

**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 :

1. 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 deem 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 31st 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 31st 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 31st 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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