

GIST OF WORKSHOP PAPERS

1. CONCEPT OF LICENSEE – LICENSOR UNDER THE PRESIDENCY SMALL CAUSES COURTS ACT, 1882

In common parlance, a "licence" is a power or authority to do some act, which, without such authority, could not lawfully be done. Section 52 of the Indian Easement Act, 1882 defines the term "licence". Thereby, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be regarded as unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence in favour of that particular person or group of persons.

The Presidency Small Causes Courts Act, 1882 (in short PSCC Act) does not define the expression "licensor" and "licensee" even though both these expressions find a place in Section 41(1) of the said Act. Licensor is a person who grants the license. Ordinary meaning of licensee in Stroud's Judicial Dictionary of Words and Phrases, Sixth Edition, Vol. 2 is that a licensee is a person who has permission to do an act which, without such permission, would be unlawful.

Section 5(4A) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (for short Bombay Rent Act) and present Section 7(5) of the Maharashtra Rent Control Act, 1999 defines the term 'Licensee' as a 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 fees or charges. It includes any person in such occupation of any premises or part thereof in a building vesting in or leased to a cooperative housing society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1960. It also provides a list of persons who are not included in the said definition

e.g. Paying guest, a person having any accommodation in hostel, hospital etc. Section 52 of the Indian Easement Act, 1882 does not require any consideration, material or non-material, to be an element of the definition of licence, nor does it require that the right under the licence must arise by way of contract or as a result of a mutual promise. Thus, licence as defined in Section 52 of the Indian Easement Act can be a unilateral grant and unsupported by any consideration. The Hon'ble Apex Court¹ held,

“payment of licence fee is not an essential attribute for subsistence of licence.”

The concept of “licence” as reflected in the definition of licensee under Sub-section (4A) of Section 5 of the Bombay Rent Act and Section 7(5) of the Maharashtra Rent Control Act, 1999 on one hand and Section 52 of the Indian Easements Act on the other hand are contra distinguishable. Under Rent Act, there cannot be licence unsupported by any material consideration whereas under Section 52 payment of licence fee is not an essential attribute for subsistence of licence. Therefore, a question arises as to which definition of Licensee is applicable to suits filed under Section 41 of the PSCC Act, 1882. The Hon'ble Apex Court² held that,

“the expression 'licensee' employed in Section 41 of PSCC Act is used in general sense of term as defined in Section 52 of the Indian Easement Act.”

Accordingly the position is well settled.

2. CONCEPT AND EVICTION OF GRATUITOUS LICENSEE UNDER THE PRESIDENCY SMALL CAUSES COURTS ACT, 1882

¹ *State of Punjab Vs. Brig. Sukhjit Singh (1993 (3) SCC 459)*

² *Prabhudas Damodar Kotecha and Ors. Vs. Manhabala Jeram Damodar and Anr. (2014 Bom. R.C. 1)*

“Gratuitous” means given or done free of charge. It means given without any consideration. Previously, there was controversy as to whether a suit for eviction of gratuitous licensee is maintainable under Section 41 of the PSCC Act, 1882 before the Court of Small Causes. This question is resolved by the Hon'ble Apex Court³ by invoking one umbrella policy i.e. bringing all disputes together. It is held,

“We are of the considered view that the High Court has correctly noticed that the clubbing of the expression “licensor and licensee” with “landlord and tenant” in Section 41(1) of the PSCC Act and clubbing of causes relating to recovery of licence fee is only with a view to bring all suits between the “landlord and tenant” and the “licensor and licensee” under one umbrella to avoid unnecessary delay, expresses and hardship.”

Therefore now, a suit against gratuitous licensee is maintainable before Small Causes Court vide Sec. 41 of the PSCC Act, 1882.

3. JURISDICTION AS CONTEMPLATED UNDER SECTION 41 OF THE PRESIDENCY SMALL CAUSES COURTS ACT, 1882

Section 41(1) of the PSCC Act provides that notwithstanding anything contained elsewhere in this Act but subject to the provisions of sub-section(2), the Court of Small Cause shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of any licence fee or charges or rent therefor, irrespective of the value of the subject-matter of such suits or proceedings.

Sub section (2) provides that nothing contained in sub-

³ *Prabhudas Damodar Kotecha Vs. Manhabala Jeram Damodar (2014 Bombay Rent Cases 1)*

section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property, or of license fee or charges of rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947, the Bombay Government Premises [Eviction] Act, 1955, the Bombay Municipal Corporation Act, the Maharashtra Housing and Area Development Act, 1976 or any other law for the time being in force apply.

Section 41 of the PSCC Act is interpreted by the Hon'ble Apex Court⁴. It is held that,

“the following conditions must be satisfied before taking the view that the jurisdiction of the regular competent Civil Court is ousted :

- 1. It must be a suit or proceeding between the licensee and licensor; or*
- 2. between the landlord and tenant or*
- 3. such suit or proceeding must relate to the recovery of possession of any immovable property, situated in Greater Bombay, or*
- 4. relating to the recovery of licence fee or charges or rent thereof.”*

Thus, if the suit is not between the landlord and tenant or the licensee and licensor and is not relating to recovery of possession of immovable property, then the Court of Small Causes has no jurisdiction. The Hon'ble Bombay High Court⁵ held that,

“a suit for declaration of title cannot be entertained by the Court of Small Causes under Section 41 of the Presidency Small Causes Courts Act, 1882.”

The phrase “relating to recovery of possession” as found in Section 41(1) of the PSCC Act has also been interpreted by the Hon'ble

⁴ *Mansukhlal Dhanraj Jain, Vasdev Prakash Vs. Eknath Vithal Ogale, Vimla Premchand Hinduja (AIR 1995 S.C 1102)*

⁵ *Smita Rajeev Sah and another Vs. Roop Narain Sah and another (2013(5) Mh. L. J. 211)*

Apex Court⁶. It is held that,

“the words 'relating to' are of wide import and can take in their sweep any suit in which the grievance is made that the defendant is threatening to illegally recover possession from the plaintiff-licensee. Suits for protecting such possession of immovable property against the alleged illegal attempts on the part of the defendant to forcibly recover such possession from the plaintiff, can clearly get covered by the wide sweep of the words 'relating to recovery of possession' as employed by Section 41(1).”

Similarly the Hon'ble Bombay High Court⁷ held that,

“a suit relating to the recovery of possession brings within its sweep not merely a suit by the landlord for recovery of possession but a suit by a tenant or licensee for protecting his possession of immovable property against an unlawful attempt on the part of the landlord to recover possession.”

It is settled by the Hon'ble Apex Court⁸ in order to determine the jurisdiction, averments in the plaint are germane. The question of denial of relationship by the defendant in the written statement or reply is immaterial.

4. SUIT IN WHICH COURT OF SMALL CAUSES HAS NO JURISDICTION VIDE SECTION 19 OF THE PSCC ACT, 1882

Vide Section 19 of the PSCC Act the suits of 23 suits categories wherein the jurisdiction of the Court of Small Causes is ousted. The important kinds to be noted out of them are, suits concerning assessment, for partition of immovable property, for specific

⁶ *Mansukhlal Dhanraj Jain, Vasdev Prakash Vs. Eknath Vithal Ogale, Vimla Premchand Hinduja (AIR 1995 S.C 1102)*

⁷ *Arun V. Subhedar Vs. Shyamacharan Bhagwati Prasad Tiwari (2006(6) Mh. L. J. 92)*

⁸ *Natraj Studio Pvt. Ltd. Vs. Navrang Studio, (1981(1) S.C.C. 33)*

performance or rescission of contracts, for injunction, for declaratory decrees, etc. as could be seen from the list of suits, subjects are set out over which the Court of Small Causes will have no jurisdiction. Thus, the wide jurisdiction which is conferred upon the conventional Civil Court under Section 9 of the Code of Civil Procedure has been differentiated from that of the jurisdiction of the Court of Small Causes. If plaintiff is seeking alternative reliefs and if either of the reliefs cannot be granted by Small Cause Court. The Hon'ble Bombay High Court⁹ on that point held that

“the said suit will not lie or could be entertained by the Small Causes Court being beyond the jurisdiction of the Court.”

The Hon'ble Bombay High Court¹⁰ held that,

“vide S. 19(s) 41 and 45 of the P.S.C.C. Act, suit for declaration of title cannot be decided by the Court of Small Causes.”

5. JURISDICTION AS CONTEMPLATED UNDER THE PROVINCIAL SMALL CAUSES COURTS ACT, 1887

Section 15 of the Provincial Small Causes Act, 1887 provides that suits specified in its II Schedule are exempted from being tried by the Court established under Provincial Small Causes Act. There are 44 categories of the suit which are exempted from the jurisdiction of the said Act. However if any enactments is in force or by the order of the Government, the suits of a civil nature of which the value does not exceed Rs. 2,000/- shall be cognizable by the Court of Small Causes. As per Section 16 of the said Act, a suit which can be tried by the Court of Small Causes established under Provincial Small Causes Act, 1887 shall

⁹ *Govindram Salamatrai And Anr. Vs. Dharampal Amarnath And Anr. (AIR 1951 Bombay 390).*

¹⁰ *Smita Rajeev Sah and anr. Vs. Roop Narain Sah and anr. (2013 (5) Mh. L.J. 211).*

not be tried by any other Court.

Section 26 of the said Act provides that suits or proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and licence fees or rent, except those to which other Acts apply, shall lie in Court of Small Causes. The non obstante clause in sub-section (1) of Section 26 of the Act provides that the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in the area within the local limits of the jurisdiction of the Court of Small Causes, or relating to the recovery of the licence fee or charges of rent therefor, irrespective of the value of the subject-matter of such suits or proceedings.

The Hon'ble Bombay High Court¹¹, held that,

“If the value of the subject matter of the suit covered by Section 26(1) of the Small Cause Courts Act exceeds the pecuniary limits specified under Section 28(1) of the Civil Courts Act, then a Civil Judge invested with the jurisdiction of a Court of Small Causes shall not have jurisdiction to entertain, try and decide such suit, as a small cause suit of a summary nature, but it will have to be decided as a regular suit and the procedure for deciding such suit will be governed by the Code of Civil Procedure and not by the procedure prescribed under the Small Cause Courts Act. The reason for this is that the High Court is not competent under Section 28(1) of the Civil Courts Act to invest any Civil Judge with the jurisdiction of a Court of Small Causes beyond the pecuniary limits specified in that Section.”

¹¹ Radheshyam Chandak Vs. The District Judge, Amravati & Medha Popalkar (MANU/MH/1221/2010).

Thus a Civil Judge invested with the jurisdiction of a Court of Small Causes under Section 28(1) of the Bombay Civil Courts Act can function as a Court of Small Causes to the extent of pecuniary limits prescribed under Section 28(1) of the Bombay Civil Courts Act and it shall not have jurisdiction to entertain, try and decide the suits covered by Section 26(1) of the Provincial Small Causes Courts Act, irrespective of the value of the subject matter of such suits.

6. THE JURISDICTION AS CONTEMPLATED UNDER SECTION 28 OF THE BOMBAY RENTS, HOTEL AND LODGING HOUSE RATES CONTROL ACT, 1947.

Introduction :-

Lack of jurisdiction is one of the most common defences raised in the suits instituted in the Court of Small Causes, Bombay. So as far as Small Causes Court, Bombay is concerned, jurisdiction is conferred under Section 41 of the Presidency Small Causes Courts Act, 1882 (In short, “the P.S.C.C Act”), under Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control, Act 1947 (In short, “the Bombay Rent Act, 1947) and under Section 33 of the Maharashtra Rent Control Act, 1999 (In short, “the MRC Act”).

Section 28 of the Bombay Rent Act, 1947 confers an exclusive jurisdiction on the Court of Small Causes at Bombay, in Greater Bombay, and in any area on a Court of Small Causes, if established under the Provincial Small Cause Courts Act, 1887, for that area and elsewhere, on the Court of Civil Judge (Junior Division) having jurisdiction in the area or where there is no such Civil Judge (Junior Division), Court of Civil Judge (Senior Division) exercising jurisdiction in the area, to entertain and try any suit or proceeding of certain specified nature between landlord and tenant.

Object of Section 28 :-

Section 28 of the Bombay Rent Act, 1947 is one of the most important sections laying down the forum for remedy and solving diverse problems arising under this Act. This legislation being based on social economy relating to housing accommodation and to preserve this economic measure legislature has vested exclusive jurisdiction in the lowest cadre Courts. The underlined idea is that it will be a cheaper forum from the view point of weaker section of the community, viz tenants. The second underlined object is to see that the weaker section of the community will not be bothered to approach the various forums or grades of Court as under the Bombay Civil Courts Act, 1933, according to the variation of the demised premises. Another underlined object was to ensure that matters are expedited and disposed of as early as possible. The rules framed under the Bombay Rent Act, 1947 also indicate the said object.

The exclusive jurisdiction of the Courts specified in Section 28 of the Bombay Rent Act, 1947 arises only if a person invoking jurisdiction of the Court only alleges that other party is his landlord or tenant and the question or claim is one which is referred to in the section. Such relationship need not be admitted. When the Court frames the issue of jurisdiction, next point arises that on what basis the jurisdiction of the Court is determined ?

Scope of Section 28 :-

The Hon'ble Apex Court¹² considered the scope of Section 28 of the Bombay Rent Act, 1947 and the question whether the parties are permitted by a contract to oust the jurisdiction of the Court specified under Section 28 of the Bombay Rent Act, 1947. It is held that,

¹² *Natraj Studios (P) Ltd Vs. Navrang Studios (AIR 1981 S.C 537)*.

“18. Thus exclusive jurisdiction is given to the Court of Small Causes and jurisdiction is denied to other Courts (1) to entertain and try any suit or proceeding between a landlord and a tenant relating to recovery of rent or possession of any premises, (2) to try any suit or proceeding between a licensor and a licensee relating to the recovery of licence fee or charge, (3) to decide any application made under the Act and, (4) to deal with any claim or question arising out of the Act or any of its provisions.”

Accordingly Section 28 takes within its scope the disputes pertaining to landlord-tenant, licensor-licensee in respect of recovery of the rent and possession of the suit premises.

Hon'ble the Bombay High Court¹³ held that,

“Section 28 of the Bombay Rent Act confers jurisdiction upon the courts, specified in the section, not only to decide questions referred to in the section, but also all matters which are incidental or ancillary to the determination of those questions. The words used in the section are 'relating to' 'recovery of rent or possession' and not for recovery of rent or possession. The words 'relation to' are very wide and would include any suit or proceeding in connection with or having a direct bearing on the question of possession of the premises.”

The observations illuminates the position well.

Conclusion -

It may be said that in order to determine whether the Small Causes Court, Bombay has or has no jurisdiction to try a rent suit,

¹³ *Dattatraya Krishna Jangam Vs. Jairam Ganesh Gore, (AIR 1965 Bom. 177).*

provisions of Section 28 of the Bombay Rent Act, 1947 have to be looked into and not the provisions of Section 18 of the P.S.C.C Act. Once, the Court has jurisdiction to entertain the suit or proceeding, the Court will have jurisdiction to decide all incidental or ancillary questions.

7. EXEMPTIONS AVAILABLE UNDER THE MAHARASHTRA RENT CONTROL ACT, 1999.

The Maharashtra Rent Control Act, 1999 provides the list of premises exempt from its purview. The same are premises belonging to Government or local authority or in respect of any grant/licence created by the Government in respect of any requisitioned premises including any premises taken on behalf of Government as tenant/licensee or Government. Similarly, the premises let or sub-let to the Banks or any public sector undertaking or any Corporation established by or under any Central or State Act or foreign missions, international agencies, multi-national companies and private limited companies as well as public limited companies which are having a paid-up share capital of rupees one crore or more. These companies and Banks are exempted from applicability of this Act.

The premises belonging to the Government or local authority does not include the construction carried out on Government land on the strength of agreement grant etc. in his favour.

The Hon'ble Apex Court¹⁴ settled the law as regards whether PSU are excluded from the Act is settled. Thereby it is held that,

“being companies they are not exempted from the Act.”

Hence PSU are not governed by the M.R.C. Act, 1999.

14 *Smt. Leelabai Gajanan Pansare Vs. The Oriental Ins. Co. Ltd. (2008 (9) SCC 720).*

8. EXCLUSION OF JURISDICTION OF SMALL CAUSES COURTS UNDER SEC. 24 OF THE MAHARASHTRA RENT CONTROL ACT, 1999.

One of the main main object of the M.R.C. Act, 1999 is that of encouraging the construction of new houses by assuring a fair return.

Keeping the said object in mind, the Act provides special relief for making an application to the competent authority for possession of the premises by the landlords, who have given premises on licence as well as by the members of armed forces, scientists in the department of atomic energy of Government of India who requires the premises for their bonafide use.

The Hon'ble Apex Court¹⁵ held that,

“The said Act contemplates a summary disposal of the applications. By the very nature of the proceedings as reflected from the aforesaid statutory provisions, the jurisdiction of Competent Authority is very limited. (It can decide a dispute between a landlord (licensor) and the licensee). It is obvious that considering the summary nature of the proceedings, issue of title to the disputed premises can never be decided in such proceedings.”

Thus the licensors in respect of houses have been held as protected by special procedure.

The Hon'ble Apex Court¹⁶ held that,

“Chapter VIII of the Act is itself with a caption, 'Summary disposal of certain applications' and section 39 reads that the provisions of Chapter VIII or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in the Act or in

15 *Surendra B. Agarwal Vs. AML Merchandising Pvt. Ltd. (2010(1) Mh. L.J. 223).*

16 *Prakash H. Jain Vs. Marie Fernandes (AIR 2003 SC 4591).*

any other law for the time being in force.”

Therefore, there is hardly any scope to have recourse to any other provisions in the very Act or any other law, when particularly there is specific and clear provisions or stipulation in Chapter VIII itself as to how a particular situation has to be handled and what are the powers of the authorities constituted for the purpose of Chapter VIII of the Act. Thus, under section 24 of the Maharashtra Rent Control Act, 1999, the jurisdiction of Small Causes Court is excluded.

9. THE JURISDICTION CONTEMPLATED UNDER SECTION 33 OF THE MAHARASHTRA RENT CONTROL ACT, 1999.

Section 33 of Chapter VII of the Maharashtra Rent Control Act, 1999, deals with the provisions regarding jurisdiction of Courts, suits, appeals practice and procedure whereby the said section laid down the forum for remedying and solving the diverse problem arising under the said Act. The Rent Act legislation is totally based on social economy relating to housing accommodation therefore, the underlined idea while giving the jurisdiction to the lowest cadre Courts is that it will be a cheaper forum from the point of view considering the weaker sections of the society i.e. tenants.

The jurisdiction of the Courts specified in this Section arises by reasons of subject matter as mentioned in the said section. The exclusive jurisdiction of the Courts specified in this section arises only if a person invoking jurisdiction of the Court only alleges that there is a relationship of a landlord or a tenant and the claim is one which is referred to in section 33. Such relationship of landlord and tenant need not to be admitted while deciding the jurisdiction the Court has to look into only plaint allegations if plaintiff alleges the relationship of landlord and tenant between him and the defendant and the relief, in sum and

substance, relates to the recovery of rent or possession then, the Court would have jurisdiction to entertain and try such suit. The said jurisdiction of the Court is normally and ordinarily is to be decided and determined by the Court at the time of institution of the suit from averments of the plaint. Even if the defendant denies relationship of a landlord and tenant, even then, the Court is not precluded from trying and entertaining the suit as the jurisdiction considering the plaint allegation is vested with the Court. The said jurisdiction of the Courts mentioned in the Section is wider as it is not restricted merely only to try suits for recovery of rent or possession as the Court is also empowered and vested with the jurisdiction to try dispute pertaining to the matters which are incidental or ancillary to the determination of those questions. As per Section 33, the Small Causes Court have exclusive jurisdiction to deal with matters having relationship of a landlord and a tenant. However, the Court of Small Causes is not a special Court. In other words the existence of any concurrent jurisdiction in the Hon'ble High Court or the City Civil Court to try the suit between the landlord and tenant for recovery of possession or rent under Chapter VII or under any other law has been taken away by the section 33 of the Maharashtra Rent Control Act, 1999. The Hon'ble Bombay High Court¹⁷ has made the position crystal clear.

It can be concluded that the principle object of the provision under Section 33 confers under the Small Causes Court in Brinhan Mumbai, a Presidency town or in the rest of the State of Maharashtra is to the Civil Judge Junior Division and in case if no Civil Judge then to the Civil Judge, Senior Division for having jurisdiction to entertain and try any suit or proceeding between landlord and tenant relating to recovery

¹⁷ *Shahida Sharriff and Others Vs. Amanullah s/o Hasmatullah and another*, (2014(1) Mh. L.J. 365).

of possession or rent of any premises to decide any application made under the Maharashtra Rent Control Act, 1999.

10. EFFECT OF REGISTRATION/NON-REGISTRATION OF AGREEMENT VIDE SECTION – 55 OF THE MAHARASHTRA RENT CONTROL ACT.

The Maharashtra Rent Control Act, 1999, the Act has brought in certain changes in the law that was in existence till enforcement of the same i.e. 30.03.2000. One of the major change brought in is the Act is in respect of registration of Tenancy Agreements. The most important change brought in the Act is vide Section – 55 of the Act. In a way thereby the Act has deviated from the earlier enactments. The Section contemplates compulsory registration of the Tenancy agreement under the Registration Act, 1908. If that is so, there is no escape route from mandatory registration. Now let us turn to the effect of non-registration.

The effect of registration :-

If we peruse Section – 24(3)(b) of the Act it emerges that the licence in writing shall be “conclusive proof” of the facts stated therein. Accordingly in case of written licence, the proof is of the kind “conclusive proof” as defined under section – 4 of the Indian Evidence Act. Thereby the evidence to disprove the fact shall not be allowed. The literal meaning of the same is that the registration of Agreement gives it legal sanctity.

The effect of non-registration :-

So as to understand the effect of non-registration of the Licence Agreement, sub-sections 2 and 3 of Sec. 55 are relevant. Those deal with

- i. Interpretation of the terms and conditions.

- ii. Penal consequence of imprisonment which may extend to three months or with fine not exceeding rupees five thousand or with both.

Since the aspect of non-registration is relevant for us, let us confine ourselves to Sec. 55(2) of the Act. Vide that Section “the responsibility of getting such agreement registered shall be on the landlord and in the absence of the written registered agreement, the contention of the tenant about the terms and conditions subject to which premises have been given to him by the landlord on leave and licence or have been let to him, shall prevail, unless proved otherwise”. In order to have better appreciation of the provision, we need to consider the same alongwith the provisions Registration Act, 1908.

The impact of Registration Act, 1908 :-

If we peruse the scheme of Registration Act, 1908, it emerges that Section 17 of the same provides for documents of which registration is compulsory. Surprisingly it does not contain the Tenancy Agreements. The reason behind the same is that the Registration Act is Central enactment and the amendment as regards mandatory registration of licence agreement is by way of State amendment. If that is so, placing reliance upon Sec. 49 of the Registration Act dealing with the effect of registration/non-registration of documents requiring compulsory registration will not come into picture. The Section 49 of the Registration Act specifically provides that in case of document, requiring compulsory registration is not dealt with accordingly, it shall not affect the immovable property comprised therein. In short it bars the reception in evidence of a document of transfer. However, the proviso poses question about the applicability.

The proviso to the said Section 49 prescribes that such

document may be received as evidence of any collateral transaction not required to be effected by registered instrument. If that is so, the following question crops up

“How to place reliance upon the document which is not registered ?”

In order to solve this impasse, the following Judgment can be used as guiding star.

The Hon'ble Bombay High Court¹⁸ ruled in para 20 as,

“Therefore, a document which requires registration under section 55 of the said Act does not become an invalid document. The presumption under clause (b) of explanation to section 24 of the said Act is applicable only when an application for eviction is filed relating to the premises given on licence for residence. In other proceedings, the said presumption may not apply....”

The afore-quoted observations are self-explanatory and makes the position crystal clear.

Conclusion :-

So as to conclude it can be said that the provisions of Section 55 of the Act are in consonance with the provisions of the Indian Evidence Act, 1872. Though the registration of documents is made mandatory, it does not debar proving the contents to be otherwise.

11. SECTION 9 OF CODE OF CIVIL PROCEDURE, 1908.

Vide Section 9 Civil Court shall have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The word ‘shall’ makes it mandatory.

¹⁸ *Shri Amit B. Dalal Vs. Shri Rajesh K. Doctor* decided on 3rd May, 2010 (Bench : Hon'ble Justice A.S. Oka).

What are the suits of civil nature has been explained by the Explanation I and II of section 9. The principles relating to section 9 of the Code of Civil Procedure are now well settled and have been explained by the Hon'ble Apex Court from time to time. They have been succinctly laid down by the Constitution Bench of the Hon'ble Apex Court¹⁹. The seven commandments issued thereunder are self explanatory and state the situation where it is to be inferred. A three-Judge Bench of the Hon'ble Apex Court²⁰ observed,

“There is a presumption that a Civil Court has jurisdiction. Ouster of Civil Court’s jurisdiction is not to be readily inferred. A person taking a plea contra must establish the same. Even in a case where jurisdiction of a Civil Court is sought to be barred under a statute, the civil court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or tribunal acts without jurisdiction.”

Hence there shall be no confusion about ouster of jurisdiction of Civil Court due to availability of Tribunal.

The Hon'ble Apex Court²¹ observed that while drawing distinction between the maintainability of civil suit and appeal, the Hon'ble Apex Court held as under,

*“15. There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may at one’s peril bring a suit of one’s choice. ...But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have ‘**the clear authority of law**’. That explains why the right of appeal is described as a creature of*

19 *Dhulabhai etc. Vs. State of Madhya Pradesh and another*, [(1968)3 SCR 662].

20 *Rajasthan SRTC Vs. Bal Mukund Bairwa*, [(2009) 4 SCC 299].

21 *Smt. Ganga Bai Vs. Vijay Kumar and ors.* (AIR 1974 SC 1126).

statute.”

Accordingly unlike civil suit there is no inference about existence of jurisdiction with Appellate Court.

Thus it is clear that Civil Courts are competent to decide all civil matters unless their jurisdiction is barred or excluded by any statute.

12. SECTION 9-A (MAHARASHTRA AMENDMENT) OF CIVIL PROCEDURE CODE, 1908.

Objections to jurisdiction :-

Jurisdiction of the Court is important not only for the purpose of instituting the suit, but even for the sake of execution of a decree. Bombay Court²² held that,

“if objection to jurisdiction is raised, one has to apply mind to the plaint. If wrong jurisdiction is exercised, it leads to unexecutable decrees. Therefore, if jurisdiction of a Court is objected, importance is given to such objections and it is tried to be decided at the earliest.”

Thus pleadings in the plaint is the basis to decide about jurisdiction.

The aim and object of the Section is explained by the Hon'ble Bombay High Court²³ thereby, Section 9-A mandates the Court to decide objection to the jurisdiction as a preliminary issue, if taken, while hearing of application relating to the interim relief in a suit. It is observed by the Hon'ble Bombay High Court²⁴ that,

“It is not inconsistent with provisions of Order 14 Rule 2 of Code of Civil Procedure, 1908. Hence, it cannot be said to be repealed by

²² *Sanyam Realtors Vs. Shyamji, (2014(1) Mh. L.J. 244).*

²³ *Kamlakar Vs. Baburav, (2015(2) Mh. L.J).*

²⁴ *Madhuri Patole Vs. Aruna Gaikwad [2008(1) Bom. C.R.709].*

Amendment of 1999 and 2002 to the Code of Civil Procedure, 1908. The jurisdiction can be objected on grounds of the pecuniary jurisdiction, the territorial jurisdiction and express or implied bar, the exclusion of jurisdiction by an express legal Agreement.”

The objection as to jurisdiction requires an adjudication. It is also covered by the Principle of Waiver. Section 9A is inserted to avoid this situation, to decide the jurisdiction in such cases and to prevent the abuse of process by a plaintiff dragging a defendant to a trial of the suit on merits when there is serious doubt about the maintainability of the suit itself. The Hon'ble Bombay High Court²⁵ has held it accordingly.

The Hon'ble Bombay High Court²⁶ held that

“there is a bar on jurisdiction of Civil Court when a special tribunal is created under special statute. The jurisdiction of Civil Court is ousted only in respect of those reliefs which could be granted by special tribunals in special statute and in other respects, jurisdiction of Civil Court is not ousted.”

It further elucidates the position about jurisdiction when alternate forum is available.

Once the Court frames preliminary issue under section 9A, the Court is duty bound to give opportunity to both the parties to lead evidence on preliminary issue, if they desire. The Hon'ble Bombay High Court²⁷ has observed that,

“raising and determination of the issue under section 9A of Civil Procedure Code, 1908

²⁵ *Jugraj K. Raka Vs. Mulchand K. Raka (2014 (4) AIR BOM. R. 229).*

²⁶ *Rite Choice Trading Company Vs. Vikram Govind Rao and ors. [2013(6) Mh. L.J. 955].*

²⁷ *Mehar Singh Vs. Deepak Sawhny [1998 (3) Mh.L.J. 940].*

certainly would require adjudication as the procedure prescribed in Civil Procedure Code i.e. after giving an opportunity of leading evidence to both parties.”

The Division Bench of the the Hon'ble Bombay High Court²⁸ observed that,

“provisions of section 9A are mandatory in nature and plea once raised, Court is under obligation to decide it. Section 9A starts with non obstante clause and decision as to jurisdiction cannot be left to be decided at the trial stage and is to be decided even for the purposes of interim relief.”

It is further observed that,

“if an objection to jurisdiction of the Court is not taken at the hearing of application for interim relief or setting aside an order granting interim relief, then section 9A has no application. But, this cannot be made applicable to the situation that defendant who raises an objection to the jurisdiction and later on not press or give up such objection for the purpose of interim relief. Objection once raised, has to be decided by the Court as a preliminary issue.”

The Division Bench of the Hon'ble Bombay High Court²⁹ while deciding scope and ambit of Section 9A vis-a-vis the provisions of Order 14 Rule 2 of the Code of Civil Procedure 1908 and Section 3 of the Limitation Act, 1963 has observed that,

“a plea of limitation is a plea which goes to the jurisdiction of the court and it is a plea on law. When the suit is barred by law of limitation, the

²⁸ *Mukund Ltd Vs. Mumbai International Airport and others [2011 (5) Bom. C.R. 456].*

²⁹ *Foreshore Co-operative Housing Ltd Bombay Vs. Pravin Desai [2009 (2) Mh. L.J. 28].*

court is precluded from proceeding on merits of the contentions and the court is justified in framing preliminary issue of limitation under section 9A of the Code of Civil Procedure.”

Conclusion :-

Section 9 of Code of Civil Procedure, 1908 is declaratory in terms in that the Courts established would possess jurisdiction, power of authority to try the suits of civil nature excepting those the cognizance of which is expressly barred. Section 9A of C.P.C. is a complete departure from procedure established for deciding Preliminary Issue as prescribed under Order 14 Rule 2 of Code of Civil Procedure. Section 9A is mandatory in nature.³⁰

13. GRANTING OF INTERIM RELIEFS PENDING THE APPLICATION UNDER SECTION-9A(2) (MAHARASHTRA AMENDMENT) OF CODE OF CIVIL PROCEDURE CODE, 1908.

The Section 9A of C.P.C. provides a self-contained scheme with a non-obstante clause which mandates the Court to follow the provision. Once an issue of jurisdiction is raised at the hearing of an application for the grant of interim relief or for setting aside an order granting interim relief, the Court is under an obligation to decide that issue as a preliminary issue before deciding the question of interim relief. The objection to jurisdiction under section 9-A is required to be determined not only for the purpose of the motion for the interim relief, but the objection as to jurisdiction goes to the root of the jurisdiction of the Court to entertain the suit itself. Once raised, the objection has to be decided by the Court as a preliminary issue.

The necessary prerequisites contained in section 9-A are that there must be an objection as to jurisdiction raised and the objection

³⁰ *Foreshore Co-operative Housing Society Limited Vs. Praveen D. Desai reported in [2015(3) Mh.L.J. 315 (Supreme Court)].*

must be raised at the hearing of any application for granting or setting aside an order granting interim relief whether by way of stay, injunction, appointment of a receiver or otherwise. In these terms the Hon'ble Bombay High Court³¹ has crystalised the position.

Sec. 9 (2) C.P.C. provides that in spite of the provisions contained in sub-Cl.(1), pending the determination of such an application I.e objection as to jurisdiction, an interim relief can be granted. The Hon'ble Apex Court³² held that,

“the Court is not helpless in doing so.”

Where an objection to jurisdiction of a Civil Court is raised to entertain a suit and to pass any interim orders therein, the Court shall decide the question of jurisdiction in the first instance but that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. The interim orders so passed are orders within jurisdiction when passed and effective till the Court decides that it has no jurisdiction to entertain the suit. These interim orders undoubtedly come to an end with the decision that the Court had no jurisdiction. It is open to the Court to modify these orders while holding that it has no jurisdiction to try the suit.

Once an objection to jurisdiction is raised, before hearing of any interim relief application, then the Court is required to frame the preliminary issues by verifying the strength of the objections. After the issues are framed, the parties to the suit are entitled for leading necessary evidence and upon full hearing of the preliminary issues, the

31 *Fedroline Anthoney Vs. Vinod Vishanji*, reported in (2002(3) Mh. L.J. 865).

32 *Tayyabbhai M. Bagsanwalla and another Vs. Hind Rubber Ind. Pvt. Ltd. And Others*, (1997(4) Bom. C.R. 312).

dispute of jurisdiction is required to be resolved. Such a dispute requires hearing and therefore, Section 9-A (2) provides for grant of an interim relief necessary during the pendency of hearing of the preliminary issues as to the jurisdiction. This is the mandate of the Hon'ble Bombay High Court³³.

14 to 16. OUSTER OF JURISDICTION OF SMALL CAUSES COURTS BY THE MAHARASHTRA SLUM AREAS (IMPROVEMENT, CLEARANCE & REDEVELOPMENT) ACT, 1971.

As per section 22 of the aforesaid Act, previous permission of the competent authority is required for the institution of the suit seeking the decree of eviction of an occupier in the building in slum area. Prior to amendment to clause (a) of sub section (1) of section 22 of the Act, no prior permission for institution of suit to obtain a decree or order for recovery of rental arrears was required. Whenever declaration of slum areas are notified, the suits instituted in respect of the premises in such areas prior to the date of the notification declaring the slum area are required to be continued. Section does not prohibit the court from continuing the suit which has already been instituted before the area is declared as slum. If the area is declared as slum, after institution of the suit, the very institution of the suit cannot be said to be improper. The Hon'ble Bombay High Court³⁴ held that,

“clause (b) of sub section 1 of the Section 22 of the Act contemplates a permission to be obtained only for execution of a decree and does not render the decree nonest which has been obtained in a suit filed prior to the commencement of Slum Act.”

33 *Prem Bhagwandas Harjani Vs. Naraindas Vensimal Harjani (2014(3) Bom. C.R. 518).*

34 *Hari Dhondur Gurav Vs. Jhonney Augustine Gomes, (2011 (2) Mh. L.J. 715).*

It is further observed that,

“consequently , it cannot be said that court had no jurisdiction to entertain and try the suit and/or continue with the trial after the suit premises were declared as slum.” It is also held by Hon'ble High Court that “notification declaring area to be slum area has no retrospective effect.”

The effect of declaration of area as slum is made clear.

In the case before the Hon'ble Bombay High Court³⁵ wherein a case, decree was obtained which had become final. The decree was sought to be executed. The execution was obstructed on the ground that the decree was nullity as on the date, the decree was passed area has been declared/notified as slum. Therefore, it has been held that decree is nullity and set aside the same.

The Hon'ble Bombay High Court³⁶ also got occasion to consider the provision of section 22 of the Slum Area Act, 1971. It has been held that,

“once the notification was set aside and proceedings are pending, the bar created is lifted. Once the bar is lifted, the bar on the person instituting the suit without permission goes of. The suit can be proceeded with, further.”

By way of the provision of Section 22 Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) Act, 1971, the Legislature, besides other aspects, has given protection to the occupiers of the premises against exploitation and has also curbed evil tactics of the

35 *Smt. Hasira Wd/o. Mohamed Ghaus Vs. Safiah & Ors. (1988 RCJ 57).*

36 *Hari S. Yadav Vs. Hiralal Prabhu Yadav (2002(6) Bom.C.R. (Bombay High Court) 177).*

slumlords. The Act has provided the protection against recovery of possession and arrears of rent against the occupiers to process of distress warrants and they being dispossessed by slumlords. The scheme of the Act contemplates improvement, clearance and redevelopment of the slum and while doing so the protection of the occupiers in such area from the eviction.

17. OUSTER OF JURISDICTION OF SMALL CAUSES COURTS BY THE PUBLIC PREMISES (EVICTION OF UNAUTHORIZED OCCUPANTS) ACT, 1971.

Section 15 of the Public Premises (Eviction of unauthorized Occupants) Act, 1971 (hereinafter the PP Act) bars the jurisdiction of the Civil Court to entertain a suit or proceeding in respect of the eviction of any person, who is in unauthorized occupation of a public premises. Under the said Section 15, no court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person, who is in authorized occupation of any public premises. Section 15 of the Act ousts the jurisdiction of the Court to deal with the matter of eviction or recovery of rent in respect of public premises.

The Rent Act gives protection to the tenant. That is its avowed object. The PP Act deals with public property, e.g., premises belonging to the Government or a corporate authority such as LIC. These are 'public premises'. The occupant of a public premises does not wear the armour of protection of the Rent Act. However, the occupant is not a tenant. The Rent Act clothe the tenant with rights and confers a measure of protection to those who have to rent their homes from private landlords.

The Hon'ble Apex Court³⁷ held that,

³⁷ *Banatwala and Company Vs. L.I.C. and another [(2011)13 SCC 446].*

(a) *The provisions of the Maharashtra Rent Control Act, 1999 with respect to fixation of standard rent for premises, and requiring the landlord not to cut off or withhold essential supply or service, and to restore the same when necessary, are not in conflict with or repugnant to any of the provisions of the Public Premises (Eviction of Unauthorized Occupant) Act 1971.*

(b) *The provisions of the Public Premises Act, 1971 shall govern the relationship between the public undertakings covered under the Act and their occupants to the extent they provide for eviction of unauthorized occupants from public premises, recovery of arrears of rent or damages for such unauthorized occupation, and other incidental matters specified under the Act.*

(c) *The provisions of the Maharashtra Rent Control Act, 1999 shall govern the relationship between the public undertaking and their occupants to the extent this Act covers the other aspects of the relationship between the landlord and tenants, not covered under the public Premises Act, 1971.*

(d) *The application of the appellant and similar applications of the tenants for fixation of standard rent or for restoration of essential supplies and services when necessary, shall be maintainable under the Maharashtra Rent Control Act, 1999.*

The Constitution Bench of the Hon'ble Apex Court³⁸ observed that,

“In our opinion the provisions of the Public Premises Eviction of Unauthorized Occupant Act to the extent they cover premises or in within the ambit of the Rent Control Act, overrides the provision of the Rent Control Act and a person

38 *Ashoka Marketing Ltd. Vs. Punjab National Bank [(1990) 4 SCC 406].*

in unauthorised occupation of the public premises under section 2(e) of the Act cannot invoke the protection of Rent Control Act.”

This Constitution Bench Judgment is the Landmark on the subject.

18. OUSTER OF JURISDICTION OF SMALL CAUSES COURT BY THE MAHARASHTRA CO-OP SOCIETIES ACT, 1960.

The Maharashtra Co-operative Societies Act, 1960 and the Rent Acts i.e. “Bombay Rents, Hotel and Lodging House Rates Control Act of 1947) and Maharashtra Rent Control Act, 1999 deal with two distinct and separate fields and therefore the non-obstante clause in s.91(1) of the Act and that in s. 28/s. 33 of the Rent Act operate in two different planes. The two legislations pertain to different topics of legislation. It will be noticed that s. 28/s. 33 of the Rent Act proceeds on the basis that exclusive jurisdiction is conferred on certain Courts to decide all questions or claims under that Act as to parties between whom there is or was a relationship of landlord and tenant. The Hon'ble Apex Court³⁹ dealt with the question “Whether the "non-obstante" clause in Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control has an overriding effect over the non-obstante clause in Section 91(1) Maharashtra Cooperative Societies Act, 1960 Societies Act”. It is held that,

“No doubt, the appellant acquired a right to occupy the flat as a licensee, by virtue of his being a nominal member, but in the very nature of things, his rights were inchoate. In view of these considerations, we are of the opinion that the proceedings under S. 91(1) of the Act were not barred by the provisions of S. 28 of the Rent

39 O.N. Bhatnagar Vs. Smt. Rukibai Narsindas & Ors (1982 SCC (2) 244).

Act.”

19. OUSTER OF JURISDICTION OF THE SMALL CAUSES COURT BY THE PROVISIONS OF MAHARASHTRA HOUSING AND AREA DEVELOPMENT ACT, 1976.

Section 9 of the Code of Civil Procedure, provides that the court shall have jurisdiction to try all suits of civil nature, except suits of which their cognizance is either expressly or impliedly barred whereas section 41(1) of the Presidency Small Causes Courts Act, 1882 (Here-in-after referred as 'PSCC Act'), provides for jurisdiction of the Small Cause Court in case it falls within the ambit of *the recovery of possession*. Section 177 of the MHADA mandates as - Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the authority or the Tribunal is empowered by or under this Act, to determine; and no injunction or stay shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred or duty imposed by or under this Act. As per Section 177, in cases which the Authority or Tribunal under MHADA is empowered to determine the issue involved in the said case, the Small Cause Court shall have no jurisdiction to deal with such case.

The Hon'ble Bombay High Court⁴⁰ held that,

“the first part of section 177 lays down that a Civil Court shall have no jurisdiction in respect of any matter which the Authority or the Tribunal is empowered by or under the Act to determine.”

40 *Rajan Prabhakar Borde Vs. MHADA (1983 Mh. L.J. 790).*

20. OUSTER OF JURISDICTION OF SMALL CAUSES COURT'S BY THE COMPANIES ACT, 1956

Section 10 GB of The Companies Act bars the jurisdiction of Civil Court. As per Section 10 GB, no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the appellate Tribunal empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted any Court or other authority in respect of any action taken or be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force. So also Section 630 of Company Act ousts the jurisdiction of Small Causes Court in respect of property held by the company. It gives two remedies i.e Civil as well as Criminal which is speedier than those provided under Rent Act. The Hon'ble Bombay High Court⁴¹ held,

“while considering whether the plea of tenancy is a bonafide plea, it is always necessary to examine and consider the transaction on the basis of which plea of tenancy is based and if on those facts no plea of tenancy can be raised, such a “plea can not be entertained.”

41 *Krishan Avtar Bahadur Vs. Col Irwin Extross. Administrative officer of Rallies India Ltd & Another (1985(1) Bom. CR 443).*