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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 1136 OF 2014
IN
SUIT NO. 2457 OF 2001**

Apex Urban Co-op. Bank of Maharashtra
& Goa. Ltd. ...Applicant

In the matter between:

Mr. Ramesh W. Sawant ...Plaintiff
Vs.

Apex Urban Co-op. Bank of Maharashtra
& Goa Ltd. & Ors. ...Defendants

Mr. Vaibhav Joglekar a/w. Mr. Ashish Rao &
Mr. Nikhil Jangid i/b. M & M Legal Venture for Plaintiff
Mr. Karan Bhosale a/w. Mr. R.P. Gurjar i/b. M.V. Kini & Co.,
for Defendant No.1

**CORAM : MRS. ROSHAN DALVI, J.
DATED : 1ST APRIL, 2015**

ORDER:

1. The preliminary issue with regard to the jurisdiction of this Court is raised under Section 9A of the Maharashtra Rent Control Act, 1999. The issue is framed and answered as follows:

Whether this Court's inherent jurisdiction is barred . No

2. The plaintiff has sued for a declaration that two

agreements dated 30th May, 1996 which are leave and license agreements for a period of 5 years up to 29th May, 2009 are valid, subsisting and binding on the parties and for a declaration that defendant No.1 has never terminated or repudiated the said two agreements dated 30th May, 1996 and also for payment of Rs.1.87 crores as per particulars of claim, **Exhibit-Q** to the plaint or in the alternative Rs.27.42 lakhs as per particulars of the claim, **Exhibit-R** to the plaint and for an injunction against defendant No.2 from suing or claiming any amount from the DRT under an MOU dated 10th July, 1996(which prayer has become infructuous as the plaintiff and defendant No.2 have settled their disputes).

3. The dispute is between plaintiff and defendant No.1. Under the aforesaid agreement dated 30th May 1996 the plaintiff as the licensor licensed the suit premises to defendant No.1 as the licensee. The agreement was to be subsisting between the parties for a period of 3 years from 1st June 1996 to 31st May 1999 under clause 3 of the agreement subject to any renewal / extension provided therein. It was to be renewed for a further period of 2 years under clause 5 of the agreement.
4. For the payment of the license fee to the plaintiff / licensor the parties entered into a further arrangement under which the payment was to be made by the defendant No.1 in

the account of the plaintiff with defendant No.2 from whom a loan was taken by the plaintiff. This loan was to be recovered within a period of 5 years by defendant No.2 bank. The parties entered into the MOU dated 19th July, 1996, **Exhibit-D** to the plaint under which the plaintiff as the borrower obtained the loan from defendant No.2 as the landlord.

5. Defendant No.1 confirmed the MOU, **Exhibit-D** to the plaint and agreed that until the loan was repaid in full by the borrower to the landlord, the plaintiff as the borrower would not terminate the leave and license agreement with defendant No.1. Since the loan was to be repaid in 5 years time, the plaintiff would claim that the parties to the MOU including defendant No.1 agreed that the leave and license agreement would subsist for 5 years when the loan would be repaid.
6. Yet in clause 7 of the MOU the parties agreed that if for any breach committed by the defendant No.1, the agreement was terminated prior to the extended period (it would be by the plaintiff as the licensor) the plaintiff would make full payment of the loan to defendant No.2. Such prior termination was allowed only to the plaintiff. The obligation under clause 7 was only of the plaintiff. It has nothing to do with defendant No.1 or the agreement of the plaintiff with defendant No.1.

7. Defendant No.1 has not terminated the agreement. Defendant No.1 could not terminate the agreement. Defendant No.1 has, however, handed over vacant possession of the suit premises to the plaintiff prior to even the initial period of 3 years of the initial agreement of license dated 30th May 1996. The possession is stated to have been handed over on 26th or 28th February, 1999.
8. The plaintiff would claim that by such handing over of possession and the consequent implied termination, the plaintiff has lost the license fee which was agreed to be paid by defendant No.1 to the plaintiff for the remainder of the period of license. The plaintiff could not license the premises to any other parties soon thereafter. The plaintiff suffered loss and damages of such license fee and consequent interest thereon. The plaintiff has sought to mitigate those damages by licensing the premises, albeit at a lesser rate, to another party, on a later date. The premises is said to be licensed to one Stock Holder Corporation of India from 26th July, 2000, about 17 months after the plaintiff commenced suffering damages by non-receipt of the license fee.
9. The suit is, therefore, for the aforesaid declarations that the license agreements are valid and subsisting and not terminated or repudiated and for the damages suffered.

10. It is for such a suit that the defendant would claim that the Civil Court's inherent jurisdiction is barred under the Maharashtra Rent Control Act, 1999 as also the Presidency small Cause Courts act (1882). The defendant would claim that what is sought to be recovered is precisely the rent / license fees payable by defendant No.1 which was not paid since possession was handed over. Indeed for recovery of license fees which is not paid the plaintiff would claim the amount at the agreed rate and claim interest thereon. However license fees is payable during the subsistence of the license; license fees is not payable upon the license being terminated or repudiated. The defendant does not accept that the license agreements are valid and subsisting and are not terminated or repudiated. Yet the defendant would claim the license fees sought to be recovered.
11. The plaintiff has relied upon the judgment of a single Judge of this Court in an identical suit. In that suit also upon the licensed premises being handed over prior to the period of license, the plaintiff's suit was for breach of contract which was the leave and license agreement. The damages were equivalent to the license fees payable for the remaining period. The agreement provided a minimum lock-in period. Even in that case the plaintiff found another licensee who was given the premises for occupation. The plaintiff gave credit to

the defendant to the extent of license fees recovered from such other party. The suit was held to be a suit for damages and not for license fees.

12. It must be borne in mind that only the suits which relate to recovery of rent or recovery of possession or are for claiming any relief under the Bombay Rent Act, 1947 or the Rent Control Act, 1999 that the Civil Court's jurisdiction will be barred. Hence even in a suit between landlord and a tenant or a licensor or licensee if it is for any relief other than the relief relating to recovery of rent, recovery of possession or under the Rent Act the Civil Court's jurisdiction would not be barred.

13. Thus seen this is a suit for damages suffered by the plaintiff by not obtaining the license fees upon the possession being handed over. The measure of damages would be the payment of the rent or the license fees which would, therefore, otherwise be recovered by the plaintiff had the license continued. There could be no other measure of damages as there would be no other loss to the plaintiff aside from interest thereon. In a suit for damages the Civil Court's jurisdiction would not be barred.

14. Mr. Joglekar on behalf of the plaintiff drew the Court's attention to Section 7(5) of the Bombay Rent Control Act

1999 in which the term licensee is defined. Licensee is a person who is in occupation of the premises or a party thereof under the subsisting agreement of license for a fee or a charge. The plaintiff would claim a declaration that the agreement subsists, but defendant No.1 is no longer in occupation of the premises, it having handed over vacant possession of the suit premises to the plaintiff prior to the suit. It would, therefore, stand to reason that defendant No.1 would not be a licensee.

15. Mr. Bhosale on behalf of the defendant relied upon the judgment in the case of **Nagin Mansukhlal Dagli Vs. Haribhai Manibhai Patel AIR 1980 Bombay 123** in which the Division Bench of this Court held that in essence the licensee is also a person who “once held” the relationship with the licensor. The Court observed that such relationship indeed had come to an end either by efflux of time or upon the termination of the license. However the Court noticed that in a suit for recovery of rent, the rent would be claimed only when there are acts resulting in termination of tenancy. Yet the suit would be maintainable. Similarly the recovery of possession could be claimed after the tenancy or the license expired either by efflux of time or by termination and consequently reliefs were claimed. Even upon such expiration of tenancy or license the right of recovery of the rent or the license fees or the recovery of possession from the tenant or

the license would remain and it was a misconceived argument that because the defendant would not any longer be a tenant or a licensee the relief cannot be given to the plaintiff. Such relief, of course, could be given only by the Special Court.

16. What is of importance to note is the reliance upon the nature of the suit. That would be the suit relating to the aforesaid 3 aspects only. Hence even if the licensee does not continue to be in occupation under a subsisting agreement of license which is given for a fee or a charge, he would continue to be a licensee who could be sued for the aforesaid aspects. If the suit is for such aspects it would lie in the Special Court and the Civil Court's jurisdiction would be barred. But for a licensee who may continue as such or who may be referred by such nomenclature or who may be taken to be a licensee also, if a suit does not relate to the aforesaid 3 aspects, but relates to declarations and the recovery of damages (upon mitigation of those damages) it would not be a suit either under Section 7(5) of the Maharashtra Rent Control Act 1999 or under Section 41 of the Presidency Small Cause Courts Act 1882. The Civil Court's jurisdiction in those suits would, therefore, be not barred.

17. Mr. Bhosle on behalf of the defendant would argue that aside from the aforesaid 3 aspects other aspects which may be ancillary may also be considered by the Special Court.

However those would be for ancillary aspects and not for the main reliefs. What would be those aspects also required to be seen. In the case of **Messrs. Importers and Manufacturers Ltd. Vs. Pheroze Framroze Taraporewala AIR 1953 SC 73 (Vol. 40.C.N.19)** relied upon by Mr. Bhosale the ancillary aspect was sub-letting the suit premises by defendant No.1 to defendant No.2, which was stated to be an unlawful subletting. For such subletting there was a special provision under Section 15 of the Rent Act. It was a matter, therefore, relating to the Act and would be covered by the third of aforesaid aspects.

18. Similarly in the case of **Ramesh Dwarkadas Mehra & Ors. Vs. Indravati Dwarkadas Mehra & Ors. 2001(4) Bom.C.R. 417** it was held that an erstwhile licensee stated to have turned into a trespasser would not grant jurisdiction upon Civil Court. In a case for recovery of possession the erstwhile licensee would be taken to be a licensee.

19. In the case of **Dattatraya Krishna Jangam Vs. Jairam Ganesh Gore AIR 1965 Bombay 177 (V. 52 C. 36)** also a relied upon by Mr. Bhosale the suit was for a declaration that the sub-tenancy was created in favour of the plaintiff and for an injunction restraining the defendant from interfering with the possession of the subtenant. The very relationship of the parties was of landlord and tenant which would include a

subtenant. The Court observed in para 7 of the judgment that the relief had a direct bearing on the question of possession of premises. The Court also observed that the plaintiff (who was the subtenant directed to be evicted) sought to get rid of an order of eviction by an injunction for protection of his possession thereafter. Hence the Court observed that the incidental and ancillary reliefs (it should be incidental and ancillary to the determination of the question meant for the special Court to determine) were also covered. It was observed that the salutary principle that the play upon words would not convince Courts and the real relief prayed for by the parties must be seen by the Court to determine its jurisdiction.

20. Hence in the case of **Sanjog Sadanand Parab Vs. B.P.Gharda & Co., & Ors.** 2012(5) Bom.C.R. 258 and in the case of **RMC Readymix (I) P. Ltd. Vs. Kanayo Khubchand Motwani** 2006 BLR 1082 the suit for recovery of security deposit with interest and costs was held to be not under section 41 of Presidency Small Cause Courts Act, 1882 and consequently the jurisdiction of the Civil Court was held not ousted.

21. The main relief in the suit relates to the aforesaid declaration. Under Section 19(s) of the Presidency Small Cause Courts Act, 1882 suits for declaration are specifically

barred. The Special Court, therefore, would not have jurisdiction to determine declarations such as in this suit. (See in the case of **Smita Rajeev Sah & Anr. Vs. Roop NarainS ah & Anr. 2015 SCC [2013 SCC OnLine Bom 474: (2013) 5 Mah LJ 211 : (2013) 6 Bom CR 193: (2013) 131 AIC 344: (2013) 4 ICC 782(DB)]**).

22. Mr. Joglekar on behalf of the plaintiff would claim that the Small Causes Court would not have jurisdiction to determine the relief against defendant No.2 who is not a party to the leave and license agreement. Of course, the plaintiff having settled the suit against defendant No.2 the relief under prayer (d) has become infructuous. The suit would remain between the plaintiff and defendant No.1. It is indeed a suit between a licensor and a licensee. It is not for recovery of rent. It is not for recovery of possession. It is for two declarations and for damages.

23. The Small Causes Court cannot determine the relief of declaration or of damages. The Civil Court's jurisdiction is, therefore, not barred in respect of the reliefs claimed in the suit. The issue of jurisdiction is, therefore, answered in the negative holding that this Court's jurisdiction is not barred.

24. The suit shall proceed.

25. The chamber summons No. 278 of 2015 is adjourned to
15th April, 2015.

(ROSHAN DALVI, J.)