

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 695 OF 2024
WITH
INTERIM APPLICATION NO. 3853 OF 2025

Ambrosia Restaurants Pvt. Ltd. ... Appellant / Org. Plaintiff
V/s.
Sunita Dileep Nevatia & Anr. ... Respondents

WITH
INTERIM APPLICATION (ST) NO. 9836 OF 2025
WITH
INTERIM APPLICATION NO. 1271 OF 2026
WITH
CROSS OBJECTION (ST) NO. 10028 OF 2025

Mr. Rajiv Narula a/w Ms. Nidhi Loya a/w. Mr. Tarang Jagitani and Mr. Rahul Pillai
i/b Jhangiani Narula and Associates for the Appellant
Mr. Dileep Nevatia, Respondent no. 2 - in person for Respondents

CORAM : FARHAN P. DUBASH, J
RESERVED ON : 17th APRIL 2026
PRONOUNCED ON : 14th JULY 2026

ORDER:

1. The present Appeal is directed against the order dated 31st August 2024 (the ***“Impugned Order”***) passed by the City Civil Court at Mumbai, whereby the application preferred by the original Defendants / Respondents came to be

allowed and the plaint was directed to be returned under Order VII Rule 10 of the Code of Civil Procedure, 1908, (the “**Code**”) for presentation before the court of competent jurisdiction, namely, the Court of Small Causes at Mumbai. The Impugned Order relied upon Section 41 of the Presidency Small Causes Courts Act, 1882, (the “**said Act**”) and held that the said court had exclusive jurisdiction to entertain and try the dispute forming the subject matter of the instant Suit.

2. The Respondents / original Defendants have also filed Cross Objections contending that the Trial Court, having held that the instant Suit was barred by jurisdiction, ought to have rejected the plaint under Order VII Rule 11(d) of the Code, instead of returning it, under Order VII Rule 10 of the Code.

B R I E F F A C T S

3. Before considering the rival submissions, it would be appropriate to briefly set out the facts, to the extent necessary, for deciding the present Appeal:

A. The Appellant is a private limited company. Respondent Nos. 1 and 2 are the owners of the East Wing and West Wing, respectively, situated on the third floor of Udyog Bhavan, 250-D, Worli, Mumbai.

- B. By and under two Leave and License Agreements dated 7th October 2017 executed by the Respondents, the Appellant was placed in possession of the premises on the 3rd floor of Udyog Bhavan, admeasuring approximately 6,700 sq. ft. built-up area (the “*suit premises*” or the “*licensed premises*”).
- C. On or about 29th March 2018, the Respondents are stated to have issued their No Objection Certificate to enable the Appellant to commence and operate a restaurant from the suit premises.
- D. According to the Appellant, after obtaining financial assistance from Union Bank of India, it undertook renovation and interior works in the suit premises. The Appellant alleges that on 23rd October 2018, it was forcibly dispossessed from the suit premises by the Respondents otherwise than in due course of law.
- E. Aggrieved thereby, the Appellant instituted the instant Suit on 7th January 2019 under Section 6 of the Specific Relief Act, 1963, seeking restoration of possession of the suit premises.
- F. In the instant Suit, the Appellant had also sought urgent ad-interim / interim reliefs. By an order dated 15th November 2019, this Court granted ad-interim reliefs restraining the Respondents from

inducting any third party into the suit premises. The said ad-interim protection was continued from time to time, including by orders dated 10th December 2019, 20th December 2019 and 15th January 2020.

G. The Respondents carried the said order in appeal. By an order dated 2nd February 2024, the Appellate Court directed expeditious disposal of the said application and further directed the Respondents, till then, to maintain *status quo* in respect of the suit premises in terms of the order dated 15th November 2019.

H. In June 2023, the Respondents took out another application seeking dismissal of the instant Suit on the ground that the Leave and License Agreements had expired and that, consequently, no relief of restoration of possession, could be granted to the Appellant. By an order dated 24th August 2023, this application came to be dismissed. While doing so, this Court had observed that the instant suit had been instituted under Section 6 of the Specific Relief Act and that even a licensee cannot be dispossessed, otherwise than by following due process of law.

I. Consequent upon the enhancement of the pecuniary jurisdiction of

the City Civil Court, the instant Suit stood transferred to that court. Thereafter, the Respondents took out another application invoking Section 41 of the said Act seeking return, or in the alternative, rejection of the plaint, on the ground that the City Civil Court lacked jurisdiction and that exclusive jurisdiction to entertain the instant Suit vested in the Court of Small Causes at Mumbai.

- J. By the Impugned Order dated 31st August 2024, the Trial Court accepted the case of the Respondents and allowed the said Application and directed return of the plaint under Order VII Rule 10 of the Code, for presentation before the court of competent jurisdiction.

SUBMISSIONS OF THE APPELLANT

4. Mr. Rajiv Narula, learned counsel appearing on behalf of the Appellant / original Plaintiff, submits that the Trial Court has fallen into error in holding that the Court of Small Causes at Mumbai has exclusive jurisdiction to entertain the present dispute. According to him, the instant Suit filed by the Appellant is not an ordinary suit between a licensor and licensee for enforcement of rights arising under the Leave and License Agreements, but is a possessory suit under Section 6 of the Specific Relief Act.

5. Elaborating his submissions, Mr. Narula submits that the Appellant was inducted into possession of the suit premises pursuant to the Leave and License Agreements dated 7th October 2017. According to him, the Appellant was forcibly dispossessed from the suit premises on 23rd October 2018, otherwise than in due course of law. Hence, he contends that the instant suit having been instituted on 7th January 2019, within six months from the date of the alleged dispossession, satisfies the statutory requirement prescribed under Section 6 of the Specific Relief Act.
6. Mr. Narula submits that the scope of an inquiry under Section 6 of the Specific Relief Act is a narrow one where the court is only required to examine whether the party was in settled possession of the immovable property and whether such possession was disturbed otherwise than in due course of law within six months prior to the institution of the suit. Questions relating to title or the ultimate rights of the parties are wholly foreign to such an inquiry.
7. It is further submitted that the mere existence of a licensor-licensee relationship between the parties does not alter the true character of the proceedings. According to Mr. Narula, the Leave and License Agreements have been relied upon only to explain the source and nature of the Appellant's possession. The foundation of the instant Suit is the alleged

unlawful dispossession and the consequential relief of restoration of possession under Section 6 of the Specific Relief Act, and not the enforcement of any contractual rights arising under the Leave and License Agreements.

8. Mr. Narula further submits that while deciding the earlier application preferred by the Respondents, this Court had already observed that the instant Suit had been instituted under Section 6 of the Specific Relief Act and that even a licensee cannot be dispossessed except by following due process of law. According to him, the Trial Court failed to appreciate the import of the said observations and proceeded solely on the basis that the relationship between the parties was that of licensor and licensee. According him, the Trial Court ought to have considered the averments contained in the plaint as a whole and, upon a meaningful reading thereof, ought to have concluded that the instant suit was maintainable before the City Civil Court as one, instituted under Section 6 of the Specific Relief Act.
9. Mr. Narula submits that the authorities relied upon by the Respondents while invoking Section 41 of the said Act are clearly distinguishable. Those decisions, according to him, concern disputes substantially founded upon the jural relationship of licensor and licensee or landlord and tenant,

involving enforcement or protection of possessory rights arising therefrom. He submits that the present proceedings, however, stand on an altogether different footing, being founded upon an allegation of unlawful dispossession and instituted within the period of limitation prescribed under Section 6 of the Specific Relief Act.

10. Mr. Narula further submits that the Trial Court failed to consider the authorities cited on behalf of the Appellant, which, according to him, clearly distinguish a suit under Section 6 of the Specific Relief Act from an ordinary suit founded upon the rights and obligations of a licensor and licensee. In particular, reliance is placed upon the decision of this Court in *Faijulbee Hajeel and Ors. v. Yadali Amir Shaikh Ansari*¹, wherein it was held that a suit under Section 6 of the Specific Relief Act, founded upon unlawful dispossession and seeking restoration of possession, continues to lie before the Civil Court, notwithstanding that, the parties stand in the relationship of landlord and tenant or licensor and licensee. According to Mr. Narula, the Trial Court failed to consider the ratio of the said decision.
11. Reliance was also placed upon the judgment of this Court in *Eknath Vithal Ogale v. Mansukhlal Dhanraj Jain*². Mr. Narula submits that the said decision draws a clear distinction between a suit for a bare injunction and a

¹ 1984 SCC OnLine Bom 38

² 1987 SCC OnLine Bom 414

summary possessory suit under Section 6 of the Specific Relief Act wherein, the plaintiff does not seek possession in enforcement of any rights as a licensee, and consequently, the existence of a licensor-licensee relationship is of no determinative significance.

12. Mr. Narula further relies upon the decision of the Supreme Court in *Mansukhlal Dhanraj Jain v. Eknath Vithal Ogale*³, wherein the Supreme Court recognised and reiterated that Section 6 of the Specific Relief Act provides a special and summary remedy for restoration of possession to a person dispossessed otherwise than in due course of law within six months, irrespective of the title or status of the parties. According to him, the Trial Court failed to appreciate this well-settled distinction and erroneously treated the instant Suit as falling within the exclusive jurisdiction contemplated under Section 41 of the said Act.
13. On the aforesaid premises, Mr. Narula submits that the Impugned Order deserves to be set aside, the instant Suit restored to the file of the City Civil Court and the Cross Objections preferred by the Respondents seeking rejection of the plaint under Order VII Rule 11(d) of the Code, be dismissed.

³ AIR 1995 SC 1102

SUBMISSIONS OF RESPONDENT NOS. 1 AND 2

14. On the other hand, Mr. Dileep Nevatia, Respondent No. 2, appears in person and opposes the present Appeal. He submits that the Impugned Order does not warrant interference, since the same having rightly held that the dispute raised therein, falls within the exclusive jurisdiction of the Court of Small Causes at Mumbai.
15. Mr. Nevatia submits that the plaint itself proceeds on the admitted basis that the relationship between the parties is that of licensor and licensee, by relying two registered Leave and License Agreements, both dated 7th October 2017, in respect of the suit premises. According to him, the substance of the instant Suit, is one for recovery or restoration of possession of the suit premises. He invites my attention to the substantive reliefs claimed in the plaint which, *inter alia*, include a direction to hand over possession of the suit premises, appointment of the Court Receiver, and a consequential prayer for appointment of the Appellant as his agent, to carry on business therefrom. These reliefs, according to him, unmistakably demonstrate that the instant Suit relates to possession of suit premises.
16. Mr. Nevatia submits that the mere description of the instant Suit as one, under Section 6 of the Specific Relief Act, cannot take the matter outside the ambit of Section 41 of the said Act. According to him, while

determining the question of jurisdiction, the Court must examine the substance of the plaint and the true nature of the reliefs sought, rather than the form in which the instant suit has been drafted.

17. It is further submitted that Section 41 of the said Act confers exclusive jurisdiction upon the Court of Small Causes at Mumbai to entertain and try all suits and proceedings between licensors and licensees relating to recovery of possession of immovable property situated within Greater Mumbai. Mr. Nevatia emphasizes that the statutory expression “*relating to recovery of possession*” is of much wider import than a suit merely “*for recovery of possession*”.
18. According to Mr. Nevatia, all the jurisdictional requirements of Section 41 of the said Act stand satisfied in the present case and the Appellants cannot circumvent the statutory mandate contained therein by adopting a particular form of drafting. He points out that the plaint itself refers to the Leave and License Agreements, the notices exchanged between the parties, the alleged termination, refusal to hand over keys, and the alleged dispossession. All these events, according to him, arise directly from the licensor-licensee relationship and relate to possession of the licensed premises. He further points out that the reliefs sought are directly connected with possession of the licensed premises. Consequently, the jurisdiction of the City Civil Court

is expressly excluded.

19. In support of his submissions, Mr. Nevatia relies upon the decision in *Nagin Mansukhlal Dagli v. Haribhai Manibhai Patel*⁴ to contend that disputes between licensors and licensees relating to recovery of possession fall exclusively within the exclusive jurisdiction of the Court of Small Causes.
20. He also relies upon the decision of this Court in *Eknath Vithal Ogale* (supra), wherein it was held that where a licensee seeks protection of possession founded upon a license, the jurisdiction of the Civil Court is barred by virtue of Section 41 of the said Act. Further reliance was also placed upon the said decision wherein the Supreme Court held that, by reason of the non obstante clause contained in the said Section 41, once a dispute falls within its sweep, the jurisdiction of all other Courts stands excluded notwithstanding that such a suit may otherwise have been maintainable before a Civil Court.
21. Mr. Nevatia submits that a suit instituted by a licensee seeking protection against dispossession otherwise than in accordance with law would also fall within the ambit of Section 41 of the said Act, provided, the dispute is between a licensor and licensee and relates to recovery or protection of possession of immovable property situated within Greater Mumbai. He

⁴ AIR 1980 Bom 123

relies upon the decision of the Supreme Court in ***Mahadev P. Kambekar v. Shree Krishna Woollen Mills Pvt. Ltd.***⁵, wherein the aforesaid principle was reiterated and it was held that even after determination of the license or tenancy, disputes relating to possession continue to fall within the exclusive jurisdiction of the Court of Small Causes.

22. Reliance is also placed upon the decisions in ***Sutar Pukraj Somtiji v. Yellubai Mallappa Wagle***⁶, ***Bixin Office Parks v. Kailasa Urja***⁷, in support of the proposition that where the real controversy arises out of a landlord-tenant or licensor-licensee relationship and relates to possession of the premises, the jurisdiction of the Civil Court stands excluded.
23. On the aforesaid basis, Mr. Nevatia submits that the Trial Court has rightly held that the City Civil Court lacked jurisdiction and that the Court of Small Causes at Mumbai, alone, was competent to entertain the instant suit.
24. Mr. Nevatia, however, submits that the Trial Court thereafter committed an error in directing return of the plaint under Order VII Rule 10 of the Code. According to him, once the Trial Court came to the conclusion that the instant Suit was barred by law, the only permissible course was to reject the plaint under Order VII Rule 11(d) of the Code. In that regard, he invites my

⁵ AIR 2019 SC 913

⁶ AIR 2003 Bom 85

⁷ Order dated 20th August 2023 passed in Arbitration Petition (L) No. 22526 of 2022

attention to Cross Objections (St) No. 10028 of 2025 preferred by him challenging that part of the Impugned Order by which the plaint has been returned instead of being rejected.

25. Reliance is also placed upon the decision in ***Dheeraj Singh v. Greater Noida Industrial Development Authority***⁸ to submit that the issues raised in the Cross Objections are required to be independently considered by the Appellate Court.
26. Mr. Nevatia further submitted that the expression “*barred by law*” occurring in Order VII Rule 11(d) of the Code, is of wide amplitude and includes not only, express statutory bars, but also bars flowing from binding judicial precedents. In support of this proposition, he relied upon ***Bharvagi Construction v. Kothakapu Muthyam Reddy***⁹.
27. Reliance is also placed upon ***Kamla v. K.T. Eshwara Sa***¹⁰ to submit that the distinct provisions contained in Order VII of the Code cannot be interchanged. According to Mr. Nevatia, having upheld the objection to jurisdiction, the Trial Court could not have resorted to Order VII Rule 10 of the Code, instead of rejecting the plaint under Order VII Rule 11(d).

⁸ Order dated 4th July 2023 passed in SLP (Civil) No. 26491 of 2018

⁹ AIR 2017 SC 4428

¹⁰ AIR 2008 SC 3174

28. Mr. Nevatia also relied upon *Anil Bhat v. Citibank*¹¹ to contend that return of a plaint is appropriate where the defect pertains to territorial or pecuniary jurisdiction. However, where the suit is inherently not maintainable before the class of court in which it is instituted, the plaint is liable to be rejected.
29. Mr. Nevatia further submitted that the instant Suit, as framed, cannot be regarded as one filed under Section 6 of the Specific Relief Act. According to him, apart from reliefs under Section 6, the plaint incorporates claims under Sections 5, 37, 38 and 40 of the Specific Relief Act, including reliefs of injunction, damages and appointment of the Court Receiver. He submits that proceedings under Section 6 of the Specific Relief Act are summary in nature and confined to the limited questions of prior possession and dispossession, otherwise than in due course of law. According to him, reliefs such as injunction, damages, compensation and appointment of the Court Receiver necessarily require adjudication in a regular civil trial and cannot be combined with a summary proceeding under Section 6 of the Specific Relief Act.
30. Mr. Nevatia further submits that the ad-interim protection granted by this Court on 15th November 2019, and continued from time to time thereafter, has caused grave prejudice to the Respondents. According to him, the

¹¹ AIR 2009 Bom 99

Respondents are senior citizens and the income generated from the suit premises constituted their principal source of livelihood. It is submitted that by reason of the continuation of the ad-interim order for more than five years, the Respondents have effectively been prevented from exploiting the suit premises by letting them out or granting a fresh license to any third party. He submits that the Respondents have thereby suffered loss of rental income and compensation quantified at approximately Rs.6.72 crores, together with further interest.

31. Mr. Nevatia submits that the Respondents have therefore, taken out Interim Application (L) No.9836 of 2025 seeking restitution and compensation for the losses allegedly occasioned by the continuation of the ad-interim order dated 15th November 2019. In support of the said claim, Mr. Nevatia relies upon Section 144 of the Code and the doctrine of restitution. He also places reliance upon the decisions in *Binayak Swain v. Ramesh Chandra Panigrahi*¹², and *Guran Ditta v. T.R. Ditta*¹³, to contend that where a party has suffered prejudice on account of an order which subsequently ceases to operate, the Court should, as far as possible, restore such party to the position which it would have occupied had the order not been passed.

32. On the aforesaid grounds, Mr. Nevatia submits that the Appeal deserves to

¹² AIR 1966 SC 948

¹³ AIR 1935 PC 12

be dismissed and the Cross Objections deserve to be allowed by modifying the Impugned Order to the extent of rejecting the plaint under Order VII Rule 11(d) of the Code, instead of directing its return under Order VII Rule 10. He also seeks restitution and compensation as prayed.

ANALYSIS, REASONS AND FINDINGS

33. I have heard the parties and perused the material placed on record. To my mind, the controversy lies within a narrow compass inasmuch as, the issue is only whether the instant Suit, as framed, falls within the exclusive jurisdiction of the Court of Small Causes under Section 41 of the said Act or whether it is one, filed under Section 6 of the Specific Relief Act.
34. It would be apposite to reproduce Section 41 of the said Act. The same is contained in Chapter VII which is titled “*Recovery of Possession of Immovable Property*” and reads as under:

“41. Summons against person occupying property without leave. —

When any person has had possession of any immovable property situate within the local limits, of the Small Cause Court’s jurisdiction and of which the annual value at a rack-rent does not exceed 2 [two] thousand rupees, as the tenant, or by permission, of another person, or of some person through whom such other person claims, and such tenancy or permission has determined or been withdrawn, and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by

such other person,

such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property."

35. It would also be apposite to consider the provisions of Section 6 of the Specific Relief Act which read thus:

"6. Suit by person dispossessed of immovable property.—

- 1. If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.*
- 2. No suit under this section shall be brought—*
 - (a) after the expiry of six months from the date of dispossession; or*
 - (b) against the Government.*
- 3. No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.*
- 4. Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof."*

36. Section 6 of the Specific Relief Act embodies a salutary principle that no person can take law into his own hands. The remedy provided therein is summary in nature. The court is concerned only with two questions, namely, whether the plaintiff was in possession and whether such possession was disturbed, otherwise than in due course of law within six months preceding the institution of the suit. Questions relating to title or

better rights to possession are expressly excluded from the scope of inquiry. Section 41 of the said Act, on the other hand, confers exclusive jurisdiction upon the Court of Small Causes at Mumbai to entertain suits and proceedings between licensors and licensees relating to recovery of possession of immovable property situated in Greater Mumbai.

37. In the present case, the Appellant asserts that it was inducted into possession of the suit premises pursuant to the Leave and License Agreements dated 7th October 2017. According to the Appellant, it was forcibly dispossessed from the suit premises on 23rd October 2018. The instant suit came to be instituted on 7th January 2019, which is admittedly within a period of six months from the alleged date of dispossession. Consequently, having regard to the averments contained in the plaint, in my view, the instant suit, *prima facie*, satisfies the essential requirements prescribed under Section 6 of the Specific Relief Act. The correctness or otherwise of the Appellant's claim of possession and alleged dispossession are matters to be determined on the basis of the evidence that may be adduced at the trial. At this stage, it cannot be said that the instant suit is not maintainable under Section 6 of the Act.
38. The Respondents have relied upon the judgment of the Supreme Court in ***Mansukhlal Dhanraj Jain*** (supra), to contend that the dispute falls within the

exclusive jurisdiction of the Court of Small Causes. There can be no dispute with the proposition that where a suit is between a licensor and licensee and relates to recovery or protection of possession of immovable property situated in Greater Mumbai, Section 41 of the said Act would be attracted. However, the said judgment also explains the nature of a suit under Section 6 of the Specific Relief Act. The Supreme Court observed as under:

“19. ...It is trite to say that section 6 of the Specific Relief Act gives a summary remedy to the plaintiff to seek restoration of possession from the defendant within six months of illegal recovery of possession by the defendant, without referring to the title of the plaintiff and defendant. It is purely a possessory suit wherein status of the party is irrelevant. In such type of suits the plaintiff is not required to prove his title or superior right to possession as compared to the defendant and has to only show that he was in possession of the suit immovable property, and he was illegally dispossessed within a period of six months prior to the date of the suit...”

39. The aforesaid observations are material. They make it clear that a suit under Section 6 stands on a limited and distinct footing. The status of the parties is not determinative in such a suit. What is material is the prior possession and dispossession otherwise than in due course of law. In the instant suit, the Appellant does not seek adjudication of its title. The Appellant's case is that it was in possession of the suit premises and was dispossessed otherwise than in due course of law. The Leave and License Agreements dated 7th October 2017 are relied upon only to explain the manner in which the Appellant came into possession of the suit premises. The existence of such

agreements, by itself, cannot alter the dominant nature of the suit when the relief is founded on alleged dispossession under Section 6 of the Specific Relief Act.

40. In my view, as is evident from the Impugned Order, the Trial Court appears to have proceeded principally on the existence of the licensor-licensee relationship, without examining the true nature of the instant suit and the reliefs claimed. The Trial Court also appears to have proceeded on the premise that because the parties admittedly stood in the relationship of licensor and licensee, every dispute relating to possession must necessarily fall under Section 41 of the said Act. However, such an approach overlooks the true nature of the cause of action pleaded in the plaint. Once the plaint discloses prior possession, alleged dispossession on 23rd October 2018, and it is observed that the instant suit has been instituted on 7th January 2019, namely, within the prescribed period of 6 months, the same was required to be examined within the limited scope of Section 6 of the Specific Relief Act.

41. The Trial Court has not examined whether the relief claimed is one flowing from contractual rights under the Leave and License Agreements or whether it is a statutory remedy independent of those contractual rights. The Impugned Order therefore proceeds on an incorrect legal premise.

Moreover, the question whether the Appellant was in fact in possession, whether the alleged dispossession took place in the manner pleaded, and whether the Appellant is entitled to restoration of possession are matters to be considered at the hearing of the instant suit. Instead, at the stage of considering jurisdiction and return of plaint, it is well settled that the Court is required to proceed primarily on the averments made in the plaint and the reliefs claimed therein and for deciding an objection, either under Order VII Rule 10 or Order VII Rule 11 of the Code, the defence raised by the Defendant is ordinarily irrelevant.

42. It is also material that this Court, while disposing of the earlier Application, had *prima facie* observed that the instant suit was instituted under Section 6 of the Specific Relief Act and that even a licensee cannot be dispossessed except by following due process of law. Although those observations are not conclusive on the question of jurisdiction, they reinforce the character in which the instant suit has been instituted.

43. In *Faijulbee Hajeel* (supra), this Court recognizes the distinction between a suit founded upon the jural relationship of landlord and tenant or licensor and licensee and a summary action founded solely upon prior possession and subsequent unlawful dispossession. The distinction is both real and substantial. This Court held that a suit under Section 6 of the Specific Relief

Act, based on dispossession and seeking recovery of possession of immovable property, continues to remain within the jurisdiction of the civil court. The said proposition directly applies to the present case. As already discussed above, the instant suit is not founded on enforcement of the Leave and License Agreements, but on the allegation that the Appellant was dispossessed from the suit premises, otherwise than in due course of law. The question of title or status of the parties is therefore not determinative at this stage.

44. In ***Ek Nath Vithal Ogale*** (supra), this Court also drew a distinction between a suit for injunction simpliciter and a suit under Section 6 of the Specific Relief Act. It was observed that suits under Section 6 cannot be equated with suits for injunction simpliciter since, in the former suit, the plaintiff does not claim recovery of possession in the capacity of a licensee, and the issue of relationship between licensor and licensee is immaterial.
45. The Respondents have relied upon ***Nagin Mansukhlal Dagli*** (supra), ***Mansukhlal Dhanraj Jain*** (supra), ***Mahadev P. Kambekar*** (supra), ***Sutar Pukraj Somtiji*** (supra), and ***Bixin Office Parks*** (supra) to submit that disputes between licensors and licensees relating to possession fall within the exclusive jurisdiction of the Court of Small Causes. The general proposition emerging from these judgments is not in dispute. Where the

dispute is substantially between a licensor and licensee and relates to recovery or protection of possession on the basis of such relationship, Section 41 of the said Act would apply.

46. However, the instant Suit is not framed as one seeking enforcement of the terms of the Leave and License Agreements or to seek protection of a continuing license. It is framed as a suit under Section 6 of the Specific Relief Act on the allegation that the Appellant was forcibly dispossessed otherwise than by following due process of law. The distinction is material because, in a Section 6 suit, the foundation is prior possession and later dispossession otherwise than in due course of law, whereas in a licensor-licensee possession dispute, the foundation is the right flowing from such relationship. Therefore, the judgments relied upon by the Respondents do not persuade me to hold that the instant suit must necessarily be treated as a proceeding under Section 41 merely because the Appellant originally entered into possession of the suit premises as a licensee. The Trial Court ought to have considered the true nature of the instant suit and the judgments tendered on behalf of the Appellant before directing return of the plaint.

47. Insofar as ***Mahadev P. Kambekar*** (supra) is concerned, the principle relied upon by the Respondents is that even after determination of tenancy or

license, a dispute relating to possession between such parties may fall within the jurisdiction of the Court of Small Causes. However, the present suit is not founded on the continuation or termination of the license. It is founded on the allegation of dispossession otherwise than in due course of law and is filed within six months of such alleged dispossession.

48. Similarly, the reliance placed on *Bixin Office Parks* (supra) does not assist the Respondents for deciding the present issue. The said judgment was relied upon to contend that the exclusive jurisdiction under Section 41 cannot be ousted by agreement between parties. The present issue is not of ouster by agreement, but whether the instant suit, as framed, is a Section 6 suit or a proceeding falling under Section 41.
49. The Respondents have also filed Cross Objections contending that the Trial Court ought to have rejected the plaint under Order VII Rule 11(d) of the Code instead of returning the plaint under Order VII Rule 10. Reliance is placed upon *Dheeraj Singh* (supra) to submit that the Cross Objections are required to be considered. There can be no dispute in this regard. However, in view of the finding recorded above that the instant suit, as framed, is maintainable as a suit under Section 6 of the Specific Relief Act and is not barred by Section 41 of the said Act, the Cross Objections cannot be accepted.

50. The reliance placed upon ***Bhargavi Construction*** (supra) is also of no assistance to the Respondents. The said judgment is relied upon to contend that a plaint can be rejected under Order VII Rule 11(d) of the Code where the suit is barred by law, including by binding judicial precedent. However, such rejection can follow only where, on a meaningful reading of the plaint, the suit is found to be barred by law. In the present case, however, the plaint clearly discloses a suit under Section 6 of the Specific Relief Act filed within six months of the alleged dispossession.
51. The judgment in ***Kamla*** (supra) is relied upon to submit that different provisions of Order VII of the Code cannot be mixed up. The said proposition does not require further elaboration. However, once this Court holds that the suit is not barred by law, the question of rejecting the plaint under Order VII Rule 11(d) of the Code does not arise.
52. The reliance placed upon ***Anil Bhat*** (supra) is also misconceived. The said judgment is relied upon to contend that where the defect is not merely territorial or pecuniary but relates to the class of Court, the plaint ought not to be returned. In the present case, this Court has found that the Trial Court was not justified in holding that the City Civil Court lacked jurisdiction. Therefore, the said judgment does not assist the Respondents.

53. The Respondents have also relied upon the doctrine of restitution and the judgments in *Binayak Swain* (supra) and *Guran Ditta* (supra), contending that they have suffered loss on account of continuation of interim protection. The principle of restitution is well settled. However, the said issue cannot determine the question whether the plaint was liable to be returned or rejected. The claim for compensation or restitution, if otherwise maintainable, would have to be considered independently and in accordance with law.
54. The Respondents have further contended that the instant suit is not maintainable as a Section 6 suit since the Appellant has also sought other reliefs, including injunction, damages and appointment of Receiver. However, for the purposes of the present Appeal, the Court is concerned with the dominant nature of the suit and the basis on which the plaint was returned. The principal relief is founded on alleged dispossession and restoration of possession under Section 6 of the Specific Relief Act. The presence of ancillary reliefs would not, at this stage, justify return or rejection of the plaint when the basic ingredients of Section 6 are pleaded.
55. In the circumstances, I am unable to agree with the finding recorded by the Trial Court that the plaint was liable to be returned under Order VII Rule 10

of the Code. For the aforesaid reasons, the Impugned Order dated 31st August 2024 cannot be sustained. The Trial Court erred in holding that the Court of Small Causes alone would have exclusive jurisdiction merely on account of the licensor-licensee relationship, without appreciating that the dominant nature of the instant suit is one under Section 6 of the Specific Relief Act.

56. Once it is held that the City Civil Court possesses jurisdiction to entertain the instant suit as framed, the Cross Objections preferred by the Respondents seeking rejection of the plaint under Order VII Rule 11(d) of the Code necessarily fail. They apply only where the suit is barred by law on the statements contained in the plaint itself. For the reasons recorded above, no such statutory bar is made out.

57. Considering the above, the following order is passed:

::ORDER::

- a) The present Appeal from Order is allowed.
- b) The Impugned Order dated 31st August 2024 passed by the City Civil Court at Mumbai in Notice of Motion No. 2399 of 2024 in S.C. Suit No. 1320 of 2024 is set aside and the Notice of Motion filed by the Respondents seeking return / rejection of the plaint stands rejected.

- c) S.C. Suit No. 1320 of 2024 shall stand restored to the file of the City Civil Court at Mumbai, to be proceeded with in accordance with law and shall proceed from the stage at which it stood immediately prior to the passing of the Impugned Order.
- d) The Cross Objections filed by the Respondents seeking rejection of the plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908, stand dismissed.
- e) It is clarified that this Court has not examined the merits of the rival claims regarding possession or dispossession. The Trial Court shall decide the instant suit, on its own merits and in accordance with law, uninfluenced by any observations contained either in the Impugned Order or in the present order, save and except the findings on the question of jurisdiction. All contentions of the parties on the merits of the dispute are expressly kept open.
- f) In view of disposal of the Appeal from Order, the pending Interim Applications taken out therein do not survive and also stand disposed of in terms of this order.
- g) There shall be no order as to costs.

(FARHAN P. DUBASH, J.)

58. After the order was pronounced, Ms. Nidhi Loya, learned Counsel who appears for the Appellant seeks continuation of the ad-interim protection granted by this Court vide order dated 28th April 2025. By the said order, this Court had directed that *“till further orders no further third party rights shall be created by the respondents. In the event any third party rights are already created by the respondents, no further third party rights will be created”*.
59. Considering that the Appeal has been allowed and the Suit is directed to be restored to the file of the City Civil Court at Mumbai, the said ad-interim protection granted by the order dated 28th April 2025 in Interim Application No. 3853 of 2025 shall continue to operate for a period of six weeks from today, viz., till 25th August 2026. Prior thereto, the parties shall appear before the Trial Court on 11th August 2026 and place a copy of this order on the record.

(FARHAN P. DUBASH, J.)

Shubham Gadhavepatil