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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 2 OF 2019**

Shaw Wallace and Company Limited
and Anr.

..... Applicants.

V/s

Supra Medicate Private Limited

..... Respondent.

Mr. Vikram Sathaye a/w Rupani i/b Alpha Chambers for the
Applicants.

Mr. Satyajee P. Dighe for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 16, 2021

P.C.:-

1] Special Civil Suit No.331 of 2004 came to be initiated by the Respondent/Plaintiff claiming certain relief under the Interest on Delayed Payment to Small Scale and Ancillary Industrial Undertakings Act, 1993 (hereinafter referred to as “the Act of 1993” for the sake of brevity). The Applicants/Defendants to the said suit moved an application under Order 7 Rule 11(d), thereby pointing out that the Act of 1993 was replaced in 2006 by the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as “the Act of 2006” for the sake of brevity).

2] According to the learned Counsel for the Applicants, Order 7 Rule 11(d) will operate in case if jurisdiction of the Civil Court is ousted and based on the same considering the mechanism provided for settlement of dispute under the Act of 2006, application-Exhibit-264 either for rejection of the Plaint under Order 7 Rule 11(d) or return of the Plaint came to be moved. The learned Counsel would urge that since there is faster remedy available to the Respondent/Plaintiff under the Act of 2006 and there is no saving provided under the new Act qua the action taken under the old Act of 1993, claim of Respondent/Plaintiff needs to be dealt with in accordance with the provisions of the Act of 2006 i.e. by relegating him to Facilitation Council. Apart from above, drawing support from Division Bench Judgment of this Court in the matter of *Sonali Power Equipment vs. Maharashtra State Electricity Board*, **2018 SCC OnLine Bom 2253**, submissions are, whether in view of the Act of 1993 or the Act of 2006, jurisdiction of the Civil Court is ousted is an issue pending consideration before the larger Bench pursuant to the reference made in the aforesaid judgment and that being so, suit is liable to be stayed or the Plaint is liable to be returned.

3] The learned Counsel for the Respondent supported the order impugned. According to him, once the saving in the Act of 2006 in express terms is not provided, provisions of Section 6 of the General Clauses Act will come into play. According to him, the court below have rightly considered the provisions of Section 32 of the Act of 2006 and has proceeded to interpret that proceedings will continue under the Act of 1993 as same are not saved. He sought dismissal.

4] Considered rival submissions.

5] Fact remains that proceedings were initiated by the Respondent/Plaintiff under the Act of 1993. Though the Act of 2006 does not provide for express saving clause, however, court below was very much justified in invoking provisions of Section 6 of the General Clauses Act so as to infer that even if the Act of 1993 is replaced by the Act of 2006 proceedings initiated under the Act of 1993 are saved and can be continued.

6] Whether Respondent/Plaintiff can be relegated to the mechanism of giving faster remedy under the new Act i.e. the Act of

2006 is an issue which can be agitated at appropriate stage of the suit and same can be looked into by the Civil Court dealing with the suit claim. One more principle of law which is required to be taken into account is that in case of number of remedies being available, election of one of them cannot be faulted with by saying that another remedy should have been taken recourse to so as to have expeditious disposal of the claim. Fact remains that provisions of Order 7 Rule 11(d) of CPC can be invoked based on existing provisions of law whereby it has to be established that suit claim was barred by provisions of law. Even if the Applicants have relied upon the judgment of this Court in the matter of *Sonali Power Equipment* cited supra, what can be inferred is only a reference is made as to ouster of jurisdiction of the Civil Court. However, fact remains that it cannot be read in statute that as on date there is ouster of jurisdiction of Civil Court under the Act of 1993 and that being so, proceedings are not maintainable.

7] In the aforesaid backdrop, no case for interference with the impugned order is made out. Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)