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

FIRST APPEAL NO.886 OF 2003

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Aradhana Gajanan Narkar & Anr.

... Appellant

V/s.

Sitaram Keshav Jadhav

... Respondent

Mr. Nitin Mulye for the appellants.

Mr. S.A. Sawant for respondent nos.1A, 1B & 1C.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 23, 2023

P.C.:

1. The first appeal arises out of dismissal of Suit No.2152 of 2002. The said suit was filed contending relationship of owner and gratuitous licensee before the City Civil Court. Relying on the judgment in **Prabhudas Damodar Kotecha & Ors. v. Manhabala Jeram Damodar & Anr.** reported in (2013) 15 SCC 358, it is contended that considering averments in the plaint, City Civil Court had no jurisdiction to entertain the suit. Relying on the same judgment, it is submitted that only course available with this Court is to return the plaint to the appellant for presenting it before the Court of competent jurisdiction.

2. Considering averments in the plaint, the request needs to be granted.

3. Plaint in Suit No.2152 of 2002 is returned to the plaintiff with liberty to the plaintiff to present it before appropriate Court.
4. Mr. Sawant, learned advocate for the respondent contends that this Court had already declared defendant to be protected tenant of suit property. It would be open for the defendant to raise all such contentions before the competent Court once such plaint is presented before the competent Court.
5. In that view of the matter, the first appeal is disposed of in above terms. No costs.

(AMIT BORKAR, J.)