

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1805 OF 2025**

Balkishen Ruplal Mehra ... Petitioner

versus

Ecom Express Pvt. Ltd. ... Respondent

SWAROOP
SHARAD
PHADKE

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Mr. Kapil Moye i/by Mr. S.R.Page, for Petitioner.

CORAM: N.J.JAMADAR, J.

DATE : 10 FEBRUARY 2025

P.C.

1. Heard the learned Counsel for the Petitioner.
2. The challenge in this Petition is to an order dated 20 September 2024 passed by the learned Judge, City Civil Court, whereby a preliminary issue as to whether the City Civil Court has jurisdiction over the subject matter of the suit came to be answered in the affirmative.
3. The Petitioner had let out the premises situated on the ground floor and basement at Mehra Center, Marwah Estate, Saki Vihar Road, Mumbai – 400 072 (the subject premises), on a licence, under an Agreement dated 1 November 2014. The licensee had deposited with the licensor an amount of Rs.81 Lakhs towards the security deposit.

4. Differences arose between the Petitioner-licensor and the Respondent-licensee. Asserting that there were negotiations and the terms of settlement were arrived at between the parties, and, eventually, the Petitioner committed breach of the terms of the settlement, the Respondent instituted a Summary Suit for recovery of the security deposit of Rs.81 Lakhs along with interest @ 12% p.a. from 20 December 2015.

5. Summons for Judgment taken out by the Respondent was rejected and unconditional leave to defend the suit came to be granted to the Petitioner.

6. As the jurisdiction of the City Civil Court to entertain and try the suit, in view of the provisions contained in Section 41 of the Presidency Small Causes Court Act, 1882 and Section 21 of the Maharashtra Rent Control Act, 1999 was questioned, on the basis of the pleadings, by an order dated 16 November 2021, the learned Judge, City Civil Court, ruled that the issue “whether the City Civil Court has jurisdiction over the subject matter of the suit” be decided as a preliminary issue. By the impugned order, the learned Judge, City Civil Court answered the said issue in the affirmative observing that, the suit is for recovery of security deposit, and, thus, the said suit is maintainable as a summary suit and the bar under Section 41 of the Presidency Small Causes Act, 1882 does not come into play.

7. Mr. Moye, learned Counsel for the Petitioner, strenuously submitted that there is no quarrel with the proposition that a suit for recovery of the security

deposit is maintainable under the provisions of Order XXXVII of the Code of Civil Procedure, 1908. However, the instant suit is not one for recovery of the security deposit simpliciter. From the perusal of the averments in the plaint itself, it becomes abundantly clear that the Plaintiff has raised an issue of adjustment of the licence fee, which the Plaintiff as a licensee was obligated to pay. The said issue of the recovery of the licence fee, the period for which the amount has fallen due, the period for which the Plaintiff was in arrears of licence fee and the amount which can be adjusted against the security deposit, allegedly payable by the Defendant to the Plaintiff, are the questions which are within the exclusive jurisdiction of the Court constituted under the Presidency Small Causes Court Act, 1882 ("the Act, 1882") and the jurisdiction of all other courts is ousted. To bolster up the aforesaid submission, Mr. Moye invited attention of the Court to the averments in paragraph No.33 of the plaint.

8. I have perused the averments in the plaint, especially those in paragraph No.33 of the plaint. It is trite, the plaint is required to be read in a meaningful and not formalistic manner. And the plaint is required to be read as a whole. Incontrovertibly, the prayer in the suit is primarily that of an order and decree for the return of the security deposit of Rs.81 Lakhs, alongwith interest thereon.

9. The legal position as regards the maintainability of the suit for refund of

the security deposit under Order XXXVII of the Code, is fairly well settled. A suit for refund of the security deposit squarely falls within the ambit of the provisions contained in Order XXXVII of the Code and the bar under Section 41 of the Act, 1882 does not apply to such suit.

10. In the case of ***RMC Readymix (I) P. Ltd. vs. Kanayo Khubchand Motwani***¹ a learned Single Judge of this Court held that Section 41 of the Act, 1882 applies only in the cases where the suit is related to, “recovery of possession” of premises or for payment of compensation under the Leave and Licence Agreement. A suit for refund of security deposit under the Licence Agreement with interest thereon is not covered by the provisions of Section 41 of the Act, 1882.

11. The aforesaid pronouncement was followed by another learned Single Judge in the case of ***Sanjog Sadanand Parab of Mumbai vs. B. P. Gharda & Co., Chartered Accountants and ors.***². In the case of ***Bafna Motors Private Ltd. vs. Amanulla Khan***³, this Court had an occasion to consider this aspect in the context of arbitrability of the dispute over refund of the security deposit. After advertng to the decisions in the cases of ***RMC Readymix*** (supra), ***A. S. Patel Trust and others vs. Wall Street Finance Limited***⁴, ***Brainvisa Technologies Pvt. Ltd. vs. Subhash Gaikwad (HUF)***⁵, in the light

1 2006(4) Mh.L.J. 299.

2 (2012) 5 Bom CR 258.

3 Arbitration Application No.340/2019, dtd.5/5/2022.

4 Com. Arbitration Petition No.452/2019, dtd.23/7/2019.

5 Arbitration Application No.195/20110, dtd.14/09/2012.

of the Full Bench judgment in the case of **Central Warehousing Corporation vs. M/s. Fortpoint Automotive Pvt. Ltd.**⁶ this Court observed as under:

“36. The aforesaid pronouncements indicate that this Court has, in a line of decisions, consistently held that a dispute over the refund of security deposit does not fall within the ambit of the exclusive jurisdiction of the Court of Small Causes conferred by section 41 of the Act, 1882. A suit to recover the said amount in the jurisdictional Court and, in case the parties are governed by an arbitration agreement, determination of such dispute through arbitration, is legally in order. These decisions rest on the premise that exclusive jurisdiction is restricted to only those subjects which section 41(1) of the Act, 1882 specifically reserves for the adjudication by the Court of Small Causes. Those subjects are: relating to the recovery of possession of any property situated in Greater Bombay or the recovery of the license fee or charges or rent therefor.”

12. In all fairness, Mr. Moyo submitted that there is no duality of the opinion on the point that a suit for recovery of security deposit is maintainable as a summary suit. Mr. Moyo, however, made an endeavour to persuade the Court to hold that on account of the averments in paragraph No.33 of the plaint, the instant suit cannot be considered as a suit for return of the security deposit, plain and simple. Paragraph No.33 of the plaint reads as under :

“33. The Plaintiff submits that despite the Defendant's assurance and confirmation to fulfill their obligations to refund the security deposit amount under the original settlement terms, the Defendant has clearly failed and neglected to refund the admitted security deposit amount to the Plaintiff, which establishes that the Defendant has no intention whatsoever to make the payment of the aforesaid admitted liquidated sums/debt due and payable to the Plaintiff. The Plaintiff submits that since the Defendant has admitted his liability debt, they cannot now, after inducing the Plaintiff to comply with the original settlement terms, deny and/or dispute such liquidated liability/debt. It is further submitted that the Plaintiff in due compliance of the original settlement terms are still willing to make the payment of Rs.67,90,174/- (Rupees Sixty Seven Lacs Ninety Thousand One Hundred and Seventy Four only) i.e. the Settlement Amount to the Defendant and further willing to vacate the demised

6 2010(1) ALL MR 497.

premises in accordance with the original settlement terms, subject to the Defendant simultaneously handing over a Banker's cheque in the total amount of Rs.81,00,000/- and interest at the rate of 12% per annum until payment and realization."

13. I am afraid, the aforesaid averments in paragraph No.33 of the plaint advance the cause of the submission on behalf of the Defendants. Properly construed, the aforesaid submissions indicate that the Plaintiff asserted that the Defendants induced him to comply with the original terms of settlement between the parties, the Plaintiff acted upon the said terms and the Defendants reneged therefrom. Yet the Plaintiff was still ready to comply with the original settlement terms, and was willing to make the payment of the settlement amount and vacate the subject premises in accordance with the original settlement terms provided the Defendants returned the security deposit along with interest @ 12% p.a.

14. The aforesaid averments, in my considered view, do not alter the primary and singular character of the suit i.e. suit for recovery of the security deposit.

15. The Writ Petition stands dismissed.

(N.J.JAMADAR, J.)