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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 1213 OF 2020**

Manisha Manohar Warik and another ....Petitioners

V/s.

Smt. Roohi Rajendra Gaurav and others .....Respondents

Mr. Hemant Ghadigaonkar for the Petitioners

Mr. Suresh Dubey for Respondent no. 1

**CORAM : NITIN W. SAMBRE, J.**

**DATE: MARCH 11, 2021.**

**P.C.:**

1] Heard. Notice of Motion No. 455 of 2019 is taken out by the Petitioner under the provisions of Order VII Rule 10 of the Code of Civil Procedure, 1908 for return of Plaint as same needs to be presented before the Court having jurisdiction which came to be rejected vide order impugned dated 22/11/2019.

2] Learned counsel for the Petitioner would invite attention of this Court to pleadings in the Plaint so as to demonstrate that *prima facie*

dispute is in the nature of landlord-tenant/licensee-licensor. According to him, mother of present Respondent-Plaintiff was licensor of the Petitioner and Respondent has stepped into her shoes and that being so, Suit initiated simplicitor for declaration, injunction possession and damages is not maintainable before the Court. According to him, tenor of the entire proceedings are based on leave and licence agreement and relying on Judgment of the Apex Court in the matter of **Mansukhlal Dhanraj Jain and others V/s. Eknath Vithal Ogale**<sup>1</sup> the contentions are, City Civil Court lacks jurisdiction.

3] Counsel for Respondent supports the order impugned.

4] Looking to the nature of subject matter of the Suit, learned Judge of the City Civil Court while rejecting the prayer has noticed that there is no inherent lack of jurisdiction. The fact remains that from the pleadings of the Plaint, it can be prima facie noticed that Respondent has not recognized status of the Petitioner-Defendant as that of his licensee by none of his conduct viz. of accepting licence

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<sup>1</sup> [(1995) 2 Supreme Court Cases 665]

fees subsequent to the death of her mother. Case of the Plaintiff appears to be based on gift deed executed by her mother and that being so, whether Respondent-Plaintiff has inherited right of licensor can be an issue to be looked into by the City Civil Court while exercising inherent jurisdiction. If at an appropriate stage, it is established by the Petitioner-Defendant that Court below has lacked inherent jurisdiction, it is always open for the Court to take appropriate corrective measures.

5] In that view of the matter, no case for interference is made out. Petition fails, stands dismissed.

**[NITIN W. SAMBRE, J.]**