

IN THE HIGH COURT AT CALCUTTA

**COMMERCIAL APPELLATE DIVISION
ORIGINAL SIDE**

**AO-COM/1/2024
WITH AP/827/2023**

**DEPARTMENT OF INFORMATION TECHNOLOGY AND ELECTRONICS,
GOVERNMENT OF WEST BENGAL**

-VS-

**ROLTA INFRASTRUCTURE AND TECHNOLOGY SERVICES
PRIVATE LIMITED**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant : Mr. Suman Kumar Dutt, Sr. Adv.
Mr. Anuj Singh, Adv.
Mr. Shounak Mukhopadhyaya, Adv.
Ms. Shrayashee Das, Adv.
Mr. Paritosh Sinha, Adv.
Mr. Tridibesh Dasgupta, Adv.
Mr. Shubhayan Chakraborty, Adv.

For the Respondent : Mr. Ratnanko Banerji, Sr. Adv.
Mr. Rohit Mukherji, Adv.
Mr. Pankaj Agarwal, Adv.
Mr. Soham Saha, Adv.

HEARD ON : 01.12.2025

DELIVERED ON : 01.12.2025

DEBANGSU BASAK, J.:-

1. The appeal is at the behest of the respondent in proceeding under Section 9 of the Arbitration and Conciliation Act, 1996.
2. Appeal is directed against the judgment and order dated January 5, 2024 passed in AP/827/2023.

3. Learned Senior Advocate appearing for the appellant submits that proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 are to be construed as a “suit for land” within the meaning of Clause 12 of the Letters Patent 1895, if it is so. He contends that, the relief sought for in the proceeding under Section 9 of the Act of 1996, by the respondent herein, is with regard to a notice dated September 20, 2023. He draws the attention of the Court to the notice dated September 20, 2023 and submits that, the notice was issued under the provisions of The West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962.
4. Learned Senior Advocate appearing for the appellant submits that, grant of injunction restraining the appellant to proceed under the Act of 1962, reflects upon the possession of the immovable property concerned. As immovable property is lying and situate admittedly outside the territorial jurisdiction of the Original Side of this Hon’ble Court, therefore the proceeding under Section 9 to the Act of 1996 is not maintainable in the Original Side of this Hon’ble Court. The reliefs sought for in the instant proceeding are to be construed as a suit for land.
5. In support of such contentions, learned Senior Advocate appearing for the appellant relies upon AIR 1986 Cal 422 (East Anglia Plastics (India) Ltd. -Vs- State of West Bengal and Another), AIR 1986 Cal 57 (Bengal Glass & Silicate Works -Vs- Lalit Mohan Bijlani and Another) and (2016) 2 Supreme Court

Cases 582 (Sumer Builders Private Limited -Vs- Narendra Gorani).

- 6.** Learned Senior Advocate appearing for the appellant submits that, the appellant cannot be restrained from availing of the remedy under the special statute. He submits that, the appellant is the lessor of the immovable property concerned after obtaining lease of the same from the State of West Bengal. Appellant was authorised to grant sub-lease which the appellant granted in favour of the respondent.
- 7.** Respondent is a sub-lessee of the property. He points out that, the respondent fraudulently mortgaged the immovable property concerned, and diverted the fund received for the purpose of a project which was not inconsonance with the terms of the subject lease.
- 8.** Learned Senior Advocate appearing for the appellant submits that, the learned Single Judge did not permit any affidavit to be filed in the proceeding. The application under Section 9 of the Act of 1996 was heard and disposed of finally by the impugned judgment and order, without inviting any affidavit.
- 9.** Learned Senior Advocate appearing for the appellant draws the attention of the Court to the sale notice issued by the bank. He submits that, the bank with whom the immovable property stood mortgaged by the respondent is proceeding under the provisions of the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 and the appellant will take appropriate steps in such proceeding.

- 10.** Learned Senior Advocate appearing for the respondent submits that, there is a registered sub lease between the parties. He draws the attention of the Court to the various clauses of the registered sub lease deed. In particular, he draws the attention of the Court to the arbitration agreement appearing in such registered deed of sub lease.
- 11.** Learned senior advocate appearing for the respondent submits that, the appellant acted in breach of the deed of sub lease. He submits that, the respondent from time to time, paid lease rentals in excess of Rs.6 crores. According to him, since the appellant acted in breach of the registered deed of sub-lease, the respondent was entitled to invoke the arbitration clause in the deed of sub lease.
- 12.** Learned senior advocate appearing for the respondent draws the attention of the Court to the termination notice dated September 20, 2023 as also the reply given thereto by the respondent dated October 16, 2023. He submits that, the details of the breach committed by the appellant of the registered sub-lease dated July 4, 2008 is enumerated in the letter dated October 16, 2023.
- 13.** Learned senior advocate appearing for the respondent submits that, admittedly the possession of the immovable property is with the respondent. There is no question of the Section 9 proceedings to be construed as a suit for land. He submits that,

the application under Section 11 of the Act of 1996 is pending and in this regard he draws the attention of the Court to the order dated April 15, 2024 passed by the co-ordinate Bench.

- 14.** Appellant and the respondent entered into a registered deed of sub-lease dated July 4, 2008. Two clauses of the registered deed of sub lease which are relevant for the determination of the instant appeal are as follows:

“2. The Sub-Lease to the intent the obligations and covenants on the part of the Sub-Lease to be observed and performed shall continue throughout the said period of demise agreed and covenants with the Sub-Lessor as follows:

i) * * *

* * *

* * *

xiii) On the determination of the period of demise hereof the Sub-Lessee shall yield up peaceful vacant possession of the demised premises relinquishing all its interest therein in as good a condition as the same now is with all the building and structures as may be in existence at the time.

5. The parties shall make every endeavor to settle any dispute, controversy or claim arising between the parties in connection with this sub-lease amicably in the Spirit of good faith. In the event of failure to do so such dispute, controversy or claim shall be finally resolved in terms of the India Arbitration and Conciliation Act, 1996 as amended from time to time within the jurisdiction of Kolkata High Court.”

- 15.** Apparently there are disputes and differences between the parties with regard to the registered deed of sub lease. The appellant, before us, issued a letter dated September 20,2023 determining the registered deed of sub lease and invoked the

provisions of the Act of 1962 for the purpose of evicting the respondent therefrom.

16. Respondent replied to the letter dated September 20, 2023 of eviction by letters dated September 29, 2023 and October 16, 2023.

17. We are informed that proceedings under the Act of 1962 are pending and by virtue of the impugned judgment and order no further slips can be taken therein.

18. The respondent approached this Hon'ble Court under Section 9 of the 1996 Act praying for the following reliefs:

- a) Pass an order of stay of the notice dated 20 September 2023 revoking the sub-lease agreement dated 4 July 2008 issued by the Respondent on 20 September 2023;*
- b) Ex-parte ad-interim orders in terms of prayers above;*
- c) Such further or other order or orders be passed and/or direction be given as to this Hon'ble Court may deem fit and proper."*

19. The immovable property, as appearing from the registered deed of sub lease is admeasuring about 5 acres, lying and situated at Plot No.4, Mouza- Nonadanga, J.L. No.10, under East Kolkata Area Development Project, dist- 24 Pgs (South). Admittedly, the immovable property concerned is lying and situate outside the territorial jurisdiction of the Original Side of this Hon'ble Court.

20. Clause 2(xiii) of the registered deed of sub-lease allows the appellant to enter into possession of the immovable property concerned on the conditions laid down therein. Notice dated September 20, 2023 requiring the registered deed of sub-lease

dated July 4, 2008 will, therefore, impact the possession of the immovable property concerned. Grant of stay of such notice would obviously relate to the immovable property and by its necessary implication the possession thereof in view of clause 2(xiii) of the registered deed of sub-lease.

21. East Anglia Plastics (India) Ltd. (*supra*) considered the issue as to whether a suit seeking declaration of a notice determining the tenancy under an indenture of lease as inoperative, illegal, null and void to be a suit for land or not. It held as follows:

“36. It is not in dispute that the demised premises being the subject matter of said case is situate outside the Original Side jurisdiction of this Court. It will appear from the averments contained in the plaint that the petitioner is seeking order of injunction against eviction from the demised premises and also for Injunction restraining the respondent 1 from dispossessing the petitioner and disturbing and/or interfering with its use, enjoyment and/or possession of the demised premises.

37. From the above it would be clear that the real object of the petitioner in the suit is to get a declaration that the said lease is subsisting and the petitioner is entitled continue his possession as lessee. In other words, the petitioner in this suit asserts his right to continue with the possession of the demised premises as a lessee. Therefore, in this suit it has to be determined whether the petitioner is entitled to continue to be in possession of the demised premises and whether his right in the demised premises under the said lease as alleged by the petitioner should be protected or not. The prayers of the plaint involves the question of adjudication upon title to the demised premises and determination of right therein. The reliefs claimed by the petitioner in the suit, if granted, would directly affect title to or possession of land. Further, the said impugned notice dt. 7th June 1983 interferes with the possession of the petitioner of the demised premises and threatens its eviction from the same. Thus, it

is clear that the real object and/or purpose of this suit is to get an adjudication about the petitioner's right, title and interest to and/or in respect of the demised premises.

38. *It is well settled that in order to determine the question whether a suit is a suit for land or not the court will have to see what is the primary object of the suit. Upon scrutiny of the averments contained in the plaint and its prayers we have no doubt in our mind that by the suit the petitioner wants to assert its right, title to and interest in respect of the demised premises on the allegations that the lease has not been determined in accordance with law. Therefore, in our view, the adjudication of the suit would primarily rest on the question whether the lease has been lawfully determined or not and whether the petitioner is entitled to be protected from eviction from the demised premises. Taking the averments contained in the plaint to be true and taking the prayers thereof into consideration one will come to an inescapable conclusion that the suit in question involves an adjudication as to the petitioner's right title and Interest in the demised premises which is admittedly outside the Original Side Jurisdiction of this Court.”*

22. A Single Judge in **Bengal Glass & Silicate Works** (*supra*) held that, the primary object of the suit before that Court to be a suit for land. It held so as the plaintiff therein asked for a declaration that the plaintiff was a monthly tenant in respect of a flat in an immovable property situated outside the jurisdiction of the original side.

23. Sumer Builders Pvt. Ltd. (*supra*) is of the view that if the core dispute pertains to possession of the land, the same will fall within the category “suit for land” as envisaged under Clause 12 of the Letters Patent, 1865.

- 24.** In the facts and circumstances of the present case, the notice of which stay is sought for in the proceeding under Section 9 of the Act of 1996 relates to an immovable property situated outside the territorial jurisdiction of the High Court. Adjudication with regard to such notice will obviously entail adjudication on the right, title and interest of the immovable property, which is outside the territorial jurisdiction of the Original Side of this High Court. Stay of the notice, will entail stay of the right to obtain possession of an immovable property which is again outside the territorial jurisdiction of the High Court.
- 25.** Appellant through the notice dated September 20, 2023 is seeking to obtain possession of the immovable property concerned. The respondent seeking stay of such notice is attempting to secure its possession of the concerned immovable property and prevent the appellant from obtaining possession thereof.
- 26.** Once adjudication on the right to possession of an immovable property is involved the proceeding is one for “suit for land”.
- 27.** In essence, the core dispute is with regard to the possession of the immovable property concerned. In such factual matrix, the proceedings under Section 9 of the Act of 1996 is to be considered as a proceeding in relation to an immovable property which is situated outside the territorial jurisdiction of the Original Side of this Hon’ble Court and to fall within the meaning of “suit

for land” as envisaged under Clause 12 of the Letters Patent, 1865.

28. Central Warehousing Corporation & Anr. (*supra*) held that, the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 does not override the provisions of the Act of 1996.

29. Since we are of the view finding that the proceedings under the Act of 1996 a suit for land and that, this Hon’ble Court does not possess the requisite jurisdiction to try, entertain and determine such proceedings, we are not minded to enter into such issue in this appeal.

30. In such circumstances, AO-COM/1/2024 is allowed and the impugned judgment and order is set aside.

[DEBANGSU BASAK, J.]

31. I agree.

[MD. SHABBAR RASHIDI, J.]