

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

WRIT PETITION NO. 11645 OF 2016

M/s. De Zens Products & anr.	... Petitioners.
Versus	
New Sterling Centre Commercial Premises Co-op. Housing Society.	... Respondents.

Mr. Amrut Joshi a/w. Mr. Manal Dhanani i/b. Mr. Ganesh & Co.,
advocate for petitioners.

Mr. Piyush Raheja a/w. Ms. Dhanashree Gaikawai i/b. Bilawala &
Co., advocate for respondent.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : NOVEMBER 8, 2017**

P.C.:

1 Heard the learned Counsel for the petitioners and the learned
Counsel for the respondent.

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 The petitioner herein happens to be the defendant in Short Cause Suit No. 2046 of 2015 pending before the City Civil Court at Mumbai. It is an admitted position on record that the suit is filed for recovery of the licence fee and the arrears thereto. The claim is of Rs. 54,71,736/-. The Petitioner herein had filed a Notice of Motion supported by an affidavit that the Court may frame preliminary issue as far as jurisdiction of the court is concerned. The Notice of Motion was precisely under section 9A of the Code of Civil Procedure. It was stated that “the plaintiff is very much aware that the reliefs claimed by the Plaintiff is based on Leave and Licence Agreement and this Court has no jurisdiction to try and decide the disputes and claims arose from the said agreements despite being aware about the same, chose to file present suit in this Hon'ble Court as such the suit deserves to be rejected for want of jurisdiction.”

4 The learned Counsel for the petitioner fairly submits that despite the said contention, the issue that was canvassed before the

Court is that proper and appropriate forum available would be an appropriate authority under the Maharashtra Rent Control Act, 2000. The learned Counsel for the Petitioners also submits that inadvertently, section 41 of the Presidency Small Causes Court Act was not demonstrated. Section 41 of the said Act reads as follows :

“41.Summons against person occupying property without leave

.- When any person has had possession of any immovable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed {Subs.by Act 9 of 1912, s.2, for "one"} [two] thousand rupees, as the tenant, or by permission, of another person, or of some person through whom such other person claims, and such tenancy or permission has determined or been withdrawn,

and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply {For fee on such application, see s.71, infra} to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.”

5 The learned Counsel for the respondent fairly submits that what was canvassed before the learned Court was that appropriate authority would be rent control authority and not the Small Causes Court. However, the learned Counsel agrees with the statutory provisions. The learned City Civil Court at Mumbai has rejected the application vide order dated 12/1/2016 by holding that the application is sans merits. That although the said issue was not canvassed the onus would be upon the court to determine appropriate jurisdiction and order without jurisdiction would be null and void. This would be an abuse of law and violation of statutory provisions and hence, this Court is inclined to allow the petition. However, it is made clear that since the court, which has rejected the Notice of Motion, does not have the jurisdiction to decide the claim of the plaintiff, the plaint be returned to the plaintiff to be filed before the Small Causes Court at Mumbai.

6 In view the above, the Petition is allowed. The order dated
12/1/2016 is hereby quashed and set aside. The learned City Civil
Court within 3 weeks from the date of receipt of this order shall
return the plaint to the plaintiff to be presented before the Small
Causes Court.

7 Rule is made absolute in the above terms.

The parties to act on the authenticated copy of this order.

(SMT. SADHANA S. JADHAV,J)