

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7584 OF 2016

Bata India Ltd

..Petitioner.

Vs

Boman R. Irani

.. Respondent

Mr.P.S.Dani, Senior Advocate, i/b Umesh R. Mankapure, Advocate
for Petitioner.

Mr. A.R.Bamne i/b A.R.Bamne & Company, Advocates for
Respondent.

**CORAM : R.G.KETKAR,J.
DATE : 24/08/2016**

PC:

1. Heard Mr. P.S.Dani, learned senior counsel for the petitioner and Mr. A.R.Bamne, learned counsel for the respondent at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant', has challenged order dated 18.3.2016 passed by the learned Judge, presiding over Court Room No.38 of the Court of Small Causes at Mumbai (Bandra Branch), by which the learned trial Judge rejected the application filed by the defendant praying for framing of issue of jurisdiction and deciding the same as a preliminary issue.
3. Mr. Dani submitted that the respondent, hereinafter referred to as 'plaintiff', has instituted suit against the defendant,

inter-alia, contending that Articles of Agreement dated 26.11.1975 executed between the parties, though is styled as 'Joint Retail Venture", the real transaction was that of leave and licence. He submitted that the defendant has filed written statement and has contended that the Small Causes Court has no jurisdiction to entertain and try the suit as there is no relationship of licensor and licensee between the parties.

4. The relationship between the parties is agreed as per Joint Retail Venture mentioned in the letter dated 27.7.1998. The defendant, therefore, filed application under Order 14, Rule 2 of C.P.C. for framing issue of jurisdiction and deciding the same as a preliminary issue. The learned trial judge rejected the application on the ground that the plaintiff had adduced his evidence and his cross examination was over on 21.11.2015. The plaintiff has closed his evidence and thereafter the matter was for defendant's evidence. The defendant has filed his evidence. It is at that stage the application is made for framing preliminary issue. The learned trial Judge rejected the application as misconceived and devoid of merits.

5. Perusal of issues framed on 14.2.2012 and in particular issue no.1, in my opinion, covers the controversy between the parties. Issue no.1 reads thus:

“Whether the plaintiff proves that the defendant was his

licensee in respect of the suit premises?

In view thereof, the plaintiff will have to establish that the defendant was inducted as licensee. The defendant, on the other hand, will be entitled to establish that it was not inducted as licensee and the real transaction is as per Joint Retail Venture. Subject to this, no case is made out for interfering with the impugned order. Petition fails and the same is dismissed.

(R.G.KETKAR, J.)