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**Court : Mumbai**

**Decided On : Dec-19-2005**

**Reported in : AIR2006Bom153; 2006(2)MhLj612**

**Judge : B.P. Dharmadhikari, J.**

**Acts :** Provincial Small Causes Court Act, 1887 - Sections 15, 16, 17, 25, 25A, 26, 26A, 26(1), 26A(1), 26(4), 27, 28, 29, 30, 31, 32 and 41; Code of Civil Procedure (CPC) - Sections 7, 15, 96, 96(4), 115 and 295 - Order 7, Rule 10; Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Sections 28; Bombay Government Premises (Eviction) Act, 1955; Bombay Provincial Municipal Corporations Act, 1949; [Maharashtra Housing and Area Development Act, 1976](#); [Limitation Act, 1963](#) - Sections 4, 5 and 12; Presidency Small Causes Courts (Maharashtra Amendment) Act, 1984; [Presidency Small Cause Courts Act, 1882](#) - Sections 19, 41 and 41(1); Bombay Housing Board Act, 1948; [Constitution of India](#) - Articles 133(1) and 136

**Appeal No. : W.P. No. 3667 of 2005**

**Appellant : Subhash Joshi and anr.**

**Respondent : Mohd. Sultan S/O Abdul Gani and anr.**

**Advocate for Def. : V.S. Kukday, Adv. For respondent No. 1**

**Advocate for Pet/Ap. : S.Y. Deopujari, Adv.**

**Disposition :** Petition dismissed

**Judgement :**

**B.P. Dharmadhikari, J.**

1. The only question to be decided is whether Small Causes Court is competent to grant relief of injunction in dispute between landlord and tenant while exercising jurisdiction under Section 26 of Provincial Small Causes Court Act, 1887, (hereinafter referred to as Act). The brief facts for laying down the foundation for this purpose may be stated as under :

The present petitioners are landlords while the present respondent No. 1 claims to be their tenant. The respondent No. 1 tenant has instituted Regular Civil Suit 159/2003 in Small Cause Court, Nagpur, and in it he sought temporary injunction to protect his possession by moving application at Exhibit 5. Later on he also moved another application vide Exhibit 7 for temporary mandatory injunction pointing out forcible dispossession during pendency of suit and prayed for restoration of possession. Present respondent No. 2 who was joined as defendant No. 3 in said suit claims himself to be the real tenant and present petitioners in their written statement filed before Small Causes Court admitted him to be so. He is alleged to be uncle of respondent No. 1 tenant. Respondent No. 2 moved application under Order VII, Rule 10 of Civil Procedure Code vide Exhibit 38 for return of plaint on the ground that the dispute is between plaintiff and himself and as such suit is not between landlord and tenant and hence Small Causes Court lacked jurisdiction to try it. All these applications were considered by Small Causes Court together and on 13-5-2003 it passed order allowing both the applications (Exhibits 5 and 7) of present respondent No. 1/tenant and rejected application at Exhibit 38 moved by present respondent No. 2. The landlords i.e. original defendants No. 1 and 2 filed Misc. Civil Appeal 248/2003 before District Court, Nagpur, and learned 15th Ad hoc Additional District Judge, Nagpur, dismissed that appeal by judgment dated 31-3-2005. The landlords i.e. original defendants No. 1 and 2 have filed this writ petition challenging all these orders.

2. I have heard Advocate S.Y. Deopujari for petitioners/landlords and Advocate V.S. Kukde for respondent No. 1/tenant. With consent of parties, Rule is made returnable forthwith and matter is heard finally. Respondent No. 2 who claims to be real tenant did not challenge the order of Small Causes and has not even approached this Court against the Appellate Judgment. Moreover, he is alleged to be uncle of respondent No. 1-tenant. Hence, service of Rule upon him is dispensed with.

3. Learned Advocate for petitioners has invited attention of Court to the provisions of Section 26 of Act to argue that it is not pari materia with Section 41 of Presidency Small Causes Court Act and in view of bar under Section 15 of Act and also provisions of Section 7 of Civil Procedure Code, Small Cause Court cannot grant relief of injunction at all. He points out that by interim order, said Court has directed landlords to restore possession of respondent No. 1 and said direction is without jurisdiction. He alleges that even temporary injunction granted in favour of respondent No. 1 is without jurisdiction. According to him respondent No. 1 tenant has not amended his plaint to claim relief of restoration of possession lost allegedly during pendency of suit. In support of his arguments he has placed reliance upon the judgment of learned Single Judge of this between Dilip Murlidhar Lohiya v. Mohd. Azizul Haq Court reported at : AIR1990 Bom228 . Advocate V.S. Kukde on behalf of respondent No. 1 states that Section 26 as added by amending Act XXIV of 1984 with effect from 1-1-1985 has created a special forum with a special procedure for trying such disputes, and hence, said forum i.e. Small Causes Court has all necessary powers to do complete justice between parties including power to issue interim/temporary, mandatory and permanent injunctions. He relies upon the judgment of Hon'ble Apex Court reported at : [1995]1SCR996 , Mansukhlal Dhanraj Jain v. Eknath Vithal Ogale and according to him provisions of Section 41 of the Presidency Small Causes Court Act considered therein are pari materia with Section 26 of Act. He also relies upon Ramkishore Pandit v. Vijaybahadursingh reported at : AIR1964 Bom85 and Abdul Aval v. Sayed Mohamed reported at : (2001)1BOMLR418 , Dattatraya v. Jairam reported at : AIR1965 Bom177 .

4. Before proceeding further it will be appropriate to find out the provisions contained in the Act. These provisions have been materially amended by Maharashtra Act No. XXIV of 1984 which after receiving the assent of Hon'ble President has come into force from 1-1-1985. A new chapter i.e. Chapter No. IV-A1 has been added to the Act and its heading is 'Recovery of possession of certain immovable property and certain license fees and rent'. Section 26 of this new chapter reads :

26. The suit or proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and license fee or rent, except those to which other Acts apply to lie in Court of Small Causes - (1) Notwithstanding anything contained elsewhere in this Act, but subject to provisions of Sub-section (2), the Court of small causes shall have jurisdiction to entertain and try all suits and proceedings between a licensors 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 recovery of license fee or charges or rent therefor, irrespective of the value of the subject matter of such suit or proceedings. (2) Nothing contained in Sub-section (1) shall apply to suits or proceedings for recovery of possession of any immovable property or of license fee or charges or rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Provincial Municipal Corporations Act, 1949 or the [Maharashtra Housing and Area Development Act, 1976](#), or any other law for the time being in force, apply.

26-A. Appeal : (1) An appeal shall lie, from a decree or order made by the Court of small causes exercising jurisdiction under Section 26 to the District Court.

(2) Every appeal under Sub-section (1) shall be made within 30 days from the date of decree or order, as the case may be:

Provided that, in computing the period of limitation prescribed by this sub-section, the provisions contained in Sections 4, 5 and 12 of [Limitation Act, 1963](#) shall and, so far as may be, apply.(3) No further appeal shall lie against any decision in

appeal under Sub-section (1).

(4) The District Court may, for the purposes of satisfying itself that a decree or order made in any case decided by the Court of small causes was according to law, call for the case in which decree or order was made and pass such order with respect thereto as it thinks fit.

26B. Saving of suits involving title. -- Nothing contained in this Chapter shall be deemed to bar a party to Suit, appeal or proceedings mentioned therein in which the question of title to any immovable property arises and is determined, from suing in a competent Court to establish his title to such property.

26C. Notwithstanding anything contained in Section 16, all suits and the proceedings cognizable by Court of Small Causes under this Chapter and pending in District Court or the Court of any Civil Judge on the date of coming into force of the Provincial Small Causes Courts and Presidency Small Causes Courts (Maharashtra Amendment) Act, 1984, shall be continued and disposed of by the District Court or the Court of Civil Judge, as the case may be, as if this Chapter had not been enacted.

Provisions of Section 32 of Act and also been amended by adding the number of this newly added chapter to it. Said section after amendment reads :

32. Application of Act to Courts invested with jurisdiction of Court of Small Causes :

(1) So much of the Chapter HI, IV and IV-A1 as relates to --

(a) the nature of the suits cognizable by Courts of Small Causes,

(b) the exclusion of the jurisdiction of other Courts in those suits,

(c) the practice and procedure of Courts of Small Causes,

(d) appeal from certain orders of those Courts and revisions of cases decided by them, and

(e) the finality of their decrees and orders subject to such appeal and revision as are provided by this Act, applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts.

(2) Nothing in Sub-section (1) with respect to Courts invested with the jurisdiction of Court of Small Causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with the jurisdiction.

Chapter III of the Act deals with jurisdiction of Courts of Small Causes. Section 15 thereof prescribes that :

1.- A Court of Small Cause shall not take cognizance of suits specified in Second Schedule as suits excepted from the cognizance of a Court of Small Causes.

2. Subject to the exceptions specified in that Schedule and to the provisions of any enactment for the time being in force, all suits of a Civil nature of which the value does not exceed 500 Rs. shall be cognizable by a Court of Small Causes.

3. Subject as aforesaid, the State Government may, by order in writing, direct that all suits of Civil nature of which the value does not exceed 1000 Rs shall be cognizable by a Court of Small Causes mentioned in the order.

In Second Schedule of the Act Clause (4) which read 'a suit for possession of immovable property or for the recovery of an interest in such property;' has been deleted. Clause 8 which read 'a suit for recovery of rent, other than house rent, unless the Judge of the Court of Small Cause has been expressly invested by the State Government with authority to exercise jurisdiction with respect thereto;' has also been deleted. In Clause 13 the portion at its end underlined for identification has been added and Clause 13 now reads 'a suit to enforce payment of the allowance or fees respectively called malikana and hakk, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immovable property or in an hereditary office or in a shrine or other religious institution but not including any such suit where the right is based on a contract reduced to writing'. Clause 25 which read 'a suit upon a foreign judgment as

defined in the Code of Civil Procedure or upon a judgment obtained in India;' has been deleted. Similarly Clause 26 which read 'a suit to compel a refund of assets improperly distributed under Section 295 of the Code of Civil Procedure;' has been deleted. In Clause 38 certain portion has been added and new Clause 38 read 'a suit relating to maintenance but not including any such suit where the right is based on a contract reduced to writing'. Section 16 of the Act also is important and it provides: 16. Exclusive Jurisdiction of Court of Small Causes - Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the Court of Small Causes by which the suit is triable.

5. Here reference to certain decided cases on Act becomes necessary. In *Lilabai Waghela v. Kesharao Tidke* reported that 1986 Mh.L.J. 207, the learned Single Judge of this Court has considered the position in light of 1984 Amendment of Act and has found that provisions of Section 26 cannot be regarded as continuation of the jurisdiction, however limited, which the Court of small causes had under items 4 and 8 of the Second Schedule, but the object was to create a larger jurisdiction for entertaining the suits and proceedings which till the amendment could not be entertained by Court of Small Causes and to make the orders and decrees of the Court of Small Causes subject to an appeal to the District Court. Ultimately it was held that the said right of filing appeal to District Court was available only in suits filed on or after 1st January, 1985 and pending suits had to be decided as if the amendment had not come into force. In *Kutubunnisa Begum v. Bilkis Jahan Begum* reported at 1996(1) Mh.L.J. 184 these amended provisions have been considered and it has been held that an appeal lies under Section 26A(1) from final as also interim order made by Small Causes Court in exercise of jurisdiction under Section 26 of Act. In *Salimkhan v. Mohd. Ibrahimkhan* reported at 1987 Mh.L.J. 283 question arose whether the ceiling of Rs. 3000/- prescribed for filing of appeal under Section 96, Civil Procedure Code would apply to appeal filed under Section 26A(1) of Act and it has been held that Section 96(4) prescribing such limit would be applicable to other suits contemplated by Sections 15 and 16 of Act and not to suits under Section 26 thereof. In *Ashok v. Pannalal* reported that 1996(2) Mh.L.J. 719 it is held that appeal under Section 26A is available even to challenge

the orders passed in distress for proceedings under chapter IV-A of Act. It is held that jurisdiction under Section 26(1) is not continuation or enlargement of earlier jurisdiction under Section 15 of Act but it is entirely new and exclusive jurisdiction.

In *Dilip Bidesh v. Shivgopal M. Chaurasia* reported at 2005(3) Mh.L.J. 967, I had an occasion to consider whether revision will lie before High Court after appellate judgment under Section 26A of Act and relevant observations therein are as under :

12. Thus, from discussion above it is apparent that the Provincial Act is a separate Code complete in itself. Scheme in various sections reproduced in the beginning like forums, limitation, finality and other provisions in the Act like Section 17, Chapter IV-A introduced in Maharashtra about distress warrants, Sections 28, 29, 30, 31 and 32 all support this. The Provincial Act still contains a provision for revision in High Court in other matters. In landlord-tenant or licensor-licensee matters appeal has been provided with revisional powers to the same Court. Though in cases considered by Hon'ble Apex Court by amendment powers of revision were conferred upon District Court, the position here in Maharashtra is not much different. By 1984 amendment, the District Court has been given power under Section 26(4) to do that which High Court could have done under Section 25. Language of Sections 25 and 26(4) is similar. Thus while providing a remedy of appeal which did not exist until then, the Legislature also conferred revisional powers upon District Court. Forum for filing appeal and for filing revision is same. No limitation has been prescribed in Section 26(4) for exercise of that power. Thus the intention of legislature to expedite the final adjudication of disputes between landlord and tenant or licensor and licensee and to limit statutory challenges to it till level of District Court is obvious. Because of Section 27 (now Section 25A) decree or order made by Court of Small Causes is final and it can be challenged only in manner provided under the Provincial Act, The Provincial Act contemplates approach in appeal to District Court. It also enables District Court to exercise revisional powers in certain circumstances. Thus, judgment and decree of Small Causes Court is final subject to this appeal or revision.' It is concluded that the District Court functioning as Appellate Court under Section 26 is subject to all restrictions imposed by Act. It is not functioning as such under Code of Civil

Procedure and it cannot be said that its appellate orders are revisable by High Court under Section 115 of Civil Procedure Code.

6-7. Advocate Deopujari has strongly relied on : AIR1990 Bom228 , Dilip Murlidhar Lohiya v. Mohd. Azizul Haq. There the suit was for eviction and possession before Small Cause Court and by amendment to his written statement defendant wanted to claim permanent injunction against plaintiff. This Court in paragraph 12 and 13 observed :

12. Mr. Mehadia urged before me that in any law amendment cannot be normally refused and as such the trial Court was not justified in rejecting the amendment. My attention was invited to ratio laid down in Benisham Mohanlal v. Mahadeo Tukaram : AIR1985 Bom462 . In that case a Judge of the Small Causes Court permitted an amendment of the plaint which had the effect of converting the simple suit on the basis of relationship of landlord and tenant into a suit based on title, which cannot be tried in the Small Cause jurisdiction. This amendment came to be challenged before this Court. This Court upheld that amendment. However, the circumstances which prevailed in the present case and the circumstances prevailed in that case are quite different. In the reported ruling there was no case of exclusive jurisdiction. The Small Causes Court had jurisdiction to entertain the suits for ejectment subject to the limitations in item No. 4(a), (b) and (c) of Schedule II. That article has been deleted by the amendment and now the Court of Small Causes has become Court of exclusive jurisdiction so much so that the jurisdiction of the regular Court has been barred. In these circumstances the ratio laid down as in the reported ruling cannot legitimately be applied to the present case.

13. Mr. Chandurkar invited my attention to the ratio laid down in Sahebrao Vithoba v. Bapurao Ravaji : AIR1985 Bom426 where it was observed : ...As already pointed out the position prevailing in the present case is quite crystallised. The plaintiff claims eviction of a tenant on determination of the tenancy. The suit being instituted after 1-1-1985 has been apportioned to a Court having exclusive jurisdiction to entertain the suits between landlords and tenants. The Court is not competent to entertain the suit or claims for injunction. Even Section 7 of the Code

of Civil Procedure specifically says that the provisions regarding injunctions in the Civil Procedure Code do not extend to the Court of Small Causes. It is in such suits before such specified forum that the defendant is coming with a counter claim which has nothing to do with the main plaint.' Thus this Court did not allow amendment to be made in written statement as Small Cause Court could not take cognizance of injunction matters.

8. In this respect reference can also be made to subsequent ruling of Hon'ble Apex Court : [1995]1SCR996 i.e. Mansukhlal Dhanraj Jain v. Eknath Vithal Ogale with connected matter between Vasdev Prakash v. Mrs. Vimla Premchand Hinduja. These matters went to Hon'ble Supreme Court from Bombay only. Hon'ble Apex Court has considered following issue in this matter.

Whether the suit filed by the plaintiff claiming the right to possess the suit premises as a licensee, against defendant alleged licensor, who is said to be threatening to disturb the possession of the plaintiff licensee, without following due procedure of law, is cognizable by the Court of Small Causes Bombay as per Section 41(1) of the Presidency Small Cause Courts Act (hereinafter referred to as 'the Small Causes Courts Act'), 1882 or whether it is cognizable by the City Civil Court, Bombay, constituted under the Bombay City Civil Court Act.' This High Court by the impugned judgment in these appeals took the view that such a suit was not maintainable before the City Civil Court and should be filed in the Small Causes Court, Bombay, under Section 41(1) of the Small Causes Courts Act. There were two appeals i.e. C. A. No. 4913 of 1989 and C. A. No. 4753 of 1989.

The facts in C. A. No. 4913 of 1989 can be briefly stated from paragraphs 4, 6 and 7 as under :

4. The appellant-plaintiffs filed suit No. 1290 of 1984 in the Bombay City Civil Court against the respondent-defendant for permanent injunction on the ground that the appellants are in possession of the suit shop. That the respondent-defendant is tenant of the suit premises being Shop No. 4, Meghji Vallabhadas Trust Building, Bhavanishankar Road, Dadar, Bombay. That the defendant took the same premises in December, 1974 on rent and put the appellants into possession thereof under an irrevocable licence/tenancy agreement. It was agreed

that plaintiff No. 1 had to pay licence fee to the defendant or to the landlord. The plaintiff further averred that due to some difference of opinion between the parties, the defendant started threatening the appellants that he would physically throw them out of the suit premises and hence the suit for permanent injunction restraining the respondent-licensor from disturbing the possession of the plaintiff-licensees of the suit premises, 6. The appellants moved an application for temporary injunction pending the suit. While opposing the said application, the respondent contended that the City Civil Court has no jurisdiction to entertain the suit and it was only the Small Causes Court, Bombay, which could entertain such a suit. This contention was examined by the City Civil Court as a preliminary issue. After hearing both the sides, learned Judge of the City Civil Court came to the conclusion that the Court had jurisdiction to entertain such a suit for injunction and thereafter directed that the injunction application should be heard on merits.

7. The said order of City Civil Court was challenged by the respondent by filing Civil Revision Application No. 212 of 1985 in the High Court. The learned Chief Justice (Madhava Reddy, CJ) who heard the revision in the first instance thought it fit to refer the matter to a Division Bench, looking to the importance of the question involved. The revision application thereafter was placed before a Division Bench consisting of P.B. Sawant, J. (as he then was) and G.H. Guttal, J. Sawant, J. took the view that the City Civil Court had jurisdiction to entertain such a suit, but Guttal, J. took a contrary view and held that such a suit could lie only under Section 41(1) of the Small Causes Court Act before the Small Causes Court, Bombay. In view of the difference of opinion between the two learned Judges constituting the Division Bench, the matter was referred to a third learned Judge Pendse, J. Pendse, J. after hearing the parties came to the conclusion that the City Civil Court had no jurisdiction to entertain the suit. He agreed with the view taken by Guttal, J. Thereafter the matter was placed before the Division Bench for final orders and in the light of the decision reached by Guttal, J. and Pendse, J., the revision application was allowed and it was held that the City Civil Court had no jurisdiction to entertain the suit. On an application by the appellants for certificate under Article 133(1), the Division Bench granted the certificate as prayed for and that is how this civil appeal has been filed in this Court and has reached hearing before us.

The facts; in C. A. No. 4753 of 1989 can be gathered from paragraphs 8 and 9 :

8. The appellant-plaintiff filed Suit No. 7508 of 1984 in the City Civil Court at Bombay against the respondents for permanent injunction restraining the respondent-defendants, their servants and agents from dispossessing the appellant-plaintiff from the suit premises being 505-A. Neel Kanth, 98, Marine Drive, Bombay, save and except by due process of law. A further injunction was also sought, restraining the respondents from in any manner obstructing or interfering with the possession of the plaintiff in respect of the aforesaid suit premises save and except by due process of law. The case of the plaintiff was that it was a firm which started its business as Shroffs and Financiers in the suit premises. That premises which originally belong to S. Mathuradas were purchased by respondents Nos. 1 and 2 who are also dealing as the Shroffs and Financiers. On behalf of respondents Nos. 1 and 2, respondent No. 3 used to accept monthly compensation which used to be paid by cheque. That the plaintiff had been paying monthly compensation to respondent No. 3 who had been accepting the same till 1982. The case of the plaintiff was that the premises were given to the plaintiff-firm by way of licence by defendant No. 3 and as the plaintiff apprehended that the defendants were likely to oust the plaintiff from the suit premises without following due process of law, he filed the aforesaid suit for the above stated reliefs.

9. In the said suit, by notice of motion the appellant-plaintiff prayed for interim relief against the respondents. That notice of motion was dismissed by the trial Court on merits after hearing the contesting parties. The appellant-plaintiff thereafter filed an appeal from Order No. 598 of 1986 before the Bombay High Court. In that appeal, the learned single Judge S.M. Daud, J. took the view that City Civil Court has no jurisdiction to entertain the suit. For reaching that conclusion the learned Judge placed reliance on the decision of the High Court in Civil Revision Application No. 212 of 1985 which is the subject-matter of companion appeal before us. As noted earlier, the appellant obtained leave to appeal under Article 136 of the Constitution and has filed this appeal.

The relevant observations of Hon'ble Apex Court are :

11. In order to resolve the controversy posed for our consideration, it will be appropriate to note the relevant statutory provision having a direct bearing on this question. Section 41(1) of the Small Causes Court Act reads as under :

41(1). Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force but subject to the provisions of Sub-section (2), 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 Greater Bombay, or relating to the recovery of the license fee or charges or rent thereof, irrespective of the value of the subject matter of such suits or proceedings. A mere look at the aforesaid provision makes it clear that because of the non obstante clause contained in the section even if a suit may otherwise lie before any other Court, if such a suit falls within the sweep of Section 41(1) it can be entertained only by the Court of Small Causes. In the present proceedings we are not concerned with the provisions of Sub-section (2) of Section 41(1) and hence we do not refer to them. For applicability of Section 41(1) of the Small Causes Court Act, the following conditions must be satisfied before taking the view that jurisdiction of regular competent Civil Court like City Civil Court is ousted.

(i) it must be a suit or proceedings between the licensee and licensor; or

(ii) between a landlord and a tenant;

(iii) such suit or proceedings must relate to the recovery of possession of any property situated in Greater Bombay; or

(iv) relating to the recovery of the licence fee or charges or rent thereof.

In the present case, we are not concerned with the 2nd and 4th conditions, as the only contention of the appellants is that the present suits do not satisfy conditions Nos. 1 and 3 for attracting Section 41(1).

The respondents claim to the contrary. It is obvious that if the present suits satisfy conditions Nos. 1 and 3 they would clearly attract the applicability of Section 41(1) of the Act and such suit would be outside the purview of regular Civil Court like the

City Civil Court. Therefore, the enquiry which becomes relevant at this stage is to find out from the averments in the plaints whether these are suits between a licensor and a licensee and whether they relate to the recovery of possession of immovable property situated in Greater Bombay.

So far as the first condition is concerned, a comprehensive reading of the relevant averments in the plaints in both these cases leaves no room for doubt that the plaintiffs claim relief on the basis that they are licensees on monetary consideration and the defendants are the licensors. The first condition is clearly satisfied. Then remains the question whether the third condition, namely, that the suits must relate to the recovery of possession of immovable property situated in Greater Bombay is satisfied or not. It is not in dispute that the suit properties are immovable properties situated in Greater Bombay but the controversy is around the question whether these suits relate to recovery of possession of such immovable properties. The appellants contended that these are suits for injunction simpliciter for protecting their possession from the illegal threatened Acts of respondents-defendants. Relying on a series of decisions of this Court and the Bombay High Court, Guttal, J., Pendse, J. and Daud J. had taken the view that such injunction suits can be said to be relating to the possession of the immovable property. Sawant, J. has taken a contrary view. We shall deal with these relevant decisions at a later stage of this judgment. However, on the clear language of the section in our view it cannot be said that these suits are not relating to the possession of the immovable property. It is pertinent to note that Section 41(1) does not employ words 'suits and proceedings for recovery of possession of immovable property'. There is a good deal of difference between the words 'relating to the recovery of possession' on the one hand and the terminology 'for recovery of possession of any immovable property'. 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). In this connection, we may refer to Blacks' Law Dictionary, ... as to 'concerning with' and

'pertaining to'. The expression 'pertaining to' is an expression of expansion and not of contraction.

It is, therefore, obvious that the phrase 'relating to recovery of possession' as found in Section 41(1) of the Small Causes 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 the licensee plaintiff would squarely be covered by the wide sweep of the said phrase. Consequently, in the light of the averments in the plaints under consideration and the prayers sought for therein, on the clear language of Section 41(1), the conclusion is inevitable that these suits could lie within the exclusive jurisdiction of Small Causes Court, Bombay and the City Civil Court would have no jurisdiction to entertain such suits.

Advocate Kukde has also relied upon Ramkishore Pandit v. Vijaybahadursingh reported at : AIR1964 Bom85 and Abdul Aval v. Sayed Mohamed reported at : (2001)1BOMLR418 and Dattatraya v. Jairam reported at 1964 Mh.L.J. 750 : : AIR1965 Bom177 (F.B.). In Abdul Aval v. Sayed Mohamed is upon Section 28 of Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947) in which learned single Judge has in fact relied upon this Full Bench judgment. It is not necessary to refer to all these rulings at length because the above referred judgment of Hon'ble Apex Court : [1995]1SCR996 considers provisions of said Section 28 and also the two Bombay High Court rulings. Hon'ble Apex Court states in paragraph 14 that when Section 41(1) of the Small Cause Courts Act is read in juxtaposition with the aforesaid Section 28 of the Bombay Rent Act, it becomes clear that *pari-materia* words are used about nature of suits, in both these provisions for conferring exclusive jurisdiction on Small Causes Courts, namely, they alone can entertain such suits or proceedings relating to recovery of possession of premises. It is of course true that Section 41 of the Small Causes Court 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 as contemplated by both these sections is the same, namely, it should be the suit relating to the recovery of possession of premises. The wide

interpretation given to said phrase even under Bombay Rent Act has been found to be proper and relied upon by Hon'ble Apex Court. Reference may be made to certain observations in paragraph 18 :

18. Before parting with these cases, we may mention that the Gujarat High Court in the case of *Ambalal v. Narmada* (1963)4 Guj LR 90 has taken the view that a suit where plaintiff claims that he is entitled to possession and seeks a permanent injunction restraining the respondent-landlord for recovering possession would fall under Section 28 of the Bombay Rent Act, The very same view was taken by a Division Bench of the Bombay High Court in the case of *Ramkishore v. Vijaybahadursingh* : AIR1964 Bom85 . A Full Bench of the Bombay High Court in the case of *Dattatreya Krishna v. Jairam Ganesh* : AIR1965 Bom177 which held that suits for injunction against defendant-landlords restraining them from forcibly evicting the plaintiff-tenants from possession of the suit premises would lie within the exclusive jurisdiction of the Small Causes Court, Bombay as such suits will be suits relating to recovery of possession of premises. In our view the aforesaid decisions lay down correct law on the point. .. 'Sawant, J. in the impugned judgment under appeal in Civil Appeal No. 4913 of 1989 was inclined to take a contrary view on the ground that the plaintiff had not prayed for a declaration about his licence and all that he was claiming was to protect his possession against threats of unlawful eviction and the Court had not to decide the status of the plaintiff. With respect, on the clear recitals and prayers in the plaint such a view is not sustainable. It is easy to visualise that before getting injunction whether temporary or permanent the plaintiff has to establish a legal right for the said relief, as seen earlier. Once the plaintiff contends that he is a licensee of the suit premises and the defendant is a licensor and on that basis he wants the assistance of the Court to protect his possession, it would be a suit between a licensee and licensor relating to the recovery of possession.

9. The words in italics above (in judgment of Hon'ble Apex Court) 'or in any other law for the time being in force' in Section 41(1) are deleted by Maharashtra amendment mentioned above. By Section 6 of above Amending Act Section 41 of Act No. XV of 1882 i.e. [Presidency Small Cause Courts Act, 1882](#) in its application to State of Maharashtra has also been amended from 1-1-1985 by deleting the

words 'or in any other law for the time being in force' from its Sub-section (1). In Sub-section (2), for the words and figures 'the Bombay Housing Board Act, 1948 or any other law for the time being in force, applies', the words and figures '[the Maharashtra Housing and Area Development Act, 1976](#) on any other law for the time being in force, apply', have been substituted. However, that only brings language in Section 41(1) of Presidency Act is on line with language of Section 26(1) of Act and does not in any way affect the interpretation of phrase/terminology 'relating to the recovery of possession' appearing therein. Comparison of both these sections reveal that they are identically worded. Clause 17 in Schedule II of Act excepts suit to obtain an injunction from jurisdiction of Small Causes Court. Similarly Section 19 of Presidency Small Cause Courts Act vide its Clause (i) excepts suits to obtain an injunction from jurisdiction of Small Cause Court functioning under that Act. Thus, the provisions in both these Acts are *pari materia* and interpretation on words 'relating to the recovery of possession' in Section 41(1) applies with full vigour to Section 26(1) of Act. The provisions of Act quoted above leave no manner of doubt that an exclusive forum and procedure has been prescribed for ventilation of all grievances between landlord and tenants or licensors and licensees, as the case may be. The Section 26(1) opens with non obstante clause which needs to be given full effect. Clause 17 in Schedule II of the Act would be superfluous if Section 7 of Civil Procedure Code alone is held to bar jurisdiction of Small Cause Court to grant injunction in landlord/tenant and licensee/licensor matters. The judgment of Hon'ble Apex Court (*supra*) was not available then and the other rulings considered therein have not been brought to the notice of this Court when it decided *Dilip Murlidhar Lohiya v. Mohd. Azizul Haq* Court reported at : AIR1990 Bom228 . In view of subsequent rulings of Hon'ble Apex Court squarely on the point, reliance upon it by learned Advocate Deopujari for petitioners is totally misconceived.

10. Complaint of present respondent No. 1 before the Small Cause Court reveals that he is seeking declaration that action of defendants in not accepting rent from him, in disconnecting his electric supply, harassing him by giving him threats and trying to dispossess him without due process of law is illegal. He is seeking permanent injunction restraining them from committing such acts and to accept rent from him and to issue receipt to him. He specifically averred that he is tenant occupying two

rooms since 26-11-1991 on monthly Rent of Rs. 650/-only. He has also given duration of tenancy month and how rent is to be paid. He has stated that present petitioners are owners and they are not issuing Rent receipts though they are accepting Rent. He has also described how they disconnected electric supply and it was restored after 64 days after police complaint. He has stated that from October, 2002 they have stopped accepting monthly rent. The respondent No. 1/plaintiff is running a computer center in tenanted premises and the premises are within jurisdiction of Nagpur Small Cause Court. It is thus apparent that the dispute between parties is squarely covered under Section 26(1) of Act.

11. In this view of the matter, the ground of attack levelled by petitioners against the impugned orders is found to be without any merit and hence, writ petition is dismissed with no order as to costs.

Shri Deopujari, learned Counsel for the petitioners seeks status quo in relation to possession for a period of six weeks. The request is opposed by Shri Kukday, learned Counsel for respondent No. 1.

However, in the interest of justice, status quo in relation to possession as on today shall be maintained for a period of four weeks and the same shall cease to operate automatically thereafter.

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