A SUMER BUILDERS PVT. LTD.

v.

NARENDRA GORANI

(Civil Appeal No. 4267 of 2015)

B OCTOBER 15, 2015

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

LETTERS PATENT:

C *Clause 12 – Applicability to letters patent of High Court judicature of Bombay – Held: Under s.120 of the CPC, ss.16, 17 and 20 are not applicable to the High Court in original civil jurisdiction – Thus Clause 12 would govern the* D *controversy so far Bombay High Court is concerned – Code of Civil Procedure, 1908 – ss.16, 17, 20, 120.*

Clause 12 – Original jurisdiction as to suit – Suit for land – Agreement between parties to construct buildings – Land situated in Indore – Respondent handed over E *possession of land to the appellant-developer to start the work – Dispute arose between the parties – Appellant moved Bombay High Court for grant of leave under Clause 12 by filing an application u/s.9 of AC Act – Leave granted –* F *Application for revocation of leave – High Court revoked the leave that was earlier granted – Whether justified – Held: s.9 petition sought restraint by a temporary order or injunction from entering upon the property – Thus, core dispute pertained to possession of land – Any order passed u/s.9 of* G *AC Act would have the impact on the land – Therefore, it was clearly a dispute with regard to the possession which was evincible from the correspondences and the averments made in the application preferred u/s.9 of AC Act – The suit is a suit for land and would have to be filed in Indore where*

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the land is situate – Arbitration and Conciliation Act, 1996 – s.9 – Jurisdiction.

Dismissing the appeal, the Court

HELD: 1. Under Section 120 of the Code of Civil Procedure, 1908, Sections 16, 17 and 20 are not applicable to the High Court in original civil jurisdiction. Thus, as far as the Bombay High Court is concerned, it is Clause 12 of the Letters Patent that would govern the controversy. [Para 13] [229-D]

2. The High Court referred to the correspondences between the parties. In letter dated 19.6.2013, it was mentioned that as the owner of the land had terminated the development agreement and the MoU, he had taken over the entire physical and actual possession of the said land and the developer was called upon to remove its machinery and construction material lying upon the said land. The said letter was replied by letter refuting the fact that the physical possession of the land had been taken over by the land owner and stating that the possession was still with the developer. The agreement and the MoU clearly stated that the development agreement indubitably had created certain interests in the land in favour of the appellant. Thus the core dispute pertained to possession of the land, for the appellant claimed to be in exclusive possession and the respondent, per contra, has asseverated that it had taken over possession. It can irrefragably be stated that any order passed under Section 9 of the 1996 Act will have the impact on the land. It is difficult to accede to the submission that it will not conceptually fall within the category of "suit for land" as engrafted under Clause 12 of the Letters Patent. It is clearly a dispute with regard

to the possession which is evincible from the correspondences and the averments made in the application preferred under Section 9 of the 1996 Act. Thus, there has to be determination as regards possession and impliedly issue of direction for recovery of possession. Hence, the conclusion arrived at by the Division Bench on the basis of the scrutiny of documents that the dispute is embedded with regard to the possession of the land because the fundamental claim pertains to certain constructed space on the land and, therefore, it would conceptually fall within the conception of "suit for land" appearing in Clause 12 of the Letters Patent is unexceptionable. [Paras 30, 33] [237-C-E; 240-E-H; 241-A-C]

Moolji Jaitha & Co. v. Khandesh Spinning & Weaving Mills Co. Ltd. **AIR 1950 FC 83;** *Shiv Bhagwan Moti Ram Saraoji v. Onkarmal Ishar Dass & Ors.* **AIR 1952 Bom.365;** *Adcon Electronics Pvt. Ltd. v. Daulat and Anr.* **(2001) 7 SCC 698: 2001 (3) Suppl. SCR 29;** *P.M.A. Velliappa Chettiar v. Saha Govinda Doss* **AIR 1929 Mad. 721;** *Debendra Nath Chowdhury v. Southern Bank Ltd.* **AIR 1960 Cal. 626;** *Excel Dealcomm Pvt. Ltd. v. Asset Reconstruction Co. (India) Ltd.* **(2015) 8 SCC 219 : 2015 (4) SCR 948 – referred to.**

Case Law Reference

AIR 1950 FC 83	referred to.	Para 5
AIR 1952 Bom.365	referred to.	Para 5
2001 (3) Suppl. SCR 29	referred to.	Para 5
AIR 1929 Mad. 721	referred to.	Para 14
AIR 1960 Cal. 626	referred to.	Para 14
2015 (4) SCR 948	referred to.	Para 17

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4267 of 2015

From the Judgment and Order dated 10.03.2015 of the Division Bench of the High Court at Bombay in Appeal No. 572 of 2013 in Chamber Summons No. 720 of 2013 in Leave Petition No. 238 of 2013 in Arbitration Petition No. 799 of 2013

Shekhar Naphade, Yashmin Banshali, Pratap Venugopal, Supriya Jain, Gaurav Nair, Niharika, (for M/s. K. J. John & Co.,) for the Appellant.

Shyam Divan, Vijay Tulsiyan, R. S. Bobde, Hamed Kadiani, Kush Chaturvedi for the Respondent.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. The instant appeal is directed against the judgment and order dated 10.03.2015 passed by the Division Bench of the High Court of Judicature at Bombay in Appeal No. 572 of 2013 whereby it has concurred with the view expressed by the learned Single Judge in Chamber Summons No. 720/2013 in Arbitration Petition No. 799/2013 dated 10.10.2013 whereunder the learned Single Judge had revoked the leave granted by the court under Clause 12 of the Letters Patent to file a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (for brevity, "the 1996 Act").

2. The facts which are essential to be stated are that the parties to the lis entered into an agreement on 28.2.2008 for development of the land of the respondent. As per the said agreement, the appellant was required to develop a residential project and/or commercial complex and/or multiplex and/or hotels and/or malls etc. as permissible in law. The respondent had handed over the vacant possession of the land to enable the appellant to start the development work. Clause 13 of the development agreement contains an arbitration clause

A whereby the parties had agreed to refer the matter in respect of any difference or dispute between them with regard to the construction or the terms of the development agreement or with regard to the project undertaken for arbitration. A Memorandum of Understanding (MoU) was entered into B between the parties, which stipulates that the developer was required construct a township project consisting of one commercial building, 11 residential wings in four buildings and one club house under licence from the Indore Municipal Corporation. It was further agreed that if the MoU was C terminated, the developer would not have any right, title or interest in the township project and would be required to remove his employees and machineries from the land. Clause 13 of the developer agreement was also incorporated in the D MoU.

3. As disputes arose with regard to payment, the respondent terminated the MoU, forfeited the security deposit and invoked the arbitration clause by issuing a notice through his Advocate on 6.6.2013. The appellant herein replied to the E termination notice by stating that it had carries out substantial construction on the property by constructing three buildings and by taking many other steps. It was also stated by the appellant that the environmental clearance certificate for the F project was not obtained by the respondent and, therefore, further work was stopped. The appellant required the respondent to perform his part of the contract in obtaining the requisite environmental clearance, execute irrevocable power of attorney, refund the part of the amount payable and pay G interest on the security deposit.

4. As the factual matrix would undrape, when arbitration was demanded by the respondent, the appellant on 16.7.2013 replied that the arbitration tribunal had to be in Mumbai. It was H also put forth that it was in physical possession of the property

and its construction material, machinery, office equipments and other equipments were at the site. At this stage, the appellant moved the High Court of Bombay for grant of leave under Clause 12 of the Letters Patent by filing an application under Section 9 of the 1996 Act asserting that the courts at Bombay have the territorial jurisdiction, and accordingly leave was granted. The respondent after entering appearance filed an application praying for revocation of leave. While seeking revocation of leave, it was contended by the respondent that dispute pertains to the land which is situate at Indore; that the development agreement and the MoU had been executed at Indore where the immoveable property is situated; and that the dispute fundamentally is for right and possession over the land, hence, the court where the land is situated has the territorial jurisdiction in respect of the arbitration or any application to be filed under the 1996 Act.

5. The learned Single Judge scanned the anatomy of Clause 12 of the Letters Patent and various decisions of the High Court of Bombay and referred to the decision in ***Moolji Jaitha & Co. v. Khandesh Spinning & Weaving Mills Co. Ltd.***[1], adverted to the issue relating to what would constitute cause of action in the obtaining factual matrix, analysed the decision of the Bombay High Court in ***Shiv Bhagwan Moti Ram Saraoji v. Onkarmal Ishar Dass & Ors.***[2], and referred to ***Adcon Electronics Pvt. Ltd. v. Daulat and Anr.***[3] and eventually came to hold as follows:-

> "... the Petitioner has put up its machinery, staff for the construction and the ultimate construction upon the land. Several buildings have been constructed fully or in part. The parties are entitled to a part of the construction each as per the directions of the development agreement or

[1] AIR 1950 FC 83

[2] AIR 1952 Bom. 365

[3] (2001) 7 SCC 698

A amount in cash as per the MOU. The development work is in progress. An order for protection of the property pending the arbitration would involve the land itself. The dispute has nothing to do with the rights of the parties in personam only...."

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And again:-

"... The disputes in the development agreement are closely connected with the land, the possession of which is disputed by the parties. The suit is a suit for land. It

C would have to be filed in Indore where the land is situate."

6. Being of this view, the learned Single Judge revoked the leave that was earlier granted. Being dissatisfied with the aforesaid order, the appellant preferred an appeal before the

D Division Bench. Before the Division Bench it was contended that the appellant was in possession of the land and the possession shall remain with it till the completion of the entire project and he was entitled to refund of security deposit.

E 7. In essence, it was urged that the application preferred under Section 9 of the 1996 Act was tenable before the High Court of Bombay and there was no justification to revoke the leave. The Division Bench referred to certain clauses of the agreement and the clauses from the MoU and the

F correspondences between the parties, the assertions made in the Section 9 petition and the relief sought therein, addressed to the import of Clause 12 of the Letters Patent and what meaning had been given to the "suit for land" in ***Moolji Jaitha*** (supra) by analyzing various passages, culled out the

G principles stated in ***Adcon Electronics*** (supra), took note of the fact that the development agreement and the MoU had been executed at Indore, the statement of claim and the counter claim filed by the parties before the learned arbitrator who has already entered into reference and in the ultimate eventuality

H opined thus:-

"... In the present case, we are of the vie that the disputes between the parties hereto in relation to the development agreement dated 28 February 2008 and the MOU dated 8 June 2012 are of such a nature that they are rooted to the land. The disputes are not such that they relate only to the execution of any document and/or specific performance thereof simplicitor. The disputes relate to possession of the said land which is outside the jurisdiction of the Court as also regarding the percentage of the parties rights, title and interest in the said land and/ or their entitlement to a sizable portion of the constructed space thereon. These disputes would certainly fall within the expression "suit for land" appearing in Clause XII of the Letters Patent."

Expressing thus, the Division Bench declined to interfere with the order passed by the learned Single Judge.

8. We have heard Mr. Shekhar Naphade, learned senior counsel for the appellant and Mr. Shyam Divan, learned senior counsel for the respondent.

9. Criticizing the orders passed by the High Court, it is submitted by Mr. Naphade, learned senior counsel that the learned Single Judge as well as the Division Bench has fallen into serious error in their appreciation of the clauses in the agreement and the relief sought inasmuch as it was a money claim and when the amount was paid at Mumbai, the High Court of Mumbai had the jurisdiction. He has drawn our attention to various clauses in the agreement to which we shall refer to in the course of our delineation. In essence, his submission is that it is basically a claim relating to money and it has nothing to do with the land and, therefore, the analysis made by the High Court is fundamentally fallacious.

10. Mr. Divan, learned senior counsel appearing for the respondent countering the aforesaid submissions would

A contend that the cause of action had arisen at Indore regard being had to the fact that the land is situated at Indore and the agreement in question and the MoU were executed at Indore. It is his further submission that the order passed by the Division Bench is absolutely defensible inasmuch as it is a claim for B land and in the backdrop of prayer under Section 9 of the 1996 Act, there could not have been any other conclusion than what has been expressed by the High Court that it has no territorial jurisdiction to deal with the controversy.

C 11. To appreciate the controversy, it is appropriate to refer to Clause 12 of the Letters Patent, which reads as follows:-

"12. Original jurisdiction as to suits – And we do further ordain that the said High Court of Judicature at Bombay, D in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try and determine suits of every description, if, in the case of suits for land or other immovable property such land or property shall be situated, or in all other cases if the cause of action shall E have arisen, either wholly, or in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell or carry on F business, or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Bombay, in which the debt or damage, or value of property sued for does not exceed G one hundred rupees."

12. The said clause fell for interpretation in ***Adcon Electronics*** (supra), wherein the Court stated thus:-

H "Thus, it is clear that under clause 12 of the Letters Patent, the High Court in exercise of its ordinary original

jurisdiction will have power to receive, try and determine: (1) suits for land or other immovable property if such property is situated within the local limits of original jurisdiction of the High Court; or (2) all other cases (*a*) if the cause of action has arisen wholly within the local limits of the ordinary original jurisdiction of the High Court; (*b*) if prior leave of the Court has been obtained and the cause of action has arisen in part within the local limits of the ordinary original jurisdiction of the High Court; or (*c*) if the defendant dwells or carries on business or personally works for gain within such limits."

13. Be it noted under Section 120 of the Code of Civil Procedure, 1908 (for short, "CPC"), Sections 16, 17 and 20 are not applicable to the High Court in original civil jurisdiction. Thus, as far as the Bombay High Court is concerned, it is Clause 12 of the Letters Patent that would govern the controversy.

14. In ***Adcon Electronics*** (supra), the two-Judge Bench referred to the divergence of opinion in ***Moolji Jaitha*** (supra), the Full Bench decision of the High Court of Madras in ***P.M.A. Velliappa Chettiar v. Saha Govinda Doss***[4], Division Bench judgment of Calcutta High Court in ***Debendra Nath Chowdhury v. Southern Bank Ltd.***[5] and ruled thus:-

"From the above discussion it follows that a "suit for land" is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a "suit for land" or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property,

[4] AIR 1929 Mad. 721

[5] AIR 1960 Cal. 626

A it will be a "suit for land". We are in respectful agreement with the view expressed by Mahajan, J. in ***Moolji Jaitha*** *case.*"

15. It will be appropriate to reproduce what Justice B Mahajan had observed in ***Moolji Jaitha*** (supra):-

"If an attempt is made to find a comprehensive definition of the phrase, it will eventually be discovered that it has created further complications. I therefore content myself by saying that where the nature of the suit is such that in C substance it involves a controversy about land or immovable property and the court is called upon to decide conflicting claims to such property and a decree or order is prayed for which will bring about a change in the title to it, that suit can be said to be in respect of land D or immovable property; but where incidentally in a suit, the main purpose of which or the primary object of which is quite different, some relief has to be given about land, the title to it not being in dispute in the real sense of the E term, then such a suit cannot fall within the four corners of this expression."

16. He had further added:-

"In my opinion, if the suit is for specific performance and F a decree for possession of the land sold is claimed, such a suit would certainly be a suit for land; but if the suit is simpliciter for specific performance, i.e., for the enforcement of the contract of sale and for execution of a conveyance, in that event there can be no good ground G for holding that such a suit is a suit for determination of title to land or that the decree in it would operate on the land."

17. Recently, in ***Excel Dealcomm Pvt. Ltd. v. Asset Reconstruction Co. (India) Ltd.***[6], the controversy had arisen H

[6] (2015) 8 SCC 219

from the High Court of Calcutta. The two-Judge Bench addressed to the issue "what is the suit for land", and observed as under:-

> "A suit for land is a suit in which the relief claimed relates to the title or delivery of possession of land or immovable property [see *Adcon Electronics (P) Ltd.* v. *Daulat*]. Further, it is an established rule that to determine whether it is a suit for land, the court will look into barely the plaint and no other evidence (*Indian Mineral & Chemicals Co.* v. *Deutsche Bank*[7]). If by the averments in the plaint and prayers therein, it appears that the suit is one for land, it shall be so held and if it does not so appear, then the suit shall continue under leave granted under Clause 12."s

18. Be it noted, in the said case suit was filed for specific performance of the agreement which contemplated sale of property as has been described under Section 13 of the SARFAESI Act, 2002. The issue that arose before the Court is as follows:-

> "In the present case, a suit was filed for the specific performance of the agreement which contemplated the sale of property, as has been described in Para 1 under Section 13 of the SARFAESI Act in terms of the Rules. The question with respect to Clause 12 of the Letters Patent in the present case is that whether the present suit is suit for land."

19. The Court referred to the relief clause, the authority in ***Adcon Electronics*** (supra) and came to hold that:-

> "It may be noted that the sale certificate sought under the prayer requires the delivery of possession of the suit property. Thus, we find that the prayer for delivery of

[7] (2004) 12 SCC 376

A possession was an implicit one in the present case. The prayer as sought in the plaint could not have been granted without the delivery of possession of the suit property as the sale certificate itself contemplates the delivery of the immovable property. Thus, in view of this we find that
B *Adcon Electronics* would not apply as there was a prayer for delivery of possession in the present case. Therefore, we hold that the present suit was indeed a suit for land."

Being of this view, it concurred with the opinion expressed
C by the High Court of Calcutta that it did not have the territorial jurisdiction.

20. The obtaining factual matrix has to be appreciated on the basis of the principles that have been enunciated in the
D authorities we have referred to hereinabove. It has to be borne in mind that it was an application under Section 9 of the 1996 Act. Section 9 of the 1996 Act reads as follows:-

"9. **Interim measures, etc. by Court.**—A party may,
E before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral
F proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any
G goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any
H property or thing which is the subject-matter of the dispute

in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the court to be just and convenient,

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it."

21. There can be no cavil over the proposition that Section 9 petition can be entertained in the absence of arbitral proceeding. Be that as it may, it is imperative to scan the relevant clauses of the agreement and carefully x-ray the clauses of the MoU and also critically scrutinise the relief sought in the petition preferred under Section 9 of the Act.

22. Mr. Naphade, learned senior counsel has drawn our attention to the recital part of the agreement and certain other clauses. The recital part reads as follows:-

"AND WHEREAS the Owner and Developer have agreed to develop the said land by entering in a Development Agreement, by which the owner shall get 40% of the Developed Saleable area and Developer shall get 60% of the Developed Saleable Area in the proposed project irrespective of its being residential/commercial or hotels or Multiplex or mixture of the either etc."

23. Clause 3 of the agreement deals with the security amount which stipulates that for developing the said land of

A the owner, the developer shall give a "Refundable Security Deposit" of Rs.20 crores to the owner. A schedule was fixed for payment of the said amount. Clause 4 of the agreement stipulates what events would take place after execution of the development agreement. It basically relates to certain
B obligations to be performed by the parties.

24. Clause 5(ii) of the agreement on which emphasis has been laid is to the following effect:-

C "5. (ii) The Developer and the Owner shall at all times thereafter be entitled to receive money, take bookings, enter into leasing agreements, sell, assign any or all portions of the proposed project falling under his share, and owner hereby give express consent for the same to
D the Developers."

25. Clause 7 deals with refund of security deposit. Clause 7D from which inspiration has been drawn by the learned senior counsel for the appellant reads as follows:-

E "7D. It is agreed between the parties hereto that if the Owner fails to refund the security deposit and the parties hereto decides to sale the units and/or blocks then in that event the Developer shall be entitled to recover refundable security deposit from the sale of Units
F and/or Blocks of the Owner's share and in the circumstances the Developers shall be entitled to receive 60% and the Owner shall be entitled to receive 40% of the sale price of the Units and/or Blocks of the Owner's share and the said 60% price will be adjusted towards
G refundable security deposit."

26. Clause 9 deals with the responsibility of the developer. Clause 10 deals with the joint responsibilities of the owner and the developer. The said clause reads as follows:-

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"10. Joint Responsibility of Owners and Developers:- A

(i) To provide cooperation to each other for sanctioning the plans of the project with all required permissions and obtaining occupation certificate for handing over possession of the tenements to the Purchasers of B Tenements.

(ii) To clear all the dues of authorities concerned with respect of plot under development.

(iii) To convey the land with building to the societies and/ C or condominium or apex body after completion of project as per rules applicable."

27. At this juncture, it is relevant to refer to certain aspects which have been enumerated in the MoU. The recital in the D MoU is as follows:-

"**& Whereas** 'YES BANK' (hereinafter referred to as the 'SAID BANK') has principally agreed to grant loan of Rs.85 crores to the Developers for the development of E the said Township for which purpose the Developers are required to mortgage the Land and Development of the said Township to the SAID BANK in lieu of which the SAID BANK has agreed to disburse construction related loan which shall be disbursed as per the progress of the F project.

& Whereas as the Development Agreement did not provide for mortgage of the Land of the Owner and for availing the facility of loan the Developer are required to G mortgage the entire project the Developer has proposed to pay a lump sum amount of Rs.137 crores to the Owner in lieu of his share in the said Township for which consideration the Owner has agreed to permit the Developer to avail loan facility from the said Bank for the H

development of the Said Township and to release/transfer his share in the said Township in favour of the Developer."

28. Clause 13 of the agreement refers to resolution of disputes. We quote the said clause:-

"13. RESOLUTION OF DISPUTES:-

That in case of any difference or dispute between the parties with regard to the meaning of construction of this MoU or regarding any terms of the Development Agreement or with regard to the project undertaken under this MoU or Development agreement to be executed between the parties, the same shall be resolved by arbitration in conformity with the provisions of the Arbitration and Conciliation Act, 1996."

29. In this context reference to the reliefs prayed for under Section 9 petition gain significance. Prayers (a) and (b) of the paragraph relating to relief sought read as under:-

"(a) pending the hearing and final of the proposed arbitral proceedings and for a period of sixty days after the award therein, the respondent by himself and through his servant and or his agent and/or in any manner, howsoever, be restrained by a temporary order or injunction from entering upon the property bearing Survey No. 1487/1 and 1487/2 at Kasba, Indore, Patwari Halka No. 15/2, Tahsil & District – Indore, Madhya Pradesh, and from dealing with or moving the petitioners' construction machinery on the said property and from disturbing or interfering with the Petitioners possession thereof in any manner;

(b) pending and hearing and final disposal of the proposed arbitral proceedings and for a period of sixty days after the award therein, the Respondent by himself

and or through his servants and/or his agents, be restrained by a temporary order of injunction from or in any manner directly or indirectly disposing off, alienating, encumbering or creating third party rights in any manner whatsoever in the property bearing Survey No. 1487/1 and 1487/2 at Kasba, Indore, Patwari Halka No. 15/2, Tahsil & District – Indore, Madhya Pradesh, and from disturbing or interfering with the Petitioners possession thereof in any manner."

30. At this stage, we are obligated to state that the High Court has referred to the correspondences between the parties. It has referred to the letter dated 19.6.2013 in extenso. In the said letter it was mentioned that as the owner of the land had terminated the development agreement and the MoU, he had taken over the entire physical and actual possession of the said land and the developer was called upon to remove its machinery and construction material lying upon the said land. The said letter was replied to vide letter dated 16.7.2013 refuting the fact that the physical possession of the land had been taken over by the land owner and stating that the possession was still with the developer. The Division Bench has extensively reproduced from the petition preferred under Section 9 of the 1996 Act. We think it apt to reproduce the same:-

"10. The Petitioners have shocked to receive letter dated 6 June 2013, from Respondent's Advocates, informing the Petitioner that the Respondent had terminated the MOU and the Development Agreement with immediate effect and had allegedly taken over the possession of the Township in terms of the MOU. By the said letter, the petitioners were further informed that the Security Deposit of Rs.20 crores stood forfeited. The petitioners were informed that without prejudice to the termination, the

A respondent made a demand of payment of Rs.71 crores along with interest thereon. A copy of the letter dated 6 June 2013 is annexed and marked Exhibit-F hereto.

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14. The respondent, by Advocates letter dated 30 June 2013 sought to invoke the Arbitration Clause under the Development Agreement and the Memorandum of Understanding. By the said letter, the petitioners were C informed that the entire physical and actual possession was allegedly already taken over by the respondent. This is a false statement. The petitioners were further called upon to remove the machinery and construction material. Hereto annexed and marked Exhibit-I is a copy of the D respondent's Advocates letter dated 30 June 2013.

xxxxx xxxxx xxxxx

17. The petitioners submit that they had completed substantial work by completing Building B-1, B-2 and B-E 3 (where only top slabs are pending), construction of five slabs of Building C-1, commencing digging and footing work of Building A-1. The petitioners' machinery and labour are at site. The petitioners are in possession of the site. Now, the respondent has suddenly demanded F a sum of Rs.71 crores, allegedly due to the respondent, under the MOU dated 8 June 2012. Though not entitled, the respondent has sought to forfeit the security deposit of Rs. 20 crores, in accordance with the MOU.

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18. In the circumstances, the petitioners submit that the petitioners are entitled to, pending an adjudication in the proposed Arbitral proceedings and for a period of sixty (60) days after the award therein, for an order of H injunction, restraining the respondent by himself or

through his servants or agents from entering upon the property, subject matter of the Development Agreement and from dealing with and moving the machinery of the petitioners used in construction activity and from disturbing or interfering with the petitioners possession thereof in any manner." A B

31. After discussing the facts in entirety, the Division Bench has opined thus:-

"... The development agreement also stipulated that the appellant was entitled to possession of the said land and accordingly the respondent, by a separate possession receipt dated 28 February 2008 handed over to the appellant possession of the said land which is the subject matter of the development agreement. Thereafter, the parties entered into a MOU dated 8 June 2012 which inter alia recited that the appellant was to construct the township project consisting of residential and commercial buildings and a club house and further that the respondent would be paid a sum of Rs.137 crores in place of its 40% share under the development agreement. As disputes arose between the parties, the said development agreement and the MOU were terminated by the respondent by its Advocate's letter dated 6 June 2013 and the respondent invoked arbitration. It is pertinent to note that in paragraph 9 of the said termination letter, the respondent has specifically stated that as on that date (6 June 2013), the respondent had taken over the possession and absolute ownership of the said township including the structures thereon, in accordance with the terms of the MOU. This included the construction put up by the appellant on the said land. In the said letter, at paragraphs 11 and 12, the respondent reiterated that it was the owner of the said land. C D E F G H

A 32. And thereafter the Division Bench proceeded to analyse the letter dated 30.6.2013 and on that basis observed that:-

> "... This letter of the respondent further stated that since
> B the Respondent had terminated the development agreement and MoU, the respondent had taken over the entire physical and actual possession of the said land and in view thereof called upon the Appellant to remove its machinery and construction material from the said land.
> C Again, by its letter dated 16 July, 2013, the Appellant once again denied that the physical possession of the said land had been taken over by the Respondent as alleged in its letters dated 6 June 2013 and 30 June 2013 respectively."

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33. The seminal issue is whether on the factual score which has been exposited, the application filed under Section 9 of the 1996 Act before the High Court of Bombay can be regarded as a money claim. On a studied scrutiny of the
E agreement and the MoU it is clear as day that the development agreement indubitably had created certain interests in the land in favour of the appellant. The assertions made in the application along with the relief clause when read in entirety and appreciated in a holistic manner, it becomes luminescent
F that the core dispute pertains to possession of the land, for the appellant claims to be in exclusive possession and the respondent, per contra, has asseverated that it had taken over possession. It can irrefragably be stated that any order passed under Section 9 of the 1996 Act will have the impact on the
G land. It is difficult to accede to the submission that it will not conceptually fall within the category of "suit for land" as engrafted under Clause 12 of the Letters Patent. It is clearly a dispute with regard to the possession which is evincible from the correspondences and the averments made in the
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application preferred under Section 9 of the 1996 Act. Thus, there has to be determination as regards possession and impliedly issue of direction for recovery of possession. Hence, the conclusion arrived at by the Division Bench on the basis of the scrutiny of documents that the dispute is embedded with regard to the possession of the land because the fundamental claim pertains to certain constructed space on the land and, therefore, it would conceptually fall within the conception of "suit for land" appearing in Clause 12 of the Letters Patent is unexceptionable. Prayer (a) quoted above seeks restraint by a temporary order or injunction from entering upon the property. It is difficult to accept the submission that it is a money claim and, therefore, the Bombay High Court would also have the territorial jurisdiction and accordingly we unhesitatingly repel the same.

34. Resultantly, we find no substance in the appeal and accordingly the same stands dismissed. There shall be no order as to costs.

Devika Gujral Appeal dismissed.