

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

**APPEAL NO. 325 OF 2016
IN
NOTICE OF MOTION NO. 3139 OF 2010
IN
SUIT NO. 886 OF 2010**

Kirti Sohan Modi and ors.	.. Petitioners.
V/s.	
M/S. CREATION	.. Respondent.

Mr. Mohan Bir Singh a/w. Ms Puja Jalan i/b M/s. MBS and Co. for Appellant.

Mr. V.J. Shah i/b Sanjay T. Manek for Respondent.

**CORAM: DR. MANJULA CHELLUR, C.J.
AND M.S.SONAK, J.**

DATE : 01 SEPTEMBER 2016.

P.C.

1] With the consent of and at the request of learned counsel for the parties, we proceed to dispose of this appeal finally.

2] The challenge in this appeal is to the judgment and order dated 24 November 2015 in Notice of Motion No. 3139 of 2010 in Suit No. 886 of 2010, by which, learned Single Judge has held that on averments made itself, the present suit is between a Licensor and Licensee and it relates to recovery of possession of premises, which are subject matter of the license as also recovery of license fees. Such suit, according to the learned Single Judge is exclusively within the jurisdiction of the Courts of Small Causes

under Section 41 of the Presidency Small Causes Courts Act, 1882. The preliminary issue was answered accordingly and the suit was dismissed for want of jurisdiction.

3] Mr. Mohan Bir Singh, learned counsel for the appellants, initially submitted that Section 41 of the Presidency Small Causes Courts Act, 1882 did not apply to the suit as instituted, since the appellants had already terminated the license. However, upon obtaining instructions from the appellants, Mr. Mohan Bir Singh, learned counsel for the appellants, did not press this contention. Instead, Mr. Mohan Bir Singh contended that in any case, the suit ought not to have been dismissed but the plaint could have been returned to the appellants for presentation before the Courts of Small Causes, so that the appellants could pursue the suit before the Courts of Small Causes.

4] Mr. V.J. Shah, learned counsel for the respondent, submitted that the respondent would have no objection if the plaint is returned for presentation before the Courts of Small Causes.

5] In view of the aforesaid, we modify the impugned judgment and order. The dismissal of the suit is set aside. Instead, we direct the Registry to return the plaint in Suit No. 886 of 2010 to the appellants, by making appropriate endorsement thereon, in order to enable the appellants to present the same before the Chief Judge, Court of Small Causes at Mumbai within a period of four weeks from today.

6] Upon return of the plaint as aforesaid, the appellants to present the same before the Chief Judge, Court of Small Causes at Mumabi, who shall either take up the suit himself or make the same over to any Judge of the Court of Small Causes, as per practice, which is being followed.

7] Parties or their advocates are directed to appear before the Chief Judge, Court of Small Causes, Mumbai on 3 October 2016 at 3.00 p.m., for the aforesaid purpose. There shall be no necessity for any further notice to any of the parties.

8] The appellants are at liberty to apply for clubbing of this suit alongwith L.D. Suit No. 52 of 2008, instituted by the respondent in the Court of Small Causes Court. Such application, if made, may be decided, in accordance with law and on its own merits.

9] It is clarified that this Court has not expressed any opinion on the merits of the matter and further, observations in the impugned judgment and order are also only *prima facie* and for the purposes of ruling on the issue of jurisdiction. Therefore, the Court of Small Causes in disposing of the suit, need not be influenced by any such observations. The suit will have to be decided on its own merits and in accordance with law. Accordingly, all contentions of all parties are kept open for consideration by the Court of Small Causes.

10] Appeal is disposed of in the aforesaid terms. There shall, however, be no order as to costs.

(CHIEF JUSTICE)

(M.S.SONAK, J.)