  
Mr. Dwip Raj Basu, Adv.

HEARD ON : 10.04.2026

DELIVERED ON : 10.04.2026

**DEBANGSU BASAK, J.:-**

1. IA No. GA/2/2026 is an application for recalling the order dated April 2, 2026 by which the appeal was dismissed for default.
2. Causes shown in the application for recalling, is that, the learned Advocate engaged could not be present due to circumstances mentioned therein.

3. Causes shown in the application are accepted as sufficient. The order of dismissal dated April 2, 2026 is recalled.
4. APOT/53/2026 is restored to its file and number.
5. By consent of the parties, the appeal is treated as on the day's list and taken up for final hearing.
6. Appeal is directed against the order dated December 3, 2025 passed in IA GA/7/2025. Typographical errors in the impugned order were corrected on January 19, 2026.
7. By the impugned order, learned Single Judge allowed the application filed by the plaintiff for transfer of the suit to the Commercial Division.
8. Learned Senior Advocate appearing for the appellant submits that, the suit was erroneously held to be a suit involving commercial dispute within the meaning of Section 2(1)(c) of the Commercial Courts Act, 2015. She submits that there is no written agreement between the parties to the suit.
9. Learned Senior Advocate appearing for the appellant relies upon **2026:CHC-OS:84-DB (Auto Fuel & Services Vs. Amalgamated Fuels Limited & Anr.)** and contends that, the suit, if at all, was a commercial dispute filed in the non-commercial division, was required to be dismissed in terms of the ratio laid down therein. Learned Trial Judge erred in not doing so.
10. Learned Senior Advocate appearing for the plaintiff/respondent submits that, Section 2(1)(c)(vii) of the Act of 2015 speaks of an agreement which does not qualify such agreement either to be

written or oral Section 2(1)(c)(vii) does not distinguish between a written or oral agreement. Therefore, according to him, oral and written agreement concerning immovable property which is used in trade or commerce will fall within the definition of Section 2(1)(c)(vii) of the Act of 2015.

11. Learned Senior Advocate appearing for the respondent relies upon ***AIR 2021 CAL 190 (Laxmi Polyfab Pvt. Ltd Vs. Eden Realty Ventures Pvt. Ltd. & Anr)*** and contends that, in paragraph 59 thereof, a time period was prescribed within which, if the suit involving a commercial dispute, is filed in the non-commercial division, then the plaint of such suit was required to be returned. Relying upon ***(2022) 10 Supreme Court Cases 1 (Patil Automation Private Limited And Others Vs. Rakheja Engineers Private Limited)***, he submits that, the Supreme Court provided that, the time period specified by the respective High Court which held Section 12A of the Act of 2015 to be mandatory will govern the suits filed before such Court.
12. The respondent as a plaintiff filed a suit for eviction of the appellant from the suit property. Suit property is being used as an office space. Subject matter of the suit is valued in excess of the specified value as prescribed.
13. There is a rent receipt issued by the respondent as the plaintiff to the defendant in respect of such office space. The rent receipts by itself, will constitute an agreement of tenancy.

14. In such circumstances, subject matter of the suit involves a commercial dispute within the meaning of Section 2(1)(c)(vii) of the Act of 2015.
15. Learned Single Judge noted that the plaint was filed on January 7, 2019 i.e. after coming into effect of the notification dated November 15, 2018, fixing specified value and specifying pecuniary jurisdiction of the commercial division.
16. Learned Trial Judge directed return of the plaint.
17. **Laxmi Polyfab Pvt. Ltd. (Supra)** in paragraph 59 thereof held as follows:

*“59. For the period therefore from October 23, 2015 till January 1, 2016, a plaintiff was not aware of the provisions of Section 12 A of the Act of 2015 for such plaintiff to comply therewith. There is one more period to which, the plaintiff cannot be faulted for not undertaking a pre- institution mediation. It is the period from January 1, 2016 till December 11, 2020 being the date when the manner and procedure for the pre- institution mediation had been prescribed by the rules made by the central government. The same would include the availability of requisite infrastructure for pre-institution mediation as also availability of trained mediators. Once the procedure has been prescribed by the rules of the central government and the requisite infrastructure to undertake a pre- institution mediation is in place, a plaintiff cannot claim that, Section 12 A of the Act of 2015 is directory and not mandatory, when such plaintiff is not seeking any urgent interim relief. Therefore, for the period from October 23, 2015 till December 11, 2020 a plaintiff cannot be faulted for not undertaking pre-institution mediation under Section 12A of*

*the Act of 2015 where the plaintiff is not seeking any urgent interim relief as the requisite infrastructure to do so was not in place.”*

18. The instant suit, therefore, was filed within second period of time noted in paragraph 59 of ***Laxmi Polyfab Pvt. Ltd (Supra)***.
19. ***Laxmi Polyfab Pvt. Ltd (Supra)*** was noted in ***Patil Automation Private Limited And Others (Supra)*** which directed that, if the plaint is filed violating Section 12A of the Act of 2015 after the jurisdictional High Court declared Section 12A to be mandatory then the plaintiff will not be entitled to relief.
20. In ***Auto Fuels & Services (Supra)*** the suit was filed in 2022. Therefore, it was beyond the period of time noted in ***Laxmi Polyfab Pvt. Ltd (Supra)*** and ***Patil Automation Private Limited And Others (Supra)***. Therefore, in ***Auto Fuels Services (Supra)***, the plaint was rejected in terms of ***Patil Automation Pvt. Ltd. (Supra)***.
21. Facts scenario obtaining in the present case is that, the plaint was filed on January 7, 2019 and, therefore, falling within the second period noted in paragraph 59 of ***Laxmi Polyfab Pvt. Ltd. (Supra)***.
22. Viewed from such perspective, learned Trial Judge did not err in directing return of the plaint for presentation before the appropriate forum.
23. We find no grounds to interfere with the impugned order.

**24.** APOT/53/2026 along with connected application are dismissed,  
without any order as to costs.

**(DEBANGSU BASAK, J.)**

**25.** I agree

**(MD. SHABBAR RASHIDI, J.)**