IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO.340 OF 2019

Bafna Motors Private Limited ...Applicant
vs.
Amanulla Khan ...Respondent

Mr. K.L. Vyas i/b. Karan Vyas, for the Applicant/Petitioner.
Mr. Mangesh Patel, for the Respondent.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 13th APRIL, 2022
PRONOUNCED ON : 5th MAY, 2022

ORDER:

1. By virtue of this application under section 11 of the Arbitration and Conciliation Act, 1996 (the Act, 1996), the petitioner seeks appointment of an Arbitrator to arbitrate all the disputes and differences that have arisen between the parties in relation to the Leave and License Agreement dated 2nd July, 2012.

2. The application arises in the backdrop of the following facts:-

a] The applicant is a company incorporated under the Companies Act, 1956. It is engaged in the business of dealership of commercial vehicles. The applicant was looking for a premises to operate a workshop. The respondent who is the holder of a leasehold land being Survey No. 193, CTS No. 416 of village Kurla, admeasuring 4664.46 sq.ft having a workshop shed at S.K. Compound, Kurla

village at Kurla (the subject premises) offered the subject premises to the applicant on leave and license basis.

3. Pursuant to the negotiations a Leave and License Agreement came to be executed between the parties on 2nd July, 2012. The principal terms of the agreement were that the term of license was five years from 1st July, 2012 to 30th June, 2017, there was to be lock-in period for two years i.e. upto 30th June, 2024; thereafter either parties was entitled to revoke/terminate/determine the agreement by giving three months notice in writing to the other party; for the initial period of two years, the license fee was fixed at two lakh with gradual increase in the lincese fee at a fixed percentage; a sum of Rs. 12 lakh was to be deposited by the licensee as a security deposit to enforce due compliance of the said agreement and the said deposit of Rs. 12 lakhs was be returned to the licensee upon delivery of peaceful and vacant possession of the subject premises, after deductions, if any, on account of the arrears of license fee charges or expenses of repair or damages caused by licensee to the subject premises. The agreement also provided for a dispute resolution mechanism whereunder the parties agreed to refer any dispute in connection with the said License Agreement to an Arbitrator to be appointed by mutual consent.

4. As the license was about to expire by the end of June, 2017, by efflux of time, the applicant gave a notice to the respondent on 19th May, 2017 intimating the respondent that the applicant would be vacating the subject premises on or before 30th June, 2017. A demand for refund of security deposit of Rs. 12 lakhs simultaneously with the delivery of the subject premises was also made. On 9th June, 2017, in response to the aforesaid communication, the respondent took a stand that in terms of clause 18 of the Leave and License Agreement it was incumbent upon the applicant to give three months prior notice of termination and, thus, the respondent was not agreeable to the termination of the agreement. Additionally, it was contended that, on a visual inspection of the subject premises, it was noticed that a number of equipments, tools, gadgets and furnitures were either missing or severely damaged. A claim of Rs. 14,57,000/- was made towards the damages on the aforesaid count.

5. There was a prolonged exchange of correspondence. Ultimately, vide notice dated 1st May , 2019 the applicant called upon the respondent to make the refund of security deposit along with interest @ 18% p.a. and, in default, give consent for the appointment of an Arbitrator, as suggested by the applicant in the

letter dated 17th July, 2018. The respondent neither conveyed the consent for the appointment of the Arbitrator nor gave reply to the said notice invoking arbitration. Hence, the applicant was constrained to approach this Court.

6. The respondent resisted the application by filing an affidavit in reply. At the outset, the respondent assailed the very invocation of the arbitration as the disputes arising out of Leave and License Agreement were exclusively amenable to the jurisdiction of Court of Small Causes, Mumbai under section 41 of the Presidency Small Cause Courts Act, 1882 (the Act, 1882). Thus, the arbitration agreement contained in Leave and License Agreement was invalid and inoperative as the reference to arbitration would be against the public policy. On this sole count, according to the respondent the application was liable to be dismissed.

7. The substance of the resistance put forth by the respondent on merits is that the applicant unilaterally vacated the subject premises. Furthermore, the applicant had either taken away the valuable equipments and tools form the subject premises or damaged them to an extent that they could not be put to further use. The respondent was required to incur huge expenses towards

repairing/ servicing those damaged equipments and tools. The respondent contended that he was in the process of instituting a suit for the recovery of the amount in the Court of Small Causes, Mumbai. Two further additional affidavits were filed. Along with additional affidavit dated 28th March, 2022, the respondent placed on record a copy of the plaint in LC No. 2199 of 2021 wherein respondent claimed a sum of Rs. 36,56,375/- from the applicant.

8. The affidavits in rejoinder were filed on behalf of the applicant controverting the contentions in the affidavit in reply. It was asserted that the institution of LC No. 2199 of 2021 in the Court of Small Causes, Mumbai was a farce to avoid arbitration. Since the applicant claimed the refund of the security deposit under the terms of Leave and License Agreement, the dispute would not fall within the ambit of exclusive jurisdiction conferred upon the Court of Small Causes under section 41 of the Act, 1882, averred the applicant.

9. In the light of the aforesaid pleadings, I have heard Mr. K.L. Vyas, learned counsel for the Applicant/Petitioner and Mr. Mangesh Patel, learned counsel for the Respondent at some length. With the assistance of the learned counsels for the parties, I have perused

the pleadings and material on record.

10. Mr. Vyas, learned counsel for the applicant strenuously submitted that the applicant is being deprived of a legitimate claim of the refund of the security deposit by raising untenable objections. In the circumstances, the applicant was constrained to invoke the arbitration. The resistance sought to be put forth by the respondent to the instant application is wholly unsustainable. Mr. Vyas would urge that indisputably the term of the license had came to an end, by efflux of time; the applicant vacated the subject premises; and yet the respondent had not refunded the security deposit, an arbitratable dispute has arisen between the parties. Mr. Vyas submitted that the challenge to the tenability of the application based on section 41 of the Act, 1882 is completely misconceived.

11. In opposition to this Mr. Patel, learned counsel for the respondent stoutly submitted that the position in law is settled by a Full Bench judgment of this Court in the case of **Central Warehousing Corporation vs. M/s. Fortpoint Automotive Pvt. Ltd.**[1] that inspite of an arbitration agreement between a licensor and licensee, the exclusive jurisdiction of the Small Causes Court to try and decide the dispute specified in section 41 of the Act, 1882 is not

1 2010(1) ALL MR 497.

ousted. Instead the arbitration agreement becomes inoperative and unenforceable. Since the respondent has already instituted the suit, being LC No. 2199 of 2021, in respect of the very same subject matter, in order to avoid conflicting decisions, it is imperative to decline the prayer of the applicant to refer the dispute to arbitration, submitted Mr. Patel.

12. Before adverting to deal with the aforesaid submissions canvassed across the bar, it may be appropriate to note few uncontroverted facts. First, there is no dispute about the execution of the Leave and License Agreement dated 2nd July, 2012 and the nature of the jural relationship between the parties brought about by the said agreement. Nor there is much dispute about the essential terms of the said agreement. It is indisputable that agreement provided for, inter alia, the resolution of the dispute through arbitration. In the context of the controversy, it is incontrovertible that the term of the license was five years, expiring with the end of June, 2017. Of course, the respondent made an effort to contest the mode in which the termination was to be given effect to. The parties are not at issue over the fact that the applicant had paid a sum of Rs. 12 lakhs by way of security deposit.

13. The controversy between the parties, however, revolves around the alleged unilateral termination of the agreement by the applicant and removal of, and/or damage to, the equipments, tools and other fixtures at the subject premises and, consequently, whether the respondent is entitled to withhold and/or adjust the security deposit towards the price of the equipments and tools and expenses for repairs.

14. In the aforesaid context, the core issue that wrenches to the fore, in this application, is whether the aforesaid dispute is amenable to arbitration or its reference to arbitration is barred by the provisions of section 41 of the Act, 1882.

15. Before exploring an answer to the aforesaid question, it may be necessary to note few clauses of the Leave and License Agreement which bear upon the controversy.

16. The term of 'License' is provided in clause 1 as under:

> "THE LICENSOR hereby grant unto the LICENSE their permission License to use and occupy for a period of FIVE YEARS from 1st July, 2017 to 30th June, 2017 (60 months) the said Licensed Premises"

17. The lock-in period and premature termination are provided in

clause 18 :

> "Both the parties hereto agree that there will be a lock-in period to YEAR i.e. from 1st July, 2012 to 30th June, 2014 during which this Agreement cannot be revoked or terminated. After the duration of twenty-four months, both the parties shall be entitled to revoke/ terminate/ determine this agreement by giving three months notice in writing to the other party without assigning any reasons whatsoever."

18. The payment and refund of security deposit are provided for in clause 4 :-

> "Sum of Rs. 12,00,000/- to be retained by the LICENSOR without any interest thereon, as a Security Deposit to secure and enforce due compliance to this Agreement and the said Security Deposit would be returned back to the LICENSEE on receiving the peaceful and vacant possession of the said Licensed Premises from the LICENSEE, after deductions if any on account of the arrears of license fee/ charge or expense of repair or damages caused by the LICENSEE to the premises, upon completion of the terms of this Agreement or termination thereof before the completion of the term".

19. The arbitration clause is contained in clause 13, which reads as under:-

> "ANY dispute or question which may arise during the term of FIVE YEARS or thereafter in connection with any matter between the LICENSOR and the LICENSEE in connection with these presents shall be referred to an ARBITRATOR mutually agreed to by the parties, and all such arbitration shall be held at Mumbai and shall be governed by the Provisions of the Arbitration Act for the time being in force in India and its award shall be final and binding on the parties to this dispute".

20. At this juncture, it would be contextually relevant to note the first response of the respondent to the intimation given by the applicant dated 19th May, 2017 expressing it's intent to terminate the agreement by 30th June, 2017, after expiry of the term, and calling upon the respondent to refund the security deposit of Rs. 12 lakhs. The relevant paragraph of the reply dated 9th June,, 2017 reads as under:

> "As per the para No. 18 other party is entitled to terminate the agreement by giving 3 months notice in writing. However, the same term has not been fulfilled inspite of several oral reminders for the last 6 months, and the senior people of your organization continued to give us assurances for continuing the L & L agreement.
>
> To our utter disbelief Mr. Bamankar you came to our office last week with a letter expressing to terminate the above agreement. We did not accept the letter because on a visual inspection we saw that lot of equipments, tools, gadgets and furnitures etc. were either missing or were severally damaged, for further use.
>
> We, therefore feel that a proper 3 months notice in writing be given to us and a proper inventory of the above mentioned be taken so that neither of us are put to financial difficulties. We for your knowledge are forwarding to you the photographs for your perusal."

21. At the threshold, the aforesaid stand of the respondent that it was incumbent upon the applicant to give three months prior notice before terminating the license, even when the license came to an end by efflux of time, is not borne out by clause 1 and 18, extracted above. If clause 1 and 18 are read in conjunction with each other, it

becomes evident that the term of the license was five years with a lock-in period of two years. The requirement of three months notice in writing would have sprung into operation if the applicant proposed to terminate the license after expiry of the lock-in period but before the expiry of term of five years. No requirement of notice in writing in case the license expired by efflux of time can be discerned from the terms of agreement. The controversy thus gets restricted to the claim of respondent that subject premises was damaged and he is entitled to recover the damages and expenses for repairs thereof from the applicant.

22. Now, the legislative regime which governs the determination of the controversy. Sub-section (3) of section 2 of the Act, 1996, which falls in Part 1, Chapter I declares, that Part I shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.

23. Sub section (5), (6) and (6(A)), (omitted by Act 33 of 2019), of section 11 read as under:-

> (5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree [the appointment shall be made on an application of the party in accordance

with the provisions contained in sub section (4)]

(6) Where, under an appointment procedure agreed upon by the parties,—
(a) a party fails to act as required under that procedure; or
(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitration other than international commercial arbitration, as the case may be] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

24. Section 41 of the Act, 1882 reads as under:-

41(1). Notwithstanding anything contained elsewhere in this Act 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 landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of the licence fee or charges or rent therefor, irrespective of the value of the subject matter of such suits or proceedings.
(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property, or of licence 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 Municipal Corporation Act [the Maharashtra Housing and Area Development Act, 1976 or any other law for the time being in force, apply.

25. A conjoint reading of sub-section (3) of section 2 of the Act,

1996 and section 41 of the Act, 1882 would indicate that if a special law provides for resolution of the disputes exclusively by a machinery created thereunder, and, thereby implies that such disputes may not be amenable to arbitration, Part I of the Act, 1996 is not attracted. Section 41 of the Act, 1882 confers exclusive jurisdiction on the Court of Small Causes to entertain and try all suits and proceeding between a licensor and licensee, or landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of the licence fee or charges or rent therefor, irrespective of the value of the subject matter of such suits or proceedings.

26. This juxtaposition would pose a question as to whether section 41 of the Act 1882 satisfies the description of 'any other law' under section 2(3) of the Act, 1996 barring a reference to arbitration ?

27. The aforesaid question was examined, albeit in a slightly different context, by the Full Bench in the case of **Central Warehousing Corporation** (supra) on which a strong reliance was placed by Mr. Patel. The following question arose for the consideration of the Full Bench:

> Whether 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 of arbitration, the jurisdiction of the Small Causes Court under the Presidency Small Cause Courts Act, 1882 would be ousted ?

28. It was answered as under:-

40. In summation, we would hold that section 41(1) of the Act of 1882 is a special law which in turn has constituted special Courts for adjudication of disputes specified therein between the licensor and licensee or a landlord and tenant. The effect of section 41(2) of the Act of 1882 is only the suits or proceedings for recovery of possession of immovable property or of licence fee thereof, to which, the provisions of specified Acts or any other law for the time being in force apply, have been excepted from the application of non-obstante clause contained in section 41(1) of the Act. The expression "or any other law for the time being in force" appearing in section 41(2) will have to be construed to mean that such law should provide for resolution of disputes between licensor and licensee or a landlord and tenant in relation to immovable property or licence fee thereof, to which immovable property, the provisions of that Act are applicable. The Act of 1996 is not covered within the ambit of section 41(2) in particular the expression "or any other law for the time being in force" contained therein. The question whether the exclusive jurisdiction of the Small Causes Court vested in terms of section 41 of the Act of 1882 is ousted, if an agreement between the licensor and licensee contains a clause for arbitration, the same will have to be answered in the negative. For, section 5 of the Act of 1996 in that sense is not an absolute non-obstante clause. Section 5 of the Act of 1996 cannot affect the laws for the time being in force by virtue of which certain disputes may not be submitted to arbitration, as stipulated in section 2(3) of the Act of 1996. We hold that section 41 of the Act of 1882 falls within the ambit of section 2(3) of the Act of 1996. As a result of which, even if the Licence Agreement contains Arbitration Agreement, the exclusive jurisdiction of the Courts of Small Causes under section 41 of the Act of 1882 is not affected in any manner. Whereas, Arbitration Agreement in such cases would be invalid and inoperative on the principle

> that it would be against public policy to allow the parties to contract out of the exclusive jurisdiction of the Small Causes Courts by virtue of section 41 of the Act of 1882.
>
> 41. Accordingly, we answer the question referred to us in the negative. We, therefore, hold that inspite of Arbitration Agreement between the parties and non-obstante clause in Section 5 of the Act, 1996, the exclusive jurisdiction of the Small Causes Court to try and decide the dispute specified in Section 41 of the Act of 1882 is not ousted.

29. The Full Bench thus ruled that section 5 of the Act, 1996 cannot override the laws for the time being in force by virtue of which certain disputes may not be submitted to arbitration as stipulated in section 2(3) of the Act, 1996 and section 41 is such a piece of legislation which falls within the ambit of section 2(3) of the Act, 1996. Thus, even if the license agreement contains arbitration agreement, the exclusive jurisdiction of Court of Small Causes under section 41 of the Act, 1882 is not affected. Conversely, in such a case, the arbitration agreement would be invalid and inoperative on the principle that it would be against the public policy to allow the parties to contract out of the exclusive jurisdiction of the Court of Small Causes, conferred by section 41 of the Act, 1882.

30. Mr. Vyas submitted that aforesaid Full Bench decision is under challenge before the Supreme Court in SLP CC No. 1218 of 2010 and it is still pending. Even otherwise, according to Mr. Vyas,

the aforesaid judgment does not govern the facts of the case at hand. Mr. Vyas made a strenuous effort to demonstrate that the bar under sec.41 applies only when the dispute is relating to recovery of possession of the licensed premises or rent or license fee. The claim for refund of the security deposit does not fall within the ambit of exclusive jurisdiction of Court of Small Causes, urged Mr. Vyas.

31. In order to lend support to the aforesaid submission, Mr. Vyas placed reliance on the judgments of this Court in the cases of **RMC Readymix (I) P. Ltd. vs. Kanayo Khubchand Motwani**[2]**; A.S. Patel Trust and Others vs. Wall Street Finance Limited**[3]**; Brainvisa Technologies Pvt. Ltd. vs. Subhash Gaikwad (HUF)**[4]**.**

32. In the case of **RMC Readymix** (supra), a learned single Judge of this Court repelled the challenge to the tenability of a summary suit to recover the security deposit by opining that a claim for refund of security deposit is not covered by the expression “relating to recovery of possession”. The provision of section 41 applies in cases where the suit is related to “recovery of possession” of premises or for “demand of compensation” under the Leave and License Agreement. Thus, it was held that the contentions advanced

2 Summons for Judgment No. 602 of 2005, Dt.21-03-2006.
3 Com. Arbitration Petition No. 452 of 2019, Dt. 23-07-2019.
4 Arbitration Application NO. 195 of 2010, Dt.14-09-2012.

by the learned counsel for the defendant therein that the Court has no jurisdiction to entertain and try the suit in the light of the provisions of section 41(1) of the Act, 1882 did not merit acceptance.

33. In the case of **A.S. Patel Trust** (supra), which arose out of section 34 of the Act, 1996, after adverting to the previous pronouncements including the judgments in the case of **RMC Readymix** (supra) and **BNP Paribas Securities India Pvt. Ltd. vs. Cable Corporation of India Ltd.**[5], a learned single Judge of this Court observed that the proceeding filed by the licensor for recovery of the balance amount of security deposit was not action in rem but an action in personam. Section 41 of the Act, 1882 was thus not at all attracted to such a case.

34. In the case of **Brainvisa Technologies Pvt. Ltd.** (supra) where the applicant in the Arbitration Application was not put in possession of the licensed premises despite execution of the Leave and License Agreement, which contained an arbitration clause, this Court, after adverting to the Full Bench judgment in the case of **Central Warehousing Corporation** (supra) held that for the application of section 41 of the Act, 1882 the suit must be of the

5 2012(4) Bom. C.R. 251.

description mentioned in section 41(l) of the Act, 1882. A suit for the recovery of security deposit does not constitute a suit for the recovery of “licence fee or charges or rent therefor”. The expression 'charges' must receive meaning from the terms with which it occurs in context. Licence fees, charges and rent are periodical payments made for use and occupation. A security deposit is a form of security which the landlord as licensor obtains from the licensee to whom the premises are licensed for occupation. A claim for recovery of security deposit and seeking damages/compensation would not fall within the exclusive jurisdiction of the Court of Small Causes. The application under Section 11(6) was, therefore, maintainable.

35. In the case of **BNP Paribas Securities India Pvt. Ltd.** (supra) which arose out of a petition under section 9 of the Act, 1996, it was held that the petition for refund of security deposit withheld by the licensor would not fall within the ambit of section 41 of the Act, 1882. It was further held that since the reliefs of possession of property and recovery of license fee and damages were already prayed by the licensor in the Court of Small Causes, the claim for refund of security made by the licensee in the arbitral proceeding was maintainable.

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

37. Undoubtedly, section 41(1) uses the expression “relating to”. Such expressions “relating to” or “connected with” are of wide import. Legislature has not used the expression the suit “for recovery” of possession or license fee and rent. This widens the scope of the matters which fall within the exclusive jurisdiction of the Court of Small Causes.

38. A profitable reference in this context can be made to the

judgment of the Supreme Court in the case of **Mansukhlal Dhanraj Jain And Ors. vs Eknath Vithal Ogale**[6] wherein the Supreme Court expounded the import of the exclusive jurisdiction of the Court of Small Causes under section 41(1), especially the term "relating to", employed in the said section, before it suffered the amendment (Maharashtra) in 1984. In the said case, the Supreme Court was confronted with the question as to *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 Causes Courts Act, 1882 or whether it is cognizable by the City Civil Court, Bombay, constituted under the Bombay City Civil Act."*

39. The Supreme Court answered the question in favour of the exclusive jurisdiction of the Court of Small Causes and, observed, as under :

> 12] 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

6 1995(2) SCC 665.

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 Courts Act, the following conditions must be satisfied before taking view that jurisdiction of regular competent civil court like City Civil Court is ousted.

(i) it must be a suit or proceeding between the licensee and licensor; or
(ii) between a landlord and a tenant;
(iii) such suit or proceeding 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.

....

14] 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 licensor. 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 suils for injunction simpliciter for protecting their possession from the illegal threatened acts of respondents-defendants. Relying on a series of decision 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 plain-tiff-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 wides weep of the words "relating to recovery of possession" as employed by Section 41(l), In this connection, we may refer to Blacks" Law Dictionary Super Deluxe 5th Edition. At page 1158 of the said Dictionary, the term "relate" is defined as under:

"to stand in some relation, to have bearing or concern, to pertain, refer, to bring into association with or connection with."

It cannot be seriously disputed that when a plaintiff- licensee seeks permanent injunction against the defendant- licensor restraining the defendant from recovering the possession of the suit property by forcible means from the plaintiff, such a suit does have a bearing on or a concern with the recovery of possession of such property. In the case of Renusagar Power Company Ltd. v. General Electric Company & Anr., [1985] 1 S.C.R. 432, a Division Bench of this Court had to consider the connotation of the term "relating to", Tulzapukar, J. at Page 471 of the report has culled out propositions emerging from the consideration of the relevant authorities. At page 471 proposition No. 2 has been mentioned as under: (SCC p.704, para 25)

"Expressions such as "arising out of" or "in respect of" or "in connection with" or "in relation to" or "in consequence of" or "concerning" or "relating to" the contract are of the widest amplitude and content and include even questions as to the exist-ence, validity and effect (scope) of the arbitration agreement."

....

16] It is, therefore, obvious that the phrase 'relating to recovery of possession' as found in Section 41(1) of the Small Causes Court 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(l), 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.

40. A profitable reference in this context can be made to a three Judge Bench judgment in the case of **Vidya Drolia and Others vs. Durga Trading Corporation**[7] wherein the non arbitrability in the context of landlord- tenant dispute was exposited as under:

> 79. Landlord-tenant disputes governed by the Transfer of Property Act are arbitrable as they are not actions in rem but pertain to subordinate rights in personam that arise from rights in rem. Such actions normally would not affect third-party rights or have erga omnes affect or require centralized adjudication. An award passed deciding landlord-tenant disputes can be executed and enforced like a decree of the civil court. Landlord-tenant disputes do not relate to inalienable and sovereign functions of the State. The provisions of the Transfer of Property Act do not expressly or by necessary implication bar arbitration. Transfer of Property Act, like all other Acts, has a public purpose, that is, to regulate landlord- tenant relationships and the arbitrator would be bound by the provisions, including provisions which enure and protect the tenants.
>
> 80. In view of the aforesaid, we overrule the ratio laid down in Himangni Enterprises and hold that landlord-tenant disputes are arbitrable as the

7 (2021) 2 Supreme Court Cases 1.

> 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 specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations. Such rights and obligations can only be adjudicated and enforced by the specified court/forum, and not through arbitration.

41. In the light of the aforesaid enunciation of law, it has to be seen whether, in the facts of the case, the claim for refund of the security deposit is arbitrable. Mr. Patel urged, with a degree of vehemence, that under clause 4 of the Leave and License Agreement, extracted above, the refund of the security deposit post termination of the license was not automatic. The refund was expressly made subject to deduction, if any, on account of arrears of license fee, charges or expenses of repairs or damages caused by the licensee to the premises. Therefore, the claim of the respondent premised on the loss of tools, equipments and fixtures and damage thereto, according to Mr. Patel, clearly falls within the ambit of the expression "relating to recovery of the license fee or charges or rent therefor" employed in section 41(l) of the Act, 1882.

42. To bolster up this submission, Mr. Patel banked upon the judgment of the Supreme Court in the case of **Ram Janki Devi and**

Anr.vs. M/s.Juggilal Kamlapat[8] wherein in the context of distinction between loan and deposit, Supreme Court observed as under:

> 12] The case of a deposit is something more than a mere loan of money. It will depend on the facts of each case whether the transaction is clothed with the character of a deposit of money. The surrounding circumstances, the relationship and character of the transaction and the manner in which the parties treated the transaction will throw light on the true form of the transaction.

43. Laying emphasis upon the aforesaid connotation of the term "deposit", Mr. Patel would urge that in view of the express stipulation in clause-4, extracted above, the question of entitlement of security deposit after deducting the charges towards damages would squarely fall within the exclusive jurisdiction of Court of Small Causes.

44. I am afraid to accede to these submissions. It is imperative to note that the respondent does not claim that any amount was due and payable towards either license fee or other charges. What the respondent essentially claims is the cost of the items which were allegedly lost or damaged. This claim is primarily in the nature of damages. I find it rather difficult to agree with the submission of Mr. Patel that the expression "charges" would subsume in its fold a claim for damages.

8 AIR 1971 SUPREME COURT 2551

45. As held by this Court in the case of **Brainvisa Technologies Pvt. Ltd.** (supra) license fee, charges and rent are periodical payments made for use and occupation. A claim for recovery of the same, legitimately falls within the exclusive jurisdiction of the Court of Small Causes. In the case at hand, the respondent professes to withhold the security deposit on the ground that the applicant is liable to pay damages. Such a claim, in my considered view, does not fall within the exclusive jurisdiction of the Court of Small Causes, and is amenable to arbitration.

46. For the foregoing reasons, the application deserves to be allowed.

Hence, the following order.

ORDER

1] The application stands allowed.

2] **Mrs. P. V. Ganediwala,** a former Judge of this Court is appointed as an Arbitrator to adjudicate upon claims and counter claims, if any and/or all the disputes which arise out of the leave and license agreement, between the parties.

3] The learned Arbitrator is requested to file her disclosure statement under section 11(8) read with section 12(1) of the

Arbitration and Conciliation Act, 1996 within two weeks of the uploading of this order with the Prothonotary and Senior Master and provide copies to the parties.

4] Parties to appear before the Arbitrator on a date to be fixed by her at her earliest convenience.

5] Fees payable to the Arbitrators will be in accordance with the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.

(**N.J.JAMADAR, J.**)