In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya

F.M.A. No. 1360 of 2025
IA No: CAN 1 of 2025

M/s. Sukriti Pebbles
– Versus –
The State of West Bengal and Others

For the appellants	:	Mr. Sagar Bandyopadhyay, Sr. Adv., Mr. Satadru Lahiri, Mr. Syed Wasim Faruque
For the State	:	Mr. Ayan Banerjee, Mr. Sambuddha Dutta
Heard on	:	27.11.2025, 04.12.2025 & 23.12.2025
Reserved on	:	23.12.2025
Judgment on	:	13.01.2026

Sabyasachi Bhattacharyya, J.:-

1. The appellant applied for a mining lease for operating a black stone quarry under the West Bengal Minor Mineral Rules, 2002 (for short, "the 2002 Rules"), which was granted by an order dated March 7, 2013. Pursuant to the said grant order, a formal lease deed was executed in favour of the appellant on May 2, 2019 in the Model Form prescribed under the 2002 Rules.

2. In the meantime, however, the West Bengal Minor Minerals Concession Rules, 2016 (in brief, "the 2016 Rules") came into force. By dint of Rule 62(1) of the same, the 2002 Rules were repealed. However, sub-rule (2) of Rule 62 of the 2016 Rules comprised of a saving clause in respect of anything done, any action taken, or any prosecution started under the 2002 Rules, which were to be deemed to have been validly done or taken or started under the corresponding provisions of the 2016 Rules.

3. After the expiry of tenure of the lease of five years, an application for renewal of the same was made by the appellant in terms of the renewal clause in the lease deed. The same was refused *vide* order dated May 7, 2025 on the ground that the 2002 Rules had been repealed and there was no provision for renewal under the 2016 Rules.

4. Challenging the said refusal, W.P.A. No. 11263 of 2025 was preferred by the appellant, which having been dismissed by a learned Single Judge of this Court *vide* judgment dated July 3, 2025, the present appeal has been preferred.

5. Learned senior counsel appearing for the appellant argues that the right of one-time renewal of the mining lease accrued from the grant order dated March 7, 2013 and from the renewal clause in the lease deed dated May 2, 2019. Although the lease deed was executed during the 2016 Rules regime, the same was a follow-up of the grant order under the 2002 Rules and, as such, was saved by the

provisions of Rules 62(2) of the 2016 Rules, read with Section 6 of the General Clauses Act, 1897 (hereinafter referred to as "the 1897 Act").

6. It is argued that the renewal clause in the lease deed is self-sufficient for effecting one-time renewal at the option of the lessee and operates despite the repeal of the 2002 Rules. It is contended that the renewal clause confers the right of renewal in favour of the appellant "in accordance with" Rule 12 of the 2002 Rules, and not "under" Rule 12. Hence, the right of renewal flows from the lease deed itself and not from the repealed Rule 12. Thus, it is contended that the refusal to renew the lease on the ground that the 2002 Rules had been repealed was unlawful.

7. Learned senior counsel next contends that Rule 36 of the 2016 Rules also protects the rights accrued under mining leases. It is argued that the expression "mining lease" used in Rule 36 has to be read in the context of the definition of "mining lease" in Section 3(c) of the parent Act, that is, the Mines and Minerals (Development and Regulation) Act, 1957 (for short, "the 1957 Act") and includes all leases undertaken for mining purpose, irrespective of whether under the 2002 Rules or the 2016 Rules. It is pointed out that Chapter IV (Rules 21 onwards) of the 2016 Rules deals with "lease", which has been defined to be a mining lease under the 2016 Rules. However, Rule 36, as contradistinct from "lease", uses the expression "mining leases", thereby taking the said expression outside the ambit of

leases executed exclusively under the 2016 Rules and also covers prior leases executed in terms of the 2002 Rules, in consonance with the definition provided in the 1957 Act.

8. The broader interpretation, it is argued, aligns also with Section 15 of the 1957 Act which confers rule-making power on the State Government in respect of mining leases and related concessions. Such power cannot be read in a manner that nullifies or conflicts with the scheme or provisions of the 1957 Act.

9. Learned senior counsel for the appellant next contends that Rule 61(2) of the 2016 Rules, contrary to the arguments of the respondents, has no manner of application to the present case.

10. Elaborating further, learned senior counsel submits that the grant order in favour of the appellant was issued prior to the stage contemplated under the said Rule. Execution of the lease deed was merely a formal consequential act, whereas the substantive and determinative step was the issuance of the grant order itself. In support of such contention, learned senior counsel cites Rule 24(1), Rule 15 and Rule 5(5) of the 2002 Rules. It is argued that if Rule 61(2) of the 2016 Rules had been invoked, the term of the lease would be fixed at 20 years; however, the same is not the case in respect of the appellant's lease.

11. Lastly, it is argued by the appellant that the doctrine of frustration as embodied in Section 56 of the Indian Contract Act is not applicable, since the right of renewal of the appellant's lease flows

from the lease deed itself, which is a concluded transfer within the contemplation of the Transfer of Property Act, 1882, as opposed to a mere agreement/contract under the Contract Act.

12. It is contended that Section 108(e) of the Transfer of Property Act would apply in the present case and only in cases such as *force majeure*, etc. would an impossibility occur, and not by a ministerial act. Thus, the doctrine of frustration cannot be applicable in the present case.

13. Learned senior counsel cites *Raja Dhruv Dev Chand v. Raja Harmohinder Singh and Another*, reported at *1968 SCC OnLine SC 120*, in support of such proposition.

14. In addition, learned senior counsel relies on co-ordinate Bench decisions of this Court in *Sabina Yesmin Begum v. State of West Bengal and Others*, reported at *2025 SCC OnLine Cal 8068*, and an unreported judgment in the matter of *Nitya Nanda Pal v. District Magistrate, Purba Bardhaman and others [FMA No. 152 of 2018]* for the proposition that if the right of renewal flows from a lease deed containing a renewal clause, the same is not governed by Rule 12 of the 2002 Rules and, thus, it cannot be said that the repeal of the said Rules has any effect on such right.

15. In reply, learned counsel appearing for the respondents contends that the appellant is seeking renewal of mining lease granted under Rule 24(1) of the 2002 Rules, which was repealed by the 2016 Rules.

16. It is submitted that the mining lease is renewable as per the proviso to Clause 3 of Part-VII of the lease deed, under which the State Government may refuse to renew the same. Thus, the renewal clause does not confer any absolute right of having the lease renewed. It is submitted further that under Rule 3(1)(g) of the 2002 Rules, "lease" means a mining lease for a period not below one year whereas under Rule 11(2) of the 2002 Rules, the date of the commencement of the period of the lease would be when the lease deed is executed.

17. However, by virtue of the repeal of the old Rules by the 2016 Rules, there cannot survive any right of renewal under Rule 12 of the 2002 Rules.

18. It is next contended by the respondents that under Rule 61 of the 2016 Rules, pending applications for minor minerals lease received prior to the coming into force of the 2016 Rules are ineligible to be considered. In the present case, the application was made under the 2002 Rules regime but the lease deed was granted in 2019, when the 2016 Rules had already come into force. It is submitted that the lease is governed by the 2002 Rules, but the lease deed was executed under the 2016 Rules by invoking the exception carved out in the proviso to Rule 61 of the said Rules and there is no scope of renewal under the 2016 Rules.

19. It is next submitted that the renewal clause of the lease deed, apart from not conferring any right of renewal on the appellant, also does

not incorporate all the provisions of Rule 12 of the 2002 Rules. Thus, the instant case is distinguishable from the cited judgments in *Sabina Yesmin Begum (supra)*[1] and *Nitya Nanda Pal (supra)*[2], where the Court found that the renewal clause was a virtual reproduction of Rule 12 of the 2002 Rules and by itself conferred a right of renewal.

20. Learned counsel for the respondents further argues that the appellant is not entitled to the benefit of Rule 62(2), since no lease deed had been executed prior to the coming into force of the 2016 Rules. Thus, it cannot be said that any "act" or "action" was done under the 2002 Rules for the present lease to come within the purview of the saving clause in sub-rule (2) of Rule 62 of the 2016 Rules.

21. Even otherwise, it is submitted, the Government may refuse to renew the lease deed upon giving reasons for such refusal.

22. Rule 36 of the 2016 Rules, it is argued, is not applicable, since it applies to a mining lease under the 2016 Rules only. Rule 2(j) of the 2016 Rules defines "lease" as a mining lease granted under the 2016 Rules only and does not cover one granted under the 2002 Rules.

23. It is next argued by the respondents that Section 56 of the Indian Contract Act would be attracted instead of Section 108(e) of the

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1. ***Sabina Yesmin Begum v. State of West Bengal and Others*, reported at *2025 SCC OnLine Cal 8068***
2. ***Nitya Nanda Pal v. District Magistrate, Purba Bardhaman and others [FMA No. 152 of 2018]***

Transfer of Property Act, since the right of renewal flows at best from the renewal clause, which is in a nature of a contract to renew the lease. The renewal clause as contained in the lease deed was in the nature of a "still-born contract" as it was founded on Rule 12 of the 2002 Rules, thus depending on Rule 12 of the 2002 Rules to be operational and never derived any life of its own in the year 2019 when the lease deed was executed, since the 2002 Rules, including Rule 12 thereof, had already ceased to exist by repeal by then.

24. By operation of the doctrine of frustration, as embodied in Section 56 of the Contract Act, the renewal contemplated in the renewal clause has become impossible to perform by dint of repeal of the 2002 Rules.

25. Thus, it is argued that the authority under the old Rules of 2002, before which the renewal application has been made, has been rendered *functus officio* and is no longer capable of exercising its power of renewal under the 2002 Rules. Thus, it is contended that the appeal ought to be dismissed.

26. Heard learned counsel for the parties. On the basis of the arguments advanced by the parties, the following issues fall for consideration before this Court:

(i) *Whether by virtue of Section 56 of the Contract Act, the performance of the renewal clause in the lease deed executed in favour of the appellant has become impossible;*

(ii) Whether Rule 61 or Rule 62 of the 2016 Rules is applicable in the present case;

(iii) Whether any independent right of renewal was conferred on the appellant by virtue of the renewal clause in the lease deed, irrespective of Rule 12 of the 2002 Rules.

27. The abovementioned issues are dealt with as follows:

(i) Whether by virtue of Section 56 of the Contract Act, the performance of the renewal clause in the lease deed executed in favour of the appellant has become impossible

28. Section 56 of the Indian Contract Act applies to agreements and not to concluded transfers. As held in *Raja Dhruv Dev Chand (supra)*[3], upon a lease being granted (in the said case, in respect of an agricultural land), there is a concluded transfer. Since under a lease of land, there is a transfer of right to enjoy that land, the transaction between the parties does not remain at the stage of a mere agreement but partakes the character of a concluded transfer.

29. The same principle is applicable to the present case, where, upon the execution of a formal lease deed on May 2, 2019 pursuant to the grant order under the 2002 Rules, a transfer was effected in favour of the appellant. The renewal clause contained in the lease deed is

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3. ***Raja Dhruv Dev Chand v. Raja Harmohinder Singh and Another*****, reported at *1968 SCC OnLine SC 120***

an integral part of the transfer deed itself and is a part of the essential conditions of such transfer. Thus, the renewal clause is not a "contract" under the Contract Act but is a part of a concluded transfer, coming within the domain of the Transfer of Property Act. Thus, only in cases contemplated under Section 108(e) of the Transfer of Property Act, the transfer could be rendered ineffective.

30. In the present case, however, there has been no *force majeure*, supervening impossibility or other happening as contemplated in Section 108(e) of the Transfer of Property Act. Mere change of law does not come within the ambit of such an incident.

31. Hence, the doctrine of frustration, by virtue of repeal of the 2002 Rules, cannot be said to be applicable in the present case, simply because the renewal clause is not a 'contract' but the part of a transfer of title by way of lease. This issue, thus, is decided in favour of the appellant.

(ii) Whether Rule 61 or Rule 62 of the 2016 Rules is applicable in the present case

32. In the present case, the lease deed executed on May 2, 2019 was not on a stand-alone document or an independent act but a mere culmination of the grant order dated March 7, 2013 issued in favour of the appellant under the 2002 Rules regime. The execution of the lease deed in Model Form prescribed in Form-'E' of the 2002 Rules was a mere logical culmination of an act already done by issuance

of the grant order on March 7, 2013 under the 2002 Rules and was a mere formality to conclude the grant.

33. On the other hand, Rule 61 of the 2016 Rules contemplates a situation where the application for mining lease of minor minerals itself is pending when the 2016 Rules came into force. The proviso to Rule 61 takes into account situations where the applicant has been issued a grant order or letter of intent, requiring alteration of the applicant's position. However, it is nobody's case that there was any such Government Order or grant order or letter of intent requiring any alteration in the applicant's position. Although the lease deed itself was executed in the year 2019, such execution was a mere formality pursuant to the grant order issued under the 2002 Rules. Hence, upon execution of the formal lease deed in terms of the grant order issued under the 2002 Rules, the transaction became a seamless continuation of the grant order issued under the 2002 Rules, which merely culminated in a formal lease deed being executed in 2019. Thus, the invocation of Rule 61, as argued by the respondents, is not tenable in the eye of law, as the present case is not one where the appellant's application for grant of lease was still pending on the date of coming into force of the 2016 Rules or where a conditional order was passed to change the position of the applicant, but a grant order had already been issued in favour the the appellant.

34. On the other hand, despite the repeal of the 2002 Rules under sub-rule (1) of Rule 62 of the 2016 Rules, sub-Rule (2) thereof categorically saves anything done, any action taken or any prosecution started under the 2002 Rules. In the present case, the issuance of the grant order on March 7, 2013 itself was, for all practical purposes, an action taken and/or a thing done under the 2002 Rules, conferring a vested right in favour of the appellant to have a mining lease. The formal execution of the lease deed was a mere formality and a culmination of the grant order already issued under the 2002 Rules. Thus, the mining lease granted in favour of the appellant was in terms of a thing done and an action taken under the 2002 Rules by issuance of the grant order before coming into force of the 2016 Rules and, thus, is saved by Rule 62(2) of the 2016 Rules, despite the 2002 Rules being otherwise repealed by dint of Rule 62(1).

35. Hence, it is Rule 62(2), and not Rule 61 or its proviso, of the 2016 Rules which is applicable in the present case, saving the grant order which culminated in a lease deed under the 2002 Rules in favour of the appellant from repeal. Thus, this issue is, accordingly, also decided in favour of the appellant.

(iii) Whether any independent right of renewal was conferred on the appellant by virtue of the renewal clause in the lease deed, irrespective of Rule 12 of the 2002 Rules

36. As held in *Sabina Yesmin Begum (supra)*[4] and *Nitya Nanda Pal (supra)*[5], if a renewal clause is embodied in a lease deed granted under the 2002 Rules, the same, on its own strength, confers a right of renewal on the lessee in terms thereof. There is no distinction in principle between the ratio laid down in the said judgments and the facts of the present case inasmuch as the renewal clause in the lease deed executed in favour of the present appellant categorically conferred, on its own strength, a right of renewal for once for the limited period as stipulated in the renewal clause.

37. The language used in the renewal clause of the appellant's lease deed is "in accordance with" Rule 12 and not "under" the said Rule. Thus, the right of renewal does not arise, as per the lease deed, under Rule 12 of the 2002 Rules but flows from the renewal clause of the lease deed itself. Only the mere modalities and procedure of renewal were contemplated to be governed by the since-extinct Rule 12 of the 2002 Rules.

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4. ***Sabina Yesmin Begum v. State of West Bengal and Others*****, reported at *2025 SCC OnLine Cal 8068***

5. ***Nitya Nanda Pal v. District Magistrate, Purba Bardhaman and others [FMA No. 152 of 2018]***

38. Thus, it is the renewal clause in the lease deed which is the source of the appellant's right to claim renewal and not Rule 12 of the 2002 Rules.

39. Although Rule 12 of the 2002 Rules itself has since been repealed, by virtue of the renewal clause, the appellant has a right of renewal in law, in accordance with the procedure contemplated in the said Rule. The proviso to sub-rule (1) of Rule 12 stipulates that no such renewal shall be granted if the performance of the lessee is considered unsatisfactory by the State Government or by the officers so appointed in this behalf by the State Government.

40. Hence, the contours of exercise of the power to refuse the renewal, as per the renewal clause in the lease deed, would be "in accordance with" the provisions of the since-repealed Rule 12, by application of the doctrine of incorporation of the said provision into the renewal clause itself. The modalities of Rule 12, though not applicable *per se* after repeal, have to be adhered to as a part of the renewal clause in the lease deed itself.

41. Thus, the right of renewal of the appellant, under normal circumstances, can only be refused within the contours of the language of the proviso to Rule 12(1) of the 2002 Rules, provided the performance of the lessee is unsatisfactory.

42. In any event, mere repeal of the 2002 Rules cannot be a valid ground of rejection of the application for renewal made by the appellant in view of the discussions made above, since the repeal of

the 2002 Rules is a non-issue and irrelevant for consideration of a renewal application on the strength of the renewal clause in the lease deed itself. Thus, the rejection of the application for renewal made by the appellant on the strength of the renewal clause in its lease deed by the respondents was unlawful.

CONCLUSION

43. With due respect, the learned Single Judge failed to take into consideration the aforesaid aspects of the matter but proceeded only on the premise of the repeal of the 2002 Rules by virtue of the 2016 Rules. In view of the same, the impugned judgment of the learned Single Judge cannot be sustained.

44. Accordingly, F.M.A. No. 1360 of 2025 is allowed on contest, thereby setting aside the impugned judgment dated July 3, 2025 passed in W.P.A. No. 11263 of 2025 as well as the decision of the respondents to reject the renewal application of the appellant by the order dated May 7, 2025 passed by the respondent no. 2.

45. The respondent no. 2 is hereby directed to consider the renewal application of the appellant afresh and to grant renewal within the ambit of the renewal clause in the appellant's lease deed dated May 2, 2019, subject to the condition that the appellant has performed satisfactorily under the lease deed. Such exercise shall be concluded in the light of the above observations as expeditiously as possible, positively within 2 months from date.

46. There will be no order as to costs.

47. Consequentially, CAN 1 of 2025 stands disposed of as well.

48. Urgent certified copies, if applied for, be supplied to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)