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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3672 OF 2024

THE BOMBAY ST. XAVIER'S COLLEGE
SOCIETY AND ANR.

..PETITIONERS

VS.

M/S. MANISHA CATERERS

..RESPONDENT

Adv. Abhishek Ingale a/w. Adv. Pradeep Kumar, Adv. Sudeshkumar
Naidu i/b. C.R. Naidu & Co. for petitioners.

Adv. Srishti Shetty a/w. Adv. Bhavesh Wadhwani, Adv. Kajal Gupta,
Adv. Shweta Singh i/b. M. V. Kini & Co. for respondent.

CORAM : Rajesh S. Patil, J.

DATE : 16th December 2024.

JUDGMENT :

1. RULE. Rule made returnable forthwith. By consent of the parties heard finally.

2. The present writ petition is filed under Article 227 of the Constitution of India, challenging the judgment and order dated 10 August 2018 passed by the Small Causes Court, Mumbai, on Order below Exhibit 34 in R.A.D. Suit No. 557 of 2018, and as confirmed by the judgment and order dated 2 January 2024, passed by the Division Bench of the Small Causes Court at Bombay in Revision Application

No.303 of 2022. The petitioners are the original defendants in a suit filed for Declaration of Tenancy before the Small Causes Court at Bombay being R.A.D. Suit No. 557 of 2018. The respondent is the original plaintiff in the said R.A.D.Suit No. 557 of 2018. The parties are hereinafter referred to as per their nomenclature before the Small Causes Court.

3. In the Petition, the petitioners have put up their case that petitioner no.1/defendant no.1, is a Educational Trust established in the year 1869 who imparts education through its college being St. Xavier's College at Mumbai. The defendant no. 2 is one of the trustees of defendant no.1-Trust. The defendant no.1 had set up a canteen in its college campus for the benefit of its students and staff. The plaintiff then was appointed as a Manager of canteen. Subsequently, in the year 2017, the defendants had entered into a Conducting Agreement with the plaintiff, for one and half year.

4. The plaintiff in the year 2018 filed a suit for declaration of tenancy being R.A.D.Suit No.557 of 2018 against the defendants in respect of an area in the campus of the college being canteen admeasuring 2500 sq. ft. and staff accommodation area admeasuring 300 sq.ft. The defendants appeared in the said R.A.D.Suit and filed their written statement, resisting the claim of the plaintiff. So also,

the defendants filed an application under Section 9A of the Code of Civil Procedure and an application under Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'Arbitration Act') (Exhibit 34), contending therein that the relation between the parties arises out of "Conducting Agreement" dated 3 August 2017 and in the said agreement Clause 38 contains an Arbitration Agreement. Hence, the dispute between the parties should be referred to an Arbitrator for adjudication. The defendants, thereafter, also filed a Arbitration Petition under Section 9 before this Court on 14 May 2018 being an Arbitration Petition No. 560 of 2018. By an order dated 7 June 2018, passed in Arbitration Petition, the consent of the parties that they will co-operate before the Small Causes Court, Mumbai, for disposing of the preliminary issue was recorded. So also, the plaintiff's statement that he is not in possession of the "Nescafe Area" was recorded. By an order dated 21 August 2018, the said Arbitration Petition was disposed of. Since a preliminary issue was framed before the Small Causes Court, Mumbai, the defendants withdrew the Section 9 Petition with liberty to take out the appropriate proceedings.

5. Consequently, the plaintiff filed its reply to the application (Exhibit 34) filed under Section 8 of Arbitration Act before the Small Causes Court, Mumbai. Both the parties were thereafter heard by the

Judge of the Small Causes Court on application Exhibit 34 filed under Section 8 of the Arbitration Act, and by his order dated 10 August 2018 the Judge of the Small Causes Court rejected the application Exhibit 34, thereby holding that the suit for declaration of tenancy filed before the Small Causes Court was maintainable and the parties cannot be referred to arbitration as the dispute between the parties is that of a landlord and a tenant.

6. Being aggrieved by the judgment and order dated 10 August 2018 passed by the Judge of the Small Causes Court, the defendants preferred Revision being Revision Application No. 303 of 2022, before the Division Bench of the Small Causes Court at Bombay. The parties were thereafter heard by the Division Bench in the Revision Application, and by its judgment and order dated 2 January 2024, the Revision Application filed by the defendants, was dismissed, thereby by confirming the order passed by the Single Judge of the Small Causes Court.

7. The original defendants before the Small Causes Court, by way of the present writ petition challenges the concurrent findings recorded by the Single Judge of the Small Causes Court and as confirmed by the Division Bench of the Small Causes Court.

SUBMISSIONS:-

8. Mr. Abhishek Ingale appeared on behalf of the petitioner (original defendant before the Small Causes Court) and made his submissions.

8.1 He submitted that after the period of the Conducting Agreement was expired the plaintiff did not hand over the kitchen area to the petitioners/defendants. The Conducting Agreement was dated 3 August 2017 which was executed in favour of plaintiff.

8.2 Since there was only a Conducting Agreement between the parties, the plaintiff in real sense was not in exclusive possession of any area.

8.3 In fact since the inception of the canteen until the year 1992, the canteen was run by the Governing body of the college through its own personnel and its employees. In the year 1992, Mr. Narayan Chandan was appointed as a Manager of the canteen.

8.4 Thereafter, on a request being made by the said Narayan Chandan, a Conducting Agreement dated 3 August 2017 was entered into between the college authorities and the said Mr. Chandan along with his wife as partners of M/s. Manisha Caterers.

8.5 Under the said agreement, the plaintiff enjoyed electricity

supply, water, etc. provided by the defendant - college authorities.

8.6 Under the provisions of Section 36(1)(b) of the Maharashtra Public Trusts Act, 1950, no lease for a period exceeding three years in the case of non-agricultural land or a building belonging to a public trust, shall be valid without a previous sanction of the Charity Commissioner.

8.7 He submitted that Section 33 (1) of the Maharashtra Rent Control Act, 1999 (for short 'Rent Act') confers jurisdiction on specified Courts "to entertain and try any suit or proceeding between a landlord and a tenant", relating to the recovery of rent or a possession of any premises and to decide any application preferred under the Rent Act.

8.8 Section 34 of the Rent Act provides for appeal against an order passed by the Judge of the Small Causes Court specified in Section 33(1).

8.9 Section 35 read conjointly with Section 33(1) and Section 34 indicates that the Courts specified in the said Sections have been vested with primary jurisdiction to try and entertain suits only between a landlord and tenant and if subject matter of the suit is for recovery of rent or possession of any tenanted premises or any

application made under the Rent Act.

8.10 Section 33(1) of the Rent Act has to be read with the provisions of the Presidency Small Causes Courts Act, 1882. Under the Presidency Small Causes Court Act all suits and proceedings between the licensor or licensee are entertainable before the Small Causes Court in a summary manner.

8.11 Section 19 of the Presidency Small Causes Courts Act, 1882 for classes of suits in which the Small Causes Court shall have no jurisdiction.

Section 34 of the Specific Relief Act provides that any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled.

8.12 The provisions of Section 34 of the Specific Relief Act mandates that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

8.13 A suit or proceeding u/s. 34 of the Specific Relief Act, ordinarily lies before the City Civil Court and including this Court in

exercise of its Ordinary Original Civil Jurisdiction, having jurisdiction to grant declaratory decree.

8.14 In other words, there should be a pre-existing jural relationship of landlord and tenant between the parties, for the Small Causes Court at Bombay, to have jurisdiction.

8.15 Mr. Ingale to buttress his submissions has referred to the following judgments.

- (a) *Kashinath Gosavi Patil vs. Govala Vyankanna Tatayya*¹;
- (b) *Mina Srinivasan Krishnan vs. Arun Bhaskar Adarkar*²;
- (c) *Smita Rajeev Sah vs. Roop Narain Sah*³;
- (d) *J. C. & Sons vs. Ghafrana Banobi Ahmed Ali*⁴;
- (e) *Rasiklal Kumbha Gala vs. Manilal Ravji*⁵;
- (f) *Ratanlal Gulabji Bhati vs. Himmatlal Hukumji Parihar*⁶;
- (g) *Fatimabai Noor Mhamed vs. M. Khali Ahemd and anr*⁷;
- (h) *Purshottam Shankar Shetye vs. Abhay Shridhar Shetye*⁸

9. The learned counsel Ms. Srishti Shetty made submissions on behalf of the respondent/original plaintiff.

9.1 She submitted that Section 8(1) of Arbitration Act states that the reference to arbitration must be made at the first instance and

¹ (1995) 1 Mh.L.J. 861

² 2014 SCC OnLine Bom 633

³ 2013 SCC OnLine Bom 474

⁴ 2007 SCC OnLine Bom 82

⁵ 2005 SCC OnLine Bom 931

⁶ (1987)-1-Bom C.R. 458

⁷ 1992 Mh.L.J.1605

⁸ 2020 (6) Mh.LJ 86

applies not later than the date of submitting his first statement on the substance of the dispute. To buttress her submission, she relied upon *Rashtriya Ispat Nigam Ltd. & Anr. Vs Verma Transport Co.*⁹. where the Supreme Court held that the first statement on the substance of the dispute means written statement. In the present case, there is no reference in the written statement that the matter should be referred to arbitration in view of arbitration clause under the conducting agreement nor there is reference in the reply to injunction application filed by Petitioner. In fact, an application for inspection and appointment of court receiver is filed by the Petitioner, thus have themselves subjected to the jurisdiction and are now precluded from relying on the arbitration clause.

9.2 She submitted that the language used in Section 33 of Rent Control Act, 1999, section 28 of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and section 41 of Presidency Small Cause Courts Act, 1882 are *pari materia*. With effect from 31.03.2000 all rent control acts applicable to the state are repealed and Maharashtra Rent Control Act, 1999 is brought into force which is applicable throughout the State.

9.3 She submitted that Section 41 of the Presidency Small Causes

⁹ (2006) 7 SCC 275

Courts Act, 1882 confers exclusive jurisdiction on the Small Causes Court. This Court in Full bench judgment in *Central Warehousing Corporation Limited vs Fortpoint Automotive Pvt Ltd.*¹⁰ held at in 41 that inspite of the Arbitration Agreement between the parties and non-obstante clause in Section 5 of Arbitration Act, the exclusive jurisdiction lies with the Small Causes Court to try and decide the dispute specified in Section 41 of the 1882 Act.

9.4 She further relief upon *Natraj Studio Pvt. Ltd. vs. Navrang Studio*¹¹, in context of the Section 28 of the Bombay Rent Act, 1947, it was held that the provision was a law by virtue of which disputes contemplated therein could not be submitted to arbitration.

9.5 Thereafter, she further relief upon the Supreme Court decision in *Babulal Bhuramal v. Nandram Shiram*¹² in which the suit for declaration of tenancy and the declaration of sub-tenancy was held to be a suit for protection from eviction by a tenant and hence was held liable to be filed under Section 28 of the Bombay Rent Act (the predecessor of Section 33 of the MRC Act). Nevertheless, the prayers sought in the present suit are declaration of a tenant as well as reliefs under section 29 of the Maharashtra Rent Control Act, 1999, thus the

¹⁰ 2010(1) Mh.L.J.

¹¹ (1981) 1 SCC 523

¹² 1959 SCR 367

exclusive jurisdiction vests with Small Causes Courts Act, 1882.

9.6 She submitted that Section 2(3) of the Arbitration Act categorically prescribes that it shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.

9.7. She further relied upon *Abdulla Bin Ali and others v. Galappa and others*¹³, where the Court held that the question of jurisdiction of a Civil Court depends upon the allegations in the plaint.

9.8 She further submitted that the respondent runs and owns the catering business, and XAVIER'S, as an educational institution, has only provided the premises for the business. A conducting agreement would be as if XAVIER'S were previously carrying on canteen business, and Manisha Caterers were subsequently granted permission to conduct the affairs for XAVIER'S.

9.9 She heavily relied upon Section 15 of the Maharashtra Rent Control Act which defines a term 'tenant' and according to her, the respondent is a 'tenant' of the petitioner. Further, she also stated that the only ingredient to prove tenancy is the rent receipts. Hence, the Writ Petition is liable to be dismissed with heavy cost.

¹³ 1985 SCC 54

9.10. She relied upon the following judgments :

1. Dattaray Krishan Jangam vs Jairam Ganesh Gore¹⁴
2. Sabavva Kom Hanmappa Simpiger vs Basappa Andanappa Chiniwar¹⁵
3. Devidas Mohanlal Gupta vs Shri Ajesh Suresh Sarvaiyya¹⁶
4. Ravindra s/o Vitthalrao Songire vs. Labhshetwar and Sakkarwar Constructions¹⁷
5. Babulal Bhuramal vs Nandram Shivram & Ors.¹⁸
6. Rashtriya Ispat Nigam Ltd. Vs Verma Transport Co.¹⁹

ANALYSIS AND CONCLUSION :-

10. I have heard the learned counsel of both the sides and with their assistance I have perused the proceedings on record.

10.1. In the present writ petition, the original defendants/trust have raised an issue in a declaring suit that the matter is subject of a conducting Agreement wherein there is an Clause of Arbitration Agreement, hence, in view of Section 8 of the Arbitration Act, the parties be referred to Arbitration.

11. The plaintiffs on 7 May 2018 filed a suit for *declaration of*

¹⁴ 1964 SCC OnLine Bom 30

¹⁵ [1955] ILR 386

¹⁶ 2007(1) Mh.L.J. 362

¹⁷ 2010 (1) Mh.L.J.994

¹⁸ 1958 SCC OnLine SC 24

¹⁹ S.C. Civil Appeal No. 3420 of 2006

tenancy under Section 33 of the Maharashtra Rent Control Act against The Bombay St. Xavier's College Society and its trustee Father (Dr.) Anthony D'souza (Rector). The defendants appeared in the suit and initially preferred an application under then prevailing Section 9-A of the Code of Civil Procedure.

12. As according to the defendants disputes had arisen between the parties with regard to payment of certain charges and the plaintiff was not willing to vacate the premises, the defendant no.1 – Educational Society on 14 May 2018 filed Arbitration Petition under Section 9 of the Arbitration Act in this Court seeking interim measures to direct the plaintiff to pay electricity charges, to comply with provisions of Employees State Insurance Act, Employees Provident Fund, G.S.T. and to restrain the plaintiff by mandatory order of injunction from entering into the premises or staying over the premises. In said Section 9 Petition, the learned Single Judge of this Court by his order dated 7 June 2018 directed the parties to approach the Small Causes Court in the Declaratory Suit and the preliminary issue of “jurisdiction” be decided first. As Section 9A of Code of Civil Procedure was deleted from the statute, the defendants, preferred an application under Section 8 of the Arbitration Act, in the declaratory suit of tenancy before the Small Causes Court, therein

seeking a direction that since dispute had arose between the parties, in the light of the Arbitration Agreement contained in Conducting Agreement dated 3 August 2017, the parties to the suit be referred to Arbitral Tribunal.

12.1 In the reply to the Section 8 application of the defendants, the plaintiff in paragraph 3 has stated that they are covered under Section 41 of the Presidency Small Cause Courts Act, 1882. However, in further paragraphs the plaintiffs have taken up a defence of tenancy. According to me, the plaintiff cannot take two different stands i.e. one of tenancy under the Maharashtra Rent Control Act and another of protection as licensee under Section 41 of the Presidency Small Cause Courts Act, 1882.

13. However, the said application of the defendants was dismissed, so also, a Revision against the dismissal of the application, was also rejected. Being aggrieved by both the orders, the present Writ Petition has been preferred by the defendants.

14. The compilation of the documents filed before me contains a copy of the plaint, copy of Conducting Agreement dated 3 August 2017, copies of the receipts and the copy of the documents filed by the plaintiff along with the plaint.

15. After going through the title of the plaint, it appears that the plaintiff M/s. Manisha Caterers has filed suit against “The Bombay St. Xavier’s College Society” and its trustees, thereby seeking a declaration of tenancy pertaining to an area admeasuring 2500 sq. ft. as canteen area and area admeasuring 300 sq. ft. being a staff room. The copies of around 155 payment receipts have been shown to me, on the basis of which the plaintiff has claimed that these receipts pertain to rent paid by the plaintiff to the defendants from the year 1993. I have gone through the copies of the payment receipts which are 155 in number with the help of the learned counsel for the parties. It appears that most of these receipts appeared to be issued by St. Xavier’s College Hostel. A few of these receipts appeared to be of the defendant no.1. i.e. The Bombay St. Xavier’s College Society. Most of these receipts appear to be on account “Donation towards objectives of the Trust”. Only two of these receipts appear to be on account of “use of premises for cafeteria”. One of such receipt dated 26 August 2017 appear to be towards deposit of Rs.2 lakhs. Therefore, in my view, most of the receipts are not in the name of the defendant no.1. According to me, the claim of the plaintiff of tenancy on the basis of these receipts, most of which appear to be in the name of St. Xavier’s College Hostel, would not be of any help to the plaintiff

for claiming tenancy from defendant no.1/Trust. Therefore, according to me, only on the basis of such receipts the plaintiff could not claim tenancy.

16. The plaintiff has also not produced on record any kind of document which can be termed as “Tenancy Agreement”, though the case of the plaintiff in the plaint is that of tenancy created from the year 1993.

17. It will also be important to note that when the dispute arose between the parties, there were exchange of notices between them. The plaintiff through its Advocate’s notice dated 27 April 2018 and 29 April 2018 have referred themselves as “Manisha Caterers, who is conducting the canteen in college premises”. These notices were addressed to defendant no.1 and/or to the Advocate of the defendant no.1. Therefore, according to me, the plaintiff was itself quite clear that they are in the suit premises pursuant to the “Conducting Agreement”.

18. As disputes arose between the parties with regard to payment of certain charges and the plaintiffs not vacating the premise, the defendants/trust filed Section 9 petition. Just before the filing of Section 9 petition, the plaintiffs had filed suit for declaration of

tenancy. In the said suit, the defendants filed an application under Section 8 of the Arbitration Act, on the basis that there was the Conducting Agreement between the plaintiff and the defendant no.1, in which there is a specific clause for referring parties to the arbitration, in case of any dispute. Before I deal with Clauses of 'Conducting Agreement', let us see what kind of reliefs were sought in Section 8 petition and Section 9 petition.

19. Prayer under Section 8 Petition i.e. Ex.34 preferred by the petitioners/defendant is as follows :-

“ I, therefore, submit that this is a fit case where the disputes and differences between the parties, being covered under an Arbitration Agreement within the meaning of Section 7 of the Arbitration Act the parties, be referred to a Sole Arbitrator for arbitration of the dispute as per law.”

20. Prayers under Section 9 Petition preferred by the petitioners are as follows :-

“In the circumstances, the Petitioner pray

a) That this Hon'ble Court, as an interim measure, by a mandatory order and direction direct the Respondent to :

i. Forthwith pay to the Petitioner and/or deposit a sum of Rs.5,04,000/- towards balance electricity and water charges payable under the Conducting Agreement;

ii. Undertake to this Hon'ble Court that Respondent shall pay the amount as per electricity bill of BEST in respect of Meter No.S160016 within 3 days from the date of receipt of the Bill;

b) Furnish compliance of obligations, Rules and Regulations under Employees State Insurance Act, 1948, Employees Provident Fund & Miscellaneous Provision Act, 1952 and GST on and upto 30th April 2018;

c) Pending the Arbitration Petition and thereafter pending the final Award the Respondent, their Partners, employees / workmen / Agents / Servants and/or any person claiming under them be restrained by a mandatory order of injunction from entering or squatting or staying over or picketing in the Petitioner's premises situate at 5, Mahapalika Marg, Mumbai - 400 001;

d) For cost of this Petition;

e) For such other and further reliefs as this Hon'ble Court may deem fit and proper.

21. Therefore, according to the petitioner/defendant, there were disputes and differences between the parties to the Conducting Agreement, with regard to electricity and water charges payable, compliance of obligation under Employees State Insurance Act, Employees Provident Fund Act, GST, and also with regard to entering or squatting or staying over or picketing in the Petitioner's premises by the Respondent/Plaintiff.

22. At this stage, it will be necessary to look into the important relevant clauses of the Conducting Agreement, they are as under :-

(3) In order to run the cafeteria, the Trust has set up a kitchen, which has LPG/Gas connection, electric connection, electrical equipments, etc. attached to the kitchen is a Dining Area having fans, lights, chairs, tables, etc. 8 Gas Cylinders and stainless steel Heater.

(4) The Trust has the requisite permissions/licenses from the Municipal Corporation and other authorities to conduct the cafeteria within the college premises. Whatever fees paid by the Trust for obtaining/renewal of license from Health Department, BMC or from any such regulatory bodies shall be reimbursed by the Conductor.

(6) The Trust therefore, on the following terms and conditions has decided to give on conducting basis the said cafeteria along with the equipments, utensils, furniture, and fixtures and an assured customer base of about- to-customers per day, who will visit the cafeteria.

TERMS AND CONDITIONS

(2) This Agreement shall be valid for a period of eleven months from 1st June 2017 to 30th April 2018 and thereafter it may be extended for a further period, on mutual agreement.

(6) The Conductor will deposit with the Trust a sum of Rs. 2,00,000/- (Rupees Two Lakh only) as Security Deposit towards security against the equipments provided by the Trust in the cafeteria. The aforesaid Security Deposit will not carry any interest whatsoever. At the end of the term of this agreement or its early determination, the above security deposit will be refunded to the Conductor subject to clause 7 below.

(8) The Conductor shall pay conductor fee of Rs.10,00,000/- fixed for a period of 11 months which will be paid in two installments, first installment being on 1st July 2017 and second installment on 18th December 2017.

(37) For termination of this agreement three months notice will be required from either party in writing. The Conductor and his staff shall vacate the cafeteria premises peacefully after expiry of the term

under this Agreement and shall hand over peaceful and vacant possession of the premises to the Trust with the items of the Trust as mentioned in this agreement. The Conductor will be entitled to remove, without any damage to the cafeteria premises, any articles that might be brought in or paid by the Conductor.

(38) In case of dispute between the parties the same shall be referred to an arbitrator of mutual consent and his/her decision shall be final and binding on both parties.

(39) The Conductor has a bare permission only to run a cafeteria in the College premises during the contract period and nothing contained in this document shall be construed as demise in law of the said cafeteria premises or any part thereof and shall not give any legal title or interest to the Conductor.

[Emphasis supplied]

23. The Conducting Agreement is signed by both the parties. So also, on each and every page there appears to be initials of both the parties. In the entire Conducting Agreement, there is no reference of any tenancy being created, neither there is any reference of “rent” to be paid by the parties. The document is titled as “Conducting Agreement” and in the beginning the parties are referred as “*The defendant no.1 is referred to as ‘Trust’, and the plaintiff is referred to as “the conductor.”*”

24. Under Section 16 of the Arbitration Act, the Arbitral Tribunal has powers to rule on its own jurisdiction, including ruling on any objection with respect to the existence or validity of the Arbitration

Agreement. In the present proceedings, there is an Arbitration Clause in the Conducting Agreement. Interpretation of the clauses of the Conducting Agreement can be done by the Arbitral Tribunal. Though the declaration of tenancy can be decided only by the Court of the Small Causes, in my view, taking into consideration the fact that there is no document brought on record by the plaintiff wherein a claim of tenancy can be made, for example – Rent Agreement, rent receipt etc. Whereas the defendants have specifically brought on record a copy of the Conducting Agreement, signed by both the parties, wherein there is an Arbitration Clause, the disputes and differences as stated by the Petitioner in Section 8 and Section 9 application can be decided by the Arbitrator.

25. Under the Maharashtra Rent Control Act, the term “conductor” and the term “conducting agreement”, are not defined. As far as eviction of a tenant or that of a licensee under leave and licence agreement is concerned, the same has been provided under Section 24 and in Section 33 of the Maharashtra Rent Control Act.

In the present proceedings, the respondent has filed a suit for declaration of a tenancy. After one goes through the clauses of the conducting agreement, it is clear that the respondent does not fall

into the definition of tenant neither he falls into the definition of licensee.

In the contents of the conducting agreement there is no reference to relationship of the landlord and the tenant, neither there is mention of relationship of licensor and licensee as defined under the Act.

26. Section 7(15) of Maharashtra Rent Control Act, 1999 defines tenant

7(15) "tenant" means any person by whom or on whose account rent is payable for any premises and includes,-

(a) such person,-

- (i) who is a tenant, or
- (ii) who is a deemed tenant, or
- (iii) who is a sub-tenant as permitted under a contract or by the permission or consent of the landlord, or
- (iv) who has derived title under a tenant, or
- (v) to whom interest in premises has been assigned or transferred as permitted,

by virtue of, or under the provisions of, any of the repealed Acts;

- (b) a person who is deemed to be a tenant under section 25;
- (c) a person to whom interest in premises has been assigned or transferred as permitted under section 26;
- (d) in relation to any premises, when the tenant dies,
- ...

27. The term “licensee” in Section 7(5) is defined under the Maharashtra Rent Control Act which reads as under :-

(5) “Licensee” in respect of any premises or any part thereof, means the person who is in occupation of the premises or such part, as the case may be, under a subsisting agreement for licence given for a licence fee or charge; and includes any person in such occupation of any premises or part thereof in a building vesting in or leased to a co-operative housing society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1960; but does not include a paying guest, a member of a family residing together, a person in the service or employment of the licensor, or a person conducting a running business belonging to the licensor or a person having any accommodation for rendering or carrying on medical or para-medical services or activities in or near a nursing home, hospital or sanatorium or a person having any accommodation in a hotel, lodging house, hostel, guest house, club, nursing home, hospital, sanatorium, dharmashala, home for widows, orphans or like premises, marriage or public hall or like premises, or in a place of amusement or entertainment or like institution, or in any premises belonging to or held by an employee or his spouse who on account of exigencies of service or provisions of residence attached to his or her post or office is temporarily not occupying the premises, provided that he or she charges licence fee or charge for such premises of the employee or spouse not exceeding the standard rent and permitted increase for such premises, and any additional sum for service supplied with such premises or a person having accommodation in any premises or part thereof for conducting a canteen, creche, dispensary or other services as amenities by any undertaking or institution; and the expressions “ licence”, “licensor” and “premises given on licence” shall be construed accordingly;

[Emphasis supplied]

Hence, it is evident beyond a shadow of doubt that a conductor of a business has no protection under the Maharashtra Rent Control

Act. Therefore in my opinion for evicting a conductor who is occupying premises beyond the period of Conducting Agreement, a suit would lie in Civil Court.

28. This Court on numerous occasions has held that as regards eviction of a party/person from the premises in which Conducting Agreement is involved, the same can be done by filing a suit before the Civil Court. In the case of *Purushottam Shetye* (supra) Single Judge of this Court relied upon the judgment delivered in *Anusuyabai Narayanrao Ghate vs. Smt. Maktumbi S. Nadaf*²⁰ and *Fatimabai Noor Mohd vs. M. Khallil Ahmed*²¹, and held that since there was a Conducting Agreement between the parties, and there being no relationship of landlord and tenant between the parties, Section 41 of the Presidency Small Causes Courts Act would not be invoked by the parties to the Conducting Agreement. In my view, the principles laid down by this Court in these judgments would squarely apply to the facts of this case. Since I am dealing with proceedings where there is a Conducting Agreement entered into between parties.

29. Supreme Court in *Babulal Bhuramal* (supra) was dealing with the facts where the 1st plaintiff filed a suit in City Civil Court, against

²⁰ 1999 (1) Mh. L.J. 836

²¹ 1992 Mh.L.J.1605

the defendant who was the landlord. The plaintiff no.2 and plaintiff no.3 were persons to whom the suit premises was sublet by the plaintiff no.1. Earlier the 1st plaintiff as a landlord had filed a suit for eviction against defendant as tenant and the plaintiff no. 2 and plaintiff no. 3 as subtenant alleging that plaintiff no.2 and plaintiff no.3 were trespassers. The Small Causes Court held that the plaintiff no.2 and plaintiff no.3 were not lawful subtenants and accordingly a decree of eviction against all the plaintiffs was passed. An appeal carried against the eviction decree was unsuccessful and the revision application to the High Court was summarily dismissed. Thereafter, plaintiff no.1 filed a suit in the City Civil Court for a declaration of tenancy. In such facts the Court held that the City Civil Court could not determine the issue of tenancy. The present proceeding is on a completely different set of facts and findings arrived at in *Babulal Bhuramal* (supra) would not be applicable in the present set of facts.

30. In *Sabavva Kom Hanmappa Simpiger* (supra), the Division Bench of this Court was dealing with a dispute between landlord and a tenant pertaining to a shop where the lease expired and the tenant did not vacate the shop in accordance with the terms

of the Rent Note and so the dispute arose, which was referred to arbitration. The Court held that the question of eviction was specifically covered under the Rent Act, hence, the award passed by the arbitrator is without jurisdiction. In my view, the law laid down by the Division Bench in this judgment would not be applicable to the present proceedings as in the present case the parties are bound by Conducting Agreement.

31. A single Judge of this Court in *Devidas Gupta* (supra) was dealing with the facts where suits were instituted in a Small Causes Court, on the file of 2nd Civil Judge, Junior Division, Amravati for recovery of possession, under Maharashtra Rent Control Act in which the defendant raised objection under Section 33(i)(c)(2), that jurisdiction of all other courts to take cognizance of dispute is barred, as the said Act containing special provisions and proceedings under section 25 or 26A of Provincial Small Causes Court Act has no application to these suits and therefore they be registered as a regular suits and to try the same accordingly. The court held that the suit has to be tried by Small Causes Court and there is no discrimination made by the Rent Act. Since the Court of Small Causes is functioning in any area either established under the Provincial Act or because of

investing of Small Causes jurisdiction by High Court under Civil Courts Act. The facts and law laid down in this judgment has no bearing to the present proceeding.

32. The Full Bench of this Court in *Dattatraya Jangam* (supra) were dealing with two questions to be determined namely, whether the City Civil Court have jurisdiction to entertain a suit that is a subtenancy created by tenant after coming into force of Bombay Rent Act and whether the City Civil Court have jurisdiction to entertain a suit for declaration that a plaintiff is a tenant or a subtenant of the defendant and for injunction restraining the defendants from proceeding for an order of eviction under Section 41 of the Presidency Small Causes Act.

According to me, in this judgment the issue was regarding subtenancy. The findings recorded by the Full Bench will not applicable with the present set of facts.

33. The Single Judge of this Court in *Ravindra Songire* (supra) was dealing with facts wherein there was a leave and license agreement and the licensee claimed that arbitrator be appointed under Section 11 of the Arbitration Act, since there was an arbitration clause. The Court held that the dispute has

arisen out of leave and license agreement and the same would be covered under Section 24 and 33 of the Maharashtra Rent Control Act. In the present proceedings, there is a Conducting Agreement and not a leave and license agreement, therefore, the findings recorded in the said judgment would not be applicable to the present proceedings.

34. In *Rashtriya Ispat Nigam Ltd.* (supra) the Supreme Court was dealing with a situation wherein in a contract entered into by and between the parties regarding transportation of goods wherein the appellant with a view to avoid termination of all contracts raised a plea that one Mr. Verma had resigned from the partnership firm and he was replaced by his family members as partners of the firm and the said Mr. Verma continued to be in complete control over the firm. The contract was terminated by the appellant. Thereafter, the respondent firm filed suit for grant of injunction, in the said suit Civil Judge Junior Division directed parties to maintain status-quo. The appellant appeared in the proceedings and raised a plea of the issue being covered by the Arbitration Agreement. The peculiar facts in this judgment were not dealing with any tenancy agreement, leave and license agreement or Conducting

Agreement. It was regarding to a contract of supply of goods, hence, the findings recorded therein would not be applicable.

35. In *Natraj Studios* (supra) the parties had entered into leave and licence agreement with regard to two studios and other premises. The court held that after amendment to the rent act in the year 1973, the parties in possession of the premises got protection as deemed tenant from 1 Feb 1973. Hence, the jurisdiction did not lie to the arbitral tribunal and only small causes court had jurisdiction.

36. In *Central Warehousing* (supra) the Full Bench of this Court was dealing with the question “whether in view of the provision of section 5 of the arbitration act, agreement between the licensor and licensee, which contained clause of arbitration, jurisdiction of the small causes court under the Presidency Small Causes act 1882, would be ousted. The full bench held that under a leave and license agreement the jurisdiction of small causes court cannot be ousted in view of section 41 of the presidency small causes court act. The findings in this judgment does not apply to the present proceedings since the full bench was dealing with a issue arising between licensor and licensee, admittedly in the present

processing the dispute is not between licensor and licensee.

37. Taking into consideration the law as laid down in the above mentioned authorities and the facts of this case, I am of the view that when there is a Conducting Agreement, the parties cannot approach the Small Causes Court for eviction or for any other ancillary relief, the correct forum would be Civil Court, and if such Conducting Agreement contains the arbitration clause, the parties should invoke the Arbitration Clause to decide their disputes.

38. Hence, the Rule is made absolute in terms of prayer Clauses

(a) and (b) which reads as under :-

(a) That this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ or Order or Direction under Articles 226 & 227 of the Constitution of India calling for records and proceedings of R. A. D Suit No.557 of 2018 and after going through the legality, validity and propriety of the impugned Order dated 10th August 2018 at Exhibit-A, hereto be pleased to quash and set aside the said order;

(b) That this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ or Order or Direction under Articles 226 & 227 of the Constitution of India calling for records and proceedings of Revision Application No.303 of 2022 and after going through the legality, validity and propriety of the impugned Order dated 2nd January 2024 at Exhibit-B, hereto be pleased to quash and set aside the said order.

39. The parties are hereby referred to Arbitration to decide their disputes and differences. They are free to take steps for

appointment of Arbitrator.

(Rajesh S. Patil, J.)

40. At this stage, Ms. Kajal Gupta seeks stay to the execution of this order. Mr. Abhishek Ingale, the learned counsel appearing for the petitioners opposes this request.

41. By the order passed today the impugned orders passed by the Small Causes Court have been set aside. The disputes are now referred to the Arbitral Tribunal which is yet to be constituted. In view of this, the request made by the learned counsel for the respondent seeking stay to this judgment is rejected.

(Rajesh S. Patil, J.)