Varsha

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 7681 OF 2025

IN

COMMERCIAL SUIT NO. 135 OF 2025

M/s. P.E. Manning Consultants Pvt. Ltd, through its Director Sh. R.K. Beniwal, having its office at 36, Sector 5, Chandigarh – 160009. … Applicant/ Orig. Defendant No.3.

IN THE MATTER BETWEEN

National Insurance Company Ltd., Having its Mumbai Regional Office No. III At National Insurance Building, 3rd floor, 14, J. Tata Road, Churchgate, Mumbai – 400 020, Maharashtra … Plaintiff

V/s.

VARSHA VIJAY RAJGURU Digitally signed by VARSHA VIJAY RAJGURU Date: 2026.10.29 19:58:01 +0530

1. Municipal Corporation of Greater Mumbai, through its Commissioner, Having its Head Office at Mahaplika Marg, CST Fort, Mumbai 400 001.

2. Assistant Commissioner of Municipal Corporation of Greater Mumbai G/South Ward, having its Head office at N.M. Doshi Marg, Lower Parel, Mumbai-400 013.

3. M/s. P.E. Manning Consultants Pvt Ltd through its Director Sh. R.K. Beniwal having its office at 36, Sector 5, Chandigarh - 160009.

4. Station Head Officer

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Worli Police Station, Dr. Annie Besant Road, Worli, Mumbai – 400 018.] … Defendants

Mr. Pradeep Sancheti, Senior Advocate a/w. Mr. Amandeep Singh, Mr. Abhijit Ranjan, Ms. Pallavi Bali, Ms. Rithika Yerra i/b. Mr. Jayesh Desai for the Plaintiff.

Mr. Gaurav Joshi, Senior Counsel a/w. Ms. Smita D. i/b. Mr. A. Shah for defendant no.3/Applicant in IA.

Ms. Madhavi Nallure a/w. Ms. Pooja Yadav i/b. Ms. Komal Pujari for defendant no. 1 BMC.

CORAM: GAURI GODSE, J.
RESERVED ON: 20th JULY 2026
PRONOUNCED ON: 29th OCTOBER 2026

JUDGMENT:-

1) This application is filed by defendant no. 3 under Order VII Rule 11 of the Civil Procedure Code, 1908 (“CPC”) for rejection of the plaint at the threshold on the ground that it is barred under Section 41(1) of the Presidency Small Cause Courts Act, 1882 (“said Act”).

2) The suit is filed for mandatory injunction directing defendant no. 1 (“the Corporation”) to enter the plaintiff’s name as ‘sub-lessee’ in respect of the land. The plaintiff has also prayed for a declaration that the plaintiff is the bona fide sub-lessee by virtue of a registered indenture of sub-lease dated 15th February 1965 and a registered deed of assignment dated 26th March 1971.

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BASIC FACTS AS PER THE PLAINT:

3) The suit property is described as a plot of land bearing 254-C, Scheme No. 52 of Worli Estate of Municipal Corporation of Greater Mumbai situated at Dr. Annie Besant Road, Worli, Mumbai, admeasuring 4480 square yards, owned by the corporation. By a Deed of Indenture dated 8th May 1963, registered on 12th November 1963, the corporation granted a lease in perpetuity to Blackwood Hodge (India) Private Limited. Blackwood Hodge executed a sub-lease in respect of the suit property on 15th February 1965, registered on 18th August 1966, in favour of M/s Ghai Lamba Pvt. Ltd. for 97 years, also granting development rights and the right to rent out the construction. Ghai Lamba constructed a building. Under the sub-lease dated 15th February 1965, a portion of about 8000 square feet was leased to Blackwood Hodge on the top floor of the building. Thus, Blackwood Hodge was the original lessee of the land and became a sub-lessee in respect of the constructed portion of 8000 square feet.

4) By an indenture of lease dated 8th April 1965, Ghai Lamba leased out an area of 72,000 square feet on the first, second, third and fourth floors of the building to Indian Oil Corporation (“IOCL”). By an indenture of lease dated 23rd February 1966, Ghai Lamba leased

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an additional 3,910 square feet to IOCL.

5) In 1966 and 1970, Ghai Lamba obtained a loan form M/s India Reinsurance Corporation Limited and mortgaged its rights in the land. On 20th November 1969, Blackwood Hodge assigned its leasehold rights in the land to defendant no. 3. On 26th March 1971, Ghai Lamba assigned all its sub-leasehold rights in the land and the building to India Reinsurance Corporation for the balance term of 97 years. In 1972, under the General Insurance Business (Nationalisation) Act 1972, India Reinsurance Corporation Limited merged into the National Insurance Company Limited ("the plaintiff"). Under the terms of the Indenture of lease dated 15th February 1965, the plaintiff claims sole right to receive rent from the occupants of the building constructed on the suit land.

6) The property card records only the name of Blackwood Hodge as lessee, with remarks recording that an indenture of assignment dated 26th March 1971 was executed in favour of M/S India Reinsurance Corporation Limited. While the plaintiff's request for entering the name in the property card was pending, the corporation issued a notice dated 20th April 2019 under Section 353B of the Mumbai Municipal Corporation Act calling upon the plaintiff and defendant no. 3 to submit a fresh structural report of the building. The

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Corporation issued a notice dated 6th November 2019 under Section 354 of the Mumbai Municipal Corporation Act, stating that the building is unsafe and must be vacated and demolished.

7) Thereafter, by issuing a notice dated 13th November 2019, defendant no. 3 illegally terminated the sub-lease dated 15th February 1965 and also disputed the Assignment dated 26th March 1971. It was also alleged that the plaintiff did not pay rent towards the land to defendant no. 3 from September 2000. Without prejudice to its rights and contentions, the plaintiff issued a cheque towards the alleged non-payment of rent. The plaintiff informed the corporation that defendant no. 3 was likely to illegally dispossess the plaintiff. The building was demolished, and the plaintiff paid the demolition charges to the corporation on 21st March 2023. A dispute arose between the plaintiff and defendant no. 3 over the ownership of the salvage material. The corporation allowed defendant no. 3 to dispose of the salvage material. The plaintiff claims lawful constructive possession. Hence, this suit is filed.

SUBMISSIONS ON BEHALF OF DEFENDANT NO. 3:

8) Learned senior counsel for defendant no.3 submits that the scope of the suit falls within the jurisdiction of the Small Causes Court, in view of Section 41 of the said Act. Once the suit is filed for

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protection of sub-lease rights in respect of the suit property, the same would attract the provisions of Section 41(1) of the said Act. Learned senior counsel for defendant no. 3 relied upon the relevant averments in the plaint to support his submissions that, from the plain reading of the plaint, the plaintiff's right under the sub-lease has been pleaded in detail. The allegations against defendant no. 3 also pertain to the termination of the sub-lease by defendant no. 3, and the allegations made against defendant no. 3 show that the plaintiff had objected to issuing NOC to defendant no. 3. Thus, according to the learned senior counsel for defendant no. 3, all the contentions raised in the suit pertain to the leasehold rights which would fall within the jurisdiction of the said Act.

9) Learned senior counsel for defendant no. 3 submitted that the plaintiff also claims to be in constructive possession of the suit property based on the right of sub-lease which stood terminated by defendant no. 3 vide notice dated 13th November 2019. Therefore, only the Court of Small Causes would have jurisdiction to try and entertain the suit. He submitted that the Small Causes Court has jurisdiction to decide suits not only between landlord and tenant but also between the lessor and lessee. To support his submissions, he relied upon the decision of this court in the case of ***Dattatrya Krishna***

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Jangam Vs. Jairam Ganesh Gore[1].

10) Learned senior counsel for defendant no. 3 submitted that if such a suit falls within the sweep of Section 41(1), it would be entertained only by that court. To support his submissions, learned counsel for defendant no. 3 relied upon the Apex Court's decision in *Mansuklal Dhanraj Jain and Ors Vs. Eknath Vithal Ogale*[2] and this Court's Full Bench's decision in *Central Warehousing Corporation, Mumbai Vs Fortpoint Automotive Pvt. Ltd*[3]. He submits that the words 'relating to' appearing in Section 41(1) of the said Act are of a wide amplitude, and the grievance made that defendant no. 3 is threatening to illegally recover possession would also fall within the purview of Section 41(1) of the said Act, as the suit appears to be for protecting such possession which is based on a sub-lease. To support his submissions, learned counsel for defendant no. 3 relied upon this Court's decision in *Anjanabai Sonawane Vs Hindustan Construction Co. Ltd*[4].

11) On similar propositions, the learned counsel for defendant no. 3 relied upon the Apex Court's decision of *Mahadev Kambekar Vs. Shree Krishna Woolen Mills Pvt Ltd*[5]. Learned senior counsel for

1 AIR 1965 BOM 177
2 (1995) 2 SCC 665
3 2010 (1) Mh.LJ 658
4 (2014) 6 AIR BOM R 273
5 (2020) 14 SCC 505

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defendant no. 3 submitted that in a dispute between the plaintiff, who claimed to be a lessee, and a defendant, who claimed to be a lessor, the Apex Court in ***Prabhudas Damodar Kotecha Vs. Manhabala Jeram Damodar***[6]***,*** confirmed the decision of the Full Bench of this Court and held that disputes between a lessee and a lessor relating to land are governed by Section 41 of the said Act.

12) To support his submissions regarding jurisdiction over the subject matter of the dispute under Section 41(1) of the said Act, learned senior counsel for defendant no.3 also relied upon the decisions of the learned Single Judge in ***Bombay Forging Limited Vs. Manilal and Son***[7] and also this Court's Division Bench in ***Bombay Forging Limited***[8]***.*** He submits that the suit, seeking a mandatory injunction and challenging termination, falls within the scope of Section 41(1) of the said Act. Since the primary relief is barred, consequential reliefs of injunction would not confer jurisdiction on the civil court to decide the dispute between the lessee and lessor.

13) Learned counsel for defendant no. 3 submits that the jurisdiction clause and supporting pleadings in the plaint to invoke jurisdiction of the civil court are the result of clever drafting by seeking

6 (2013) 15 SCC 358
7 2015 SCC Online Bom 5793
8 2016 SCC Online Bom 2859

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ancillary reliefs which can be prayed for in the civil suit. He submits that such cleverly drafted pleadings would not make the suit maintainable, which otherwise would not be maintainable in view of the bar under Section 41(1) of the said Act. To support his submissions, learned counsel for defendant no. 3 relied upon the decision in the case of ***Sree Surya Developers and Promoters Vs. N. Sailesh Prasad and Others***[9]***.***

14) In view of Chapter VII of the State amendment to the said Act, Section 45 provides for suits involving title; however, because of the non-obstante clause in Section 41(1), Section 45 will not apply in the present case. To support his submissions, learned senior counsel for defendant no. 3 relied upon this Court's decision in ***ING Vysya Bank Limited Vs Modern India Limited***[10] and ***Nikhilesh, Kesarichand Jhaveri Vs New Era Fabrics Limited***[11]***.***

15) In view of the implied bar under Section 41 of the said Act, the plaint must be rejected against all the defendants. Since the reliefs sought against the other defendants are consequential and ancillary, the suit can be rejected against all the defendants. Without prejudice to the prayer for rejection of the plaint against all the defendants, the

9 (2022) 5 SCC 736
10 2008(2) Mh LJ 653
11 2024 SCC Online Bom 1318

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plaint can be rejected only against defendant no. 3. To support his submissions, learned counsel for defendant no. 3 relied upon the decision of the Apex Court in ***Church of Christ Charitable Trust and Educational Charitable Trust Vs Ponniamman Educational Trust***[12] and this Court's decision in ***Sheela Ram Vidhani Vs S.K.Trading Company***[13]. In the alternative, learned counsel for the defendant no. 3 submitted that where a suit is not maintainable or barred on the ground of lack of jurisdiction relating to territorial limits or pecuniary limits, the plaint can be ordered to be returned under Order VII Rule 10 of CPC. However, under Rule 283 of the Bombay High Court (Original Side) Rules, 1980, the plaint may be returned for presentation before the court having jurisdiction. To support his submissions, learned counsel for defendant no. 3 relied upon this Court's decision in ***Nagin Mansukhlal Dogli V/s Haribhai Manibhai Patel*** [14].

16) Learned senior counsel for defendant no. 3 therefore submits that the substantial prayer in the suit falls within the jurisdiction of the said Act and therefore the plaint is liable to be rejected at the threshold or returned for presentation before the Court having

12 (2012) 8 SCC 706
13 2021 SCC Online Bom 864
14 1979 SCC Online Bom 29

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jurisdiction.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF:

17) Learned senior counsel for the plaintiff submitted that Sections 19, 41 and 45 of the said Act must be read harmoniously. Section 41 cannot override Section 45; on the contrary, Section 45 overrides Section 41 so far as the issue of suit is concerned. Unlike a civil court, which has inherent jurisdiction, the Small Causes Court exercises powers conferred on it under the said Act. In a given case, while dealing with possession under Section 41, even if the Small Causes Court is allowed to consider title as an ancillary or incidental issue, that decision is not conclusive and does not operate as res judicata. Even in such a case, a party concerned who wants to establish title would be entitled to file a suit on title in view of express saving under Section 45.

18) In a long-term lease, the lessee has title to the property for the duration of the lease, and issues relating to that title are governed by Sections 105 to 114 of the Transfer of Property Act and tried by the Civil Court. If a suit seeks to challenge the termination and thereby seeks a declaration of title as lessee, it can file a suit in Civil Court, and in that suit the lessee can also seek relief for protection of its

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possession. Even in such a situation, the lessee can file a suit on title, even after the decision of the small causes court, where it incidentally decides the issue of title. Thus, by following the settled principle that possession follows title, the Civil Court will have jurisdiction to grant possession and/or protection of possession. Learned senior counsel for the plaintiff submitted that the Civil Court's jurisdiction is not excluded in disputes arising under the Transfer of Property Act. He relied upon the Apex Court's decision in ***Vidya Drolia Vs Durga Trading Corporation***[15]***.***

19) Learned senior counsel for the plaintiff submitted that, as a sub-lessee, the plaintiff has an interest and title to the property recognised under the Transfer of Property Act, as held by the Apex Court in ***B M Lall v. Dunlop Rubber Company, India Limited***[16]. Learned counsel for the plaintiff submitted that a lease operates as a conveyance and creates an interest in the property in favour of the lessee upon execution of the lease document. The rights of a sub-lessee are the same as those of a lessee. To support his submissions. Learned counsel for the plaintiff relied upon the Apex Court's decisions in ***Associated Hotels of India V/s R.N. Kapoor***[17] and ***Puran Singh Sahni***

15 (2021) 2 SCC 1
16 1967 SCC Online SC 77
17 AIR 1959 SC 1262

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Vs Sundari Bhagwandas Kripalani [18].

20) Learned senior counsel for the plaintiff submitted that under the terms and conditions of the sub-lease, the plaintiff's predecessor was permitted to construct a building, which is now owned by the plaintiff and an area of 8000 sq ft of constructed area was given on a tenancy basis to defendant no. 3, and the remaining area was given to IOCL on a tenancy basis. However, defendant no. 3 issued a termination notice and called upon the plaintiff to hand over possession. The plaintiff challenged the validity of the termination notice, seeking a declaration that it is illegal and void and that it does not affect the plaintiff's right to continue in possession during the balance period of the sub-lease.

21) Learned senior counsel for the plaintiff relied upon Section 19(s) of the said Act, which provides that the Small Causes Court shall have jurisdiction in suits for declaratory decrees. Section 41 is part of Chapter VII, and it deals only with suits relating to recovery of possession. However, Section 45 expressly provides that nothing contained in Chapter VII shall be deemed to bar a party to the suit from suing in a competent court to establish his title to such property.

18 1991(2) SCC 180

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22) Learned senior counsel for the plaintiff submitted that destruction of a leasehold property does not amount to loss of possession by the lessee. To support his submissions, he relied upon the decision of the Apex Court in ***Shah Ratansi Khimji and sons V/s Kumar Sons Hotel Pvt Limited*** [19]. He submitted that, in the present case, after the suit building was demolished because it was in a dilapidated condition, the Apex Court decided the issue of entitlement to demolish the building and held that the corporation shall demolish the building and that the cost will be equally borne by both parties. However, the Apex Court did not expressly address the issue of title.

23) A plaint cannot be rejected partially for some of the reliefs. Hence, in the present case, the plaint cannot be rejected on the ground of jurisdiction. He relied upon the Apex Court's decision in ***Central Bank of India Vs Prabha Jain***[20]. Learned senior counsel for the plaintiff relied upon the relevant averments in the plaint to support his submissions that the suit is well within the powers of the civil court. Hence, the plaint in the present case cannot be rejected at the threshold as barred by law.

LEGAL POSITION:

19 2014 (14) SCC 1
20 (2025) 4 SCC 38

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24) In ***Associated Hotels of India*** the Apex Court explained the marked distinction between a lease and a license by referring to Section 105 of the Transfer of Property Act and then compared it with Section 52 of the Easements Act, 1882. It is observed that Section 52 of the Indian Easement Act defines a licence, which gives only a right to use the property in a particular way or under certain terms, while it remains in possession and control of the owner thereof, and it does not create any estate or interest in the property in favour of the licensee.

25) In ***Puran Singh Sahni***, the Apex Court held that a lease has been defined in Section 105 of the Transfer of Property Act and the relationship of lessor and lessee is one of contract and when the agreement vests in the lessee a right of possession for a certain time, it operates as a conveyance or transfer and is a lease. It is further held that the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 ("Rent Act") has not defined a 'lease' and the Rent Act makes the 'tenant' one of status and not of contract, and the licensee has been conferred the status of a tenant under Section 15A of the Rent Act.

26) In ***Dattatraya Krishna Jangam,*** the Full Bench of this Court was

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dealing with the jurisdiction of the City Civil Court to entertain a suit for a declaration of a sub-tenancy after the coming into force of the Rent Act, and for an injunction restraining the defendant from interfering with his possession as a sub-tenant. The Full Bench was also considering the issue of jurisdiction to entertain a suit for a declaration of tenancy or sub-tenancy and for an injunction under Section 41 of the said Act. While answering these questions in the negative, the Full Bench held that Chapter VII of the Presidency Small Cause Courts Act containing Sections 41 to 49 provides a summary procedure for obtaining expeditious possession from a tenant whose tenancy had been terminated or from a licensee whose licence had been revoked. With reference to the issue of tenancy and Section 28 of the Rent Act, it is held that, assuming that a claim to a tenancy or a subtenancy can be regarded as a question of title, it is a title other than a title of a landlord, tenant or sub-tenant, whether such title is acquired or is alleged to have been acquired under a contract or under the provisions of the Act. If, therefore, in a suit or a proceeding under Section 28 a person's claim relating to possession on the basis of his being a tenant or a sub-tenant has been negatived, he cannot file a suit under Section 29A to again try and establish his rights as a tenant or a sub-tenant as the case may be.

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27) In ***B. M. Lall***, the challenge before the Apex Court was against an order of the Calcutta High Court setting aside the trial court's decree dismissing the suit for eviction on the ground of bona fide requirement. The Apex Court, while dealing with the question whether the occupier under the agreement in question was a tenant or a licensee, considered the distinction between a lease and a license. It is held that Section 105 of the Transfer of Property Act defines a lease and Section 52 of the Indian Easement Act defines a license. It is held that a lease is the transfer of a right to enjoy the premises, whereas a license is a privilege to do something on the premises which otherwise would be unlawful. The transaction is a lease if it grants an interest in the land, and a license if it gives a personal privilege with no interest in the land.

28) In ***Nagin Mansukhlal Dogli,*** the plaintiff was a monthly tenant of a flat who granted the defendant leave and licence to occupy the said flat for a period of 11 months under the leave and licence agreement, which was renewed. The defendant alleged that before the expiry of the second agreement in or about January 1970, an oral agreement was arrived at between the plaintiff and the defendant under which it was agreed that the defendant would continue as a licensee for so long as he desired and that the said licence was subsisting on

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February 1, 1973, on which date, by reason of the amendment to the Bombay Rent Act, the defendant became a protected licensee. The defendant contended that by reason of section 41 of the said Act this Court had no jurisdiction to entertain or try this Suit. The issue of jurisdiction was referred to a Division Bench for determination. This Court held that the words used in Section 41, “relating to the possession of any immovable property”, are wider than the phrase “for the recovery of possession of any immovable property.” The words “relating to” are used in Section 41 not to confine the section only to a suit for the recovery of possession of immovable property but also to permit to be included within the ambit of such a suit all other reliefs which the plaintiff can claim in a suit for the recovery of possession of immovable property on the termination of a licence or a tenancy.

29) In ***Mansukhlal Dhanraj Jain,*** the Apex Court held that the phrase “relating to recovery of possession” as found in Section 41(1) of the Small Cause Courts Act is comprehensive in nature and takes in its sweep all types of suits and proceedings which are concerned with the recovery of possession of suit property from the licensee and, therefore, suits for permanent injunction restraining the defendant from effecting forcible recovery of such possession from

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the licensee-plaintiff would squarely be covered by the wide sweep of the said phrase. It is further held that when Section 41(1) of the said Act is read in juxtaposition with the aforesaid Section 28 of the Rent Act, it becomes clear that pari materia words are used about the nature of suits in both these provisions for conferring exclusive jurisdiction on Small Cause Courts, namely, they alone can entertain such suits or proceedings relating to recovery of possession of premises. It is further observed that Section 41 of the said Act deals with such suits between the licensee and licensor, while Section 28 of the Bombay Rent Act deals with suits between landlord and tenant. But the nature of such suits contemplated by both sections is the same, namely, a suit relating to the recovery of possession of premises.

30) In ***ING Vysya Bank Ltd.*** **,** this Court held that sub-section (2) of section 41 carves out certain legislation where an exclusive or special provision is made for regulating the juristic relationship of landlord and tenant or licensor and licensee. It is held that the words “or any other law for the time being in force” must be construed in the context in which they occur, or else the important public purpose underlying the conferment of exclusive jurisdiction on the Small Causes Court will be defeated.

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31) In ***Central Warehousing***, the question for consideration before the Full Bench of this Court was whether the jurisdiction of the Small Causes Court under the said Act would be ousted in view of the provision of section 5 of the Arbitration and Conciliation Act, 1996, if any Agreement between Licensor and Licensee contains a clause for arbitration. The Full Bench held that, despite an arbitration agreement between the parties and the non-obstante clause in section 5 of the Arbitration Act, the Small Causes Court's exclusive jurisdiction to try and decide the dispute specified in section 41 of the Act of 1882 is not ousted.

32) In ***Prabhudas Damodar Kotecha,*** the Apex Court considered whether a suit filed by a licensor against a gratuitous licensee under Section 41(1) of the said Act, as amended by the Maharashtra Act 19 of 1976, was maintainable before a Small Cause Court. The Apex Court confirmed the view of the Full Bench of this Court that the clubbing of the expression “licensor and licensee” with “landlord and tenant” in Section 41(1) of the said 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, expenses and hardship.

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33) In ***Bombay Forging Limited,*** the Division Bench of this Court confirmed the rejection of the plaint on the ground that the suit was barred under Section 41(1) of the said Act. The Division Bench referred to the decision of this Court in the case of ***Nagin Mansukhlal Dogli,*** which held that, as far as the words used in sub-section (1) of Section 41 of the said Act "relating to the recovery of possession" are concerned, they are wide enough to include all other reliefs the plaintiff can claim in a suit for recovery of possession or the termination of licence or tenancy. The Division Bench also referred to the decision in ***ING Vysya Bank***, which dealt with the question whether the provisions of Section 41 of the said Act would bar jurisdiction of an Arbitral Tribunal to entertain a claim for specific performance of an agreement of renewal contained in an agreement of licence executed between a licensor and a licensee. It was thus held that the words used in sub-section (1) of Section 41 of the said Act, "relating to the recovery of possession" are wide enough to include all other reliefs the plaintiff can claim in a suit for recovery of possession or the termination of licence or tenancy.

34) In ***Anjanabai Sonawane***, the plaintiff claimed to be a tenant, and the dispute was between the landlord and the tenant for possession. This Court held that the suit related to recovery of possession of

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immovable property and, therefore, Section 41 of the said Act would squarely apply. This Court also accepted the defendants' submissions that, even assuming the claim is for protection under the Maharashtra Rent Control Act, 1999, that issue must be decided only by the Court of Small Causes. Hence, this Court returned the plaint to the plaintiff to be presented to the appropriate forum.

35) In ***Mahadev Kambekar***, the plaintiff claimed to be the lessee and the defendant claimed to be the owner/lessor of the land on the terms set out in the indenture of the lease deed executed between the parties. The defendant determined the lease by serving a notice to quit. The plaintiff filed a civil suit on the Original Side of this Court, claiming specific performance under a clause of the lease deed which, according to the plaintiff, enabled the plaintiff to elect and exercise his right to purchase the land from the defendant upon fulfilment of the conditions set out therein. The defendant filed a counterclaim seeking eviction and arrears of rent. The Single Judge decreed the suit for specific performance and also allowed the defendant's counterclaim, and accordingly passed the decree for possession and arrears of rent. Hence, both parties preferred separate appeals. The Division Bench allowed both appeals, set aside the decree for specific performance, and remanded the suit for

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retrial. At the appellate stage, it was held that the lessor's counterclaim was not maintainable under Section 41 of the said Act, as the civil court lacked jurisdiction to try the claim for eviction and arrears of rent. Hence, the lessor's eviction suit was dismissed. Both parties approached the Apex Court. The Apex Court dismissed the plaintiff's SLP and confirmed the remand order.

36) In ***Mahadev Kambekar,*** the Apex Court confirmed the Division Bench's view in light of the law laid down in ***Mansukhlal Jain***, which was later relied on in ***Prabhudas Damodar Kotecha*****.** It was held that the only distinction in the facts of ***Mansukhlal Jain*** was that the dispute was between the licensee and the licensor in relation to the land, whereas in ***Mahadev Kambekar*** the dispute was between the landlord and the tenant. It was further held that the factual distinction was of no significance because both categories of cases, i.e. the one arising between the licensor and the licensee and the other arising between the landlord and the tenant in relation to the land, are governed by Section 41 of the Small Cause Courts Act. The Apex Court rejected the licensor's argument that, once the tenancy is determined, such suits would not fall within the purview of Section 41 of the said Act, confirming this Court's view in ***Nagin Mansukhlal Dogli.*** In ***Nagin Mansukhlal Dogli*** it was held that a suit for the

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recovery of licence fee or charges may lie either when a licence subsists or after it has come to an end, and similarly a suit for the recovery of rent may lie either when the tenancy subsists or after it has come to an end.

37) In ***Vidya Drolia***, a three-judge bench considered the legal ratio in ***Himangni Enterprises*** **v.** ***Kamaljeet Singh Ahluwalia*** [21], which held that landlord-tenant disputes governed by the Transfer of Property Act, 1882, are not arbitrable as this would be contrary to public policy. The three-judge bench of the Apex Court overruled the ratio laid down in ***Himangni Enterprises*** and held that landlord-tenant disputes are arbitrable, as the Transfer of Property Act does not forbid or foreclose arbitration; however, landlord-tenant disputes covered and governed by rent control legislation would not be arbitrable when a specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations and such rights and obligations can only be adjudicated and enforced by the specified court/forum, and not through arbitration.

38) In ***Nikhilesh Kesarichand Jhaveri,*** this court accepted the submissions that the issue of title only for the purpose of deciding the issue of recovery of possession would fall within the jurisdiction of the

21 (2017) 10 SCC 706

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Court of Small Causes and that while ordering eviction of a tenant, the Small Causes Court may undertake an enquiry, in an appropriate case, to determine as to which of the persons, claiming to be landlords, are entitled to seek possession of the tenanted premises; however, it was held in the facts of the case that it was not necessary for the Small Causes Court to undertake that enquiry.

39) In ***Shah Ratansi Khimji & Sons***, the Apex Court held that a lease of immovable property is a transfer of the right to enjoy such property in consideration of the price paid, as per Section 105 of the TP Act and that once the right of lease is transferred in favour of the lessee, the destruction of a house/building constructed on the lease property does not determine the tenancy rights of the occupant, which is incidental to the contract of the lease which continues to exist between the parties.

40) In ***Central Bank of India***, the Apex Court held that even if one relief survives, the plaint cannot be rejected under Order VII Rule 11 of the CPC. The Apex Court in ***Church of Christ*** and the learned Division Bench of this Court in ***Sheela Ram Vidhani*** held that rejection of a plaint in its entirety qua a particular defendant is permissible when the pleadings disclose no cause of action against such

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defendant.

41) In ***Sree Surya Developers,*** the Apex Court held that a mere clever drafting would not permit the plaintiff to make the suit maintainable which otherwise would not be maintainable and/or barred by law and that if clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage. It is further held that in exercise of powers under Order VII Rule 11(*d*) of the CPC the Court cannot enter into the merits, which is not permissible at the stage of deciding the application under Order VII Rule 11 of the CPC and the issue which is required to be considered by the Court is on the reading of the plaint whether the suit would be maintainable or not.

CONSIDERATION OF SUBMISSIONS AND ANALYSIS:

42) As discussed in the above paragraphs, the suit is filed on the pleadings that a valid sub-lease document was executed in favour of the plaintiff. The owner of the land is the Corporation, which leased out the land in perpetuity to Blackwood Hodge, who is not a party to this suit. Ghai Lamba constructed the building under the terms of the sub-lease in their favour executed by Blackwood Hodge for 97 years.

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Ghai Lamba is also not a party to this suit. Blackwood Hodge thereafter assigned its leasehold rights in the land to defendant no. 3. Ghai Lamba created a sub-lease in favour of Blackwood Hodge in respect of a portion of the constructed area and also leased out other portions to other parties. Ghai Lamba assigned all its sub-leasehold rights to India Reinsurance Corporation, i.e. the predecessor in interest of the plaintiff. Thus, the plaintiff claims sub-lease rights in the land and ownership of the construction through Ghai Lamba and refers to defendant no. 3's claim of leasehold rights through the original lessee Blackwood Hodge. The pleadings in the plaint show that Ghai Lamba carried out the construction and owned it, and was also permitted to rent out the constructed area under the sub-lease.

43) The corporation declared the construction as C1 category and demolished it as it was dilapidated. The dispute arose as defendant no. 3 issued a termination notice to the plaintiff, and there was also a dispute between the plaintiff and defendant no. 3 on the ownership of the salvage material after the demolition. With this background, the plaintiff pleaded a running cause of action in paragraph 16 of the plaint. The first cause of action is pleaded when the sub-lease rights of India Reinsurance Company through Ghai Lamba stood transferred to the plaintiff when the India Reinsurance Company was

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merged into the plaintiff. The next cause of action is pleaded when, time and again, the plaintiff requested the corporation to record the plaintiff's name as sub-lessee of the land and owner of the construction, as the corporation recognised the rights by raising tax invoices in the plaintiff's name. The termination notice issued by the defendant no. 3 is also pleaded as a cause of action. The plaintiff also pleaded a cause of action when defendant no. 3 tried to forcibly dispossess the plaintiff and then when the corporation issued no objection in favour of Ghai Lamba and defendant no. 3 for demolition, and the orders passed by this court and the Apex Court in the litigation pertaining to demolition, as the construction was declared as C1 category. The plaintiff has pleaded that its sub-lease rights are still valid and subsisting and therefore, it also owns the salvage material after demolition. Hence, the cause of action also arose when the corporation permitted defendant no. 3 to remove the salvage material after demolition.

44) It is therefore necessary to determine whether the suit, based on leasehold rights and possession, falls within the jurisdiction of the Small Causes Court and whether the civil court's jurisdiction is impliedly barred. The plaintiff has relied upon various letters requesting defendant no. 1, i.e. the corporation, to record its name in

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the property record maintained by the corporation. The prayers in the plaint are for (i) mandatory injunction directing the corporation to record the plaintiff's name as sub-lessee, (ii) declaration that the plaintiff is a bona fide sub-lessee, (iii) restrain the corporation from granting construction permission to defendant no. 3, (iv) restraining the corporation and also defendant no. 3 from dispossessing the plaintiff and restraining defendant no. 3 from creating third-party interest (v) declaration that the termination notice issued by defendant no. 3 is illegal and (vi) restrain the corporation from removing the salvage material or directing defendant no. 3 to remove it.

45) Chapter VII of the said Act is substituted by the state amendment applicable to the state of Maharashtra. Under Section 41(1) of the said Act, the Small Causes Court has jurisdiction to entertain and try all suits or proceedings between licensors and licensees or landlords and tenants relating to the recovery of possession of immovable property or the recovery of license fee, charges, or rent. Under Section 9 of the CPC, Civil Courts shall try all civil suits except those expressly or impliedly barred. Therefore, to oust this Court's jurisdiction to try and entertain the present suit, the conditions under Section 41(1) of the said Act must be satisfied. The

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first condition is that the suit must be between licensors and licensees or landlords and tenants. If it is a suit between licensors and licensees or landlords and tenants, it must be relating to the recovery of possession of immovable property or the recovery of license fee, charges, or rent.

46) At the stage of exercising powers under Order VII Rule 11 of the CPC, the nature of the suit can be determined only by reading the plaint and the documents referred to in the plaint. As per the plaint, the plaintiff claims sub-lease rights through Ghai Lamba, and it refers to defendant no. 3's is claim of leasehold rights through the original lessee Blackwood Hodge. However, neither Ghai Lamba nor Blackwood Hodge is a party to the suit. The plaintiff claims to be a sub-lessee of the land and owner of the construction. The plaintiff, though claiming sub-lease rights in the land, does not claim to be a sub-lessee of any of the defendants.

47) With reference to the termination notice issued by defendant no. 3, the plaintiff has pleaded that, without prejudice to the rights and contentions, the rent amount claimed by defendant no. 3 is paid. The plaintiff has pleaded that it requested the corporation to substitute the plaintiff's name in place of Ghai Lamba on the ground that the plaintiff has sub-lease rights in the land and is the owner of the structure in

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view of the deed of Assignment executed by Ghai Lamba. Thus, in view of the terms of the sub-lease in favour of Ghai Lamba, the plaintiffs also claim ownership of the construction and contends that the occupants, including defendant no. 3, are the tenants in respect of the structure. However, the suit is not between the plaintiff and defendant no. 3 as landlord and tenant of the structure.

48) The suit is for a declaration of sub-lease rights in the land and ownership of the construction through Ghai Lamba, who is not a party to the suit. Merely because it is pleaded that defendant no. 3 is claiming to be assignee of the original lessee, it can be concluded at this stage that the suit is between landlord and tenant as contemplated under Section 41(1) of the said Act. The plaintiff has also pleaded that defendant no. 3 had shown a desire to transfer its right, title and interest as lessee in favour of the plaintiff. Nothing is pleaded by the plaintiff that will indicate at this stage that the suit is between a landlord and tenant.

49) Much was argued on the meaning of a license and lease. Both parties relied on a number of judgments on the scope of the Small Causes Court's jurisdiction, provisions of the Rent Act and the meaning of a license and lease. However, the present application does not turn on whether the plaintiff’s title is based on a license or a

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lease. The point to be considered is whether the suit is between a landlord and tenant or licensor and licensee. The Rent Act is a protective statute in relation to eviction, assignment, subletting and possession. However, the Rent Act does not apply in the present case. The plaintiff is claiming rights as a sub-lessee of the land and owner of the construction. Under a contract of lease not governed by the Rent Act, the provisions of the Transfer of Property Act and the Specific Relief Act would apply, and the case would be decided on the terms and conditions of the contract. Thus, there is no difference between the terms landlord – tenant and licensor – licensee within the meaning of Section 41 of the said Act.

50) The question is not whether it is a lease or a license, but whether this suit is between landlord and tenant or a lessor and lessee. A relationship of lessor and lessee is one of a contract. In the present case, nothing is pleaded that there is any contract between the parties to the suit. Thus, I do not find any substance in the submissions on behalf of defendant no. 3 that because the contentions in the plaint are of a sub-lessee and the grievance is regarding termination notice by defendant no. 3, the suit to protect sub-lease rights is governed under Section 41 of the said Act. At the stage of deciding the application under Order VII Rule 11 of the CPC,

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the question is whether the plaint shows that the suit is between a landlord and tenant. If the first condition under Section 41 of the said Act is satisfied, only then would the question be whether the suit relates to recovery of possession or recovery of rent as contemplated under Section 41(1) of the said Act.

51) A plain reading of the plaint and the supporting documents does not indicate that the suit is between a landlord and tenant. Therefore, the question of whether the saving provision under Section 45 of the said Act applies is not the question that arises at this stage, while deciding the application under Order VII Rule 11 of the CPC. If, based on the rival pleadings, any such issue arises in the future, it can be considered at the appropriate stage of the suit. Accordingly, it is unnecessary to discuss whether the plaint can be partially rejected or whether it can be returned under Order VII Rule 10 of the CPC.

52) In the cited decisions, the dispute related to a contract between the parties to the suit and was between landlord and tenant; therefore, the legal propositions regarding “relating to the recovery of possession” having wide amplitude are discussed in that context. At the stage of deciding the application under Order VII Rule 11 of the CPC, the crux is to first determine, from the reading of the plaint, whether the suit is between landlord and tenant. In the present case,

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on careful reading of the plaint, at this stage it is not possible to record a finding that the suit is between a landlord and tenant or licensor and licensee, inasmuch as the plaintiff neither pleads that it is a sub-lessee of any of the defendants, nor pleads any contract between the parties. The pleadings also does not indicate that it is cleverly drafted only to avoid the implied bar under Section 41(1) of the said Act.

53) The legal principles governing the rejection of a plaint under Order VII Rule 11 of the CPC are no longer res integra. The Hon'ble Apex Court in ***Dahiben v. Arvindbhai Kalyanji Bhanusali***[22], held that the power conferred on the court to terminate a civil action is a drastic one and thus the conditions enumerated under Order VII Rule 11 of the CPC must be strictly adhered to. In the present case, it is not possible to conclude at this stage that the suit satisfies the conditions under Section 41(1) of the said Act to oust this Court's jurisdiction. Hence, the plaint cannot be rejected under clause (d) of Rule 11 of Order VII of the CPC on the ground of implied bar under Section 41(1) of the said Act.

54) Therefore, the interim application is rejected.

(GAURI GODSE, J.)

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