

**(2007) 07 CAL CK 0052****Calcutta High Court****Case No:** G.A. No. 75 of 2007 with AP No. 343 of 2003

Shree Shree Iswar  
Satyanarayanan and Others

**APPELLANT****Vs**

Amstar Investment Pvt. Ltd.

**RESPONDENT****Date of Decision:** July 6, 2007**Acts Referred:**

- Arbitration and Conciliation Act, 1996 - Section 9

**Citation:** (2008) 2 ARBLR 36 : (2008) 1 CHN 427**Hon'ble Judges:** Sanjib Banerjee, J**Bench:** Single Bench**Advocate:** Rajyashree Ray and Aditya Kanodia, for the Appellant; R. Mitra, S.R. Kakrania and D.N. Mallik, for the Respondent**Final Decision:** Dismissed

### **Judgement**

Sanjib Banerjee, J.

The respondent has taken a preliminary point that these proceedings are not maintainable in this Court. According to the respondent, the claim of the petitioner in the arbitration proceedings is in respect immovable properties in Howrah and none of the immovable properties, or any part thereof, is within the original jurisdiction of this Court.

2. The petitioner has set out the particulars of the three immovable properties in the opening paragraph of A.P. No. 343 of 2003. The three properties are at premises No. 23, 23/1 and 24, J.N. Mukherjee Road, P.C.-Salkia, District-Howrah. Salkia, without doubt, is across the river and it is till the eastern levee of the river Hooghly that the original jurisdiction of this Court runs.

3. At paragraphs 2 and 3 in A.P. No. 343 of 2003 the petitioner has averred as follows:

2. It was agreed by and between the parties that the lessee being the respondent above named, shall pay rent punctually and in the event rent is not paid for a period of six months the lessor may enter into the demised premises and take peaceful and vacant possession of the said premises. In the event of the lease being expired by efflux of time, the respondent/lessee should give back peaceful and vacant possession of the said premises to the petitioner.

3. The respondent/lessee from August, 1988 has not paid any rent and/or occupation charges in respect of the said premises. The rent and/or the occupation charge and/or mesne profit payable in respect of the said premises as on today will be more than Rs. 80,00,000/-. Although, the lessee was duty-bound to pay the municipal rates and taxes in respect of both the owners and occupiers shares, they have failed to do so; as a result of which the municipal rates and taxes have become due and payable to the Howrah Municipal Corporation. The default committed by the respondent in not paying the municipal rates and taxes, have been redressed by your petitioner as against the municipality, by paying the municipal rates and taxes for an amount of Rs. 57,157/- on or about July 10, 2003. A copy of the Pay Order drawn on IDBI Bank, 7, Brabourne Road, Kolkata 700 001 in favour of Howrah Municipal Corporation together with the receipts of such payments by the Howrah Municipal Corporation are annexed hereto and collectively marked as ANNEXURE "C".

4. It is evident from such averment that the petitioner was seeking to assert a right, even in the application at the pre-reference stage, that it was entitled to be put in possession of the immovable properties upon the lessees having allegedly committed default. Just as was evident from the averment found in the petition, the petitioner has subsequently made a claim in the reference, the reliefs whereof have been set out in the respondent's affidavit in the application being G.A. No. 75 of 2007. The second relief claimed in the reference is as follows:

(b) An Award declaring that the respondent and/or each person occupying the said premises, the respondent is liable to hand over peaceful and vacant khas possession of the said premises mentioned in paragraph 7....

5. In the fifth claim before the Arbitrator the petitioner has demanded possession to be restored to it in respect of the immovable properties described in paragraphs 7 and 8 of the statement of claim.

6. It is evident that the petitioner's claim is in respect of immovable properties which are completely situated outside the original jurisdiction of this Court and, as such, the petitioner could not have approached this Court u/s 9 of the Arbitration and Conciliation Act, 1996 in view of the provisions contained in Clause 12 of the Letters Patent.

7. It is urged on behalf of the petitioner that since the respondent carries on business within the jurisdiction of this Court, this Court was competent to receive

the proceedings. Ordinarily, this would suffice for the proceedings to be maintainable before this Court. The only exception is when it is a suit for land. Clause 12 permits a plaintiff (or the petitioner in this case) to invoke the territorial jurisdiction of this Court in cases other than suits for land on the basis of the defendant's place of residence or business. When the nature of the claim or reliefs sought in the suit (or in the petitioner in the proceedings of the present kind) make the plaintiffs claim a suit for land, it is the situs of the immovable property that determines the question.

8. The petition and the connected application are dismissed for want of jurisdiction. Nothing in this order should be treated to be an adjudication on the merits of the petitioner's claims or the allegations made against the respondent in either the petition or in the interim application.

9. A.P. No. 343 of 2003 and GA No. 75 of 2007 are dismissed. There will be no order as to costs. Since the order of injunction in these proceedings have been subsisting for a substantial period and since the merits of the petitioner's charges have not been gone into, this order will remain stayed for a period of four weeks.

10. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

Sanjib Banerjee, J.