Natraj Studios (P) Ltd vs Navrang Studios & Anr on 7 January, 1981

Equivalent citations: 1981 AIR 537, 1981 SCR (2) 466, AIR 1981 SUPREME COURT 537, 1981 (1) SCC 523, (1981) 2 SCR 466 (SC), (1981) 1 RENCR 350, (1981) 1 RENTLR 448, (1981) MAHLR 196, 1981 BOM LR 83 204

Author: O. Chinnappa Reddy

Bench: O. Chinnappa Reddy, R.S. Pathak, Baharul Islam

PETITIONER:
NATRAJ STUDIOS (P) LTD.

Vs.

RESPONDENT:
NAVRANG STUDIOS & ANR.

DATE OF JUDGMENT07/01/1981

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
PATHAK, R.S.
ISLAM, BAHARUL (J)

CITATION:
1981 AIR 537 1981 SCR (2) 466
1981 SCC (1) 523 1981 SCALE (1)62

ACT:
Bombay Rents, Hotel and Lodging House Rates Control Act 1947-Sections 5and 5A and 28-Scope of-Exclusive jurisdiction to try suits under the Act given to Court of Small Causes-Parties, if could confer jurisdiction on a arbitrator by agreement.

HEADNOTE:
The respondent granted to the appellant "leave and licence" for the use of their two studios, machinery, equipment and certain other materials. With effect from February 1, 1973 section 15A was inserted in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 under which any person who was in occupation of any premises on

February 1, 1973 as a licensee shall be deemed to have become on that date a tenant of the landlord in respect of the premises or part thereof in his occupation. The 'leave and licence' agreement was in force on that date.

In April, 1979 the respondent purporting to terminate the leave and licence' agreement called upon the appellant to hand over possession of the studios to the first respondent. Immediately thereafter the appellant filed a suit for a declaration that the appellant was a monthly tenant of the two studios and other structures covered by the agreement.

In August, 1979 the appellant filed an application under section 33 of the Arbitration Act for a declaration that the arbitration clause in the 'leave and licence' agreement was invalid and inoperative. The application was dismissed by a single Judge on the ground that he had no jurisdiction to determine the rights, if any, of the appellant as a tenant. A Division Bench of the High Court dismissed the appellant's appeal against the order of the single Judge on the ground that it was not maintainable under section 39 of the Arbitration Act.

Allowing the first respondent's application under section 8 of the Arbitration Act the High Court appointed the second respondent as the sole arbitrator.

In appeal against the dismissal of his suit and against the judgment of the High Court appointing the second respondent as sole arbitrator it was contended on behalf of the appellant that under the 1947 Act the dispute between the parties could only be resolved by the Court of Small Causes and that the jurisdiction of every other Court including that of an arbitrator was excluded.

On behalf of the first respondent it was contended that the subject matter of 'leave and licence' agreement was not 'premises' within the meaning of that expression as defined in the 1947 Act but the business as such and therefore the provisions of the Act were not attracted.

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Allowing the appeal

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HELD : A building in which a person is licensed to run a business is "premises" within the meaning of sections 5(8) and 5(8A), to which part II of the Act is made applicable by section 6(1) notwithstanding the fact that the building is not let as such. [474D]

If the definitions of "premises let or given on licence for business", "premises" and "licensee" are read together it will be clear that even a building so constructed or designed as to be capable of being used for running a certain business only is "premises" within the meaning of section 5(8) and section 5(8A) and does not cease to be premises merely because the building is capable of being used for the particular business only or merely because machinery or equipment must necessarily go alongwith the

building if it is to be used for the business. If "premises" did not, by definition, include a building given on licence but meant only a building which was let, it could perhaps be argued that the expression 'premises' would not take within its stride a business let as a business, but the situation is changed by the inclusion of any building given on licence in the definition of "premises" and by the deeming of a licensee as a tenant under section 15A of the Act. A licensee is not really a tenant but is a person deemed to be a tenant because of section 15A of the Act. [474 A-B]

Uttamchand v. S. M. Lalwani A.I.R. 1965 S.C. 716 and Dwarka Prasad v. Dwarka Das Saraf, [1976] 1 S.C.R. 277 held inapplicable.

The 1947 Act applies to a licence to use a building even if the building is to be used necessarily and simultaneously along with machinery and fixtures separately licensed to be used. In such a situation there can be no question of the licence to use the machinery and the licence to use the building being dominant and subsidiary purposes of the agreement. [475 G]

The argument that the agreement was primarily a licence to carry on the business of shooting films by using the machinery and equipments listed in the agreement and that the licence to use the building was only a subsidiary incident of the dominant purpose of the agreement is not valid. The two studios given on licence would still be premises given on licence for business within the meaning of the Act so as to attract its protective provisions. [475 H]

The agreement in the instant case is a composite agreement which gave "leave and licence" to use the studios and other premises for producing films and to use the machinery and equipment for the same purpose. The licensors parted with possession of the studios and the machinery in favour of the licensees. Notwithstanding the fact that the agreement was a composite one and the two licences were to operate "simultaneously and together" there could be no gainsaying the fact that the studios and other premises were certainly given on licence for the business of producing films. The parties themselves were conscious that the licence granted by the licensor in favour of the licensee was in respect of the studios and other premises and that there was even a risk of the licence being construed as a lease. They were, therefore, anxious to emphasise that what was granted was a licence and not a lease. Both by reason of section 28 of the 1947 Act and by reason of the broader consideration of public policy

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the Court of Small Causes has and the arbitrator has not the jurisdiction to decide the question whether the respondent-licensor-landlord is entitled to seek possession of the two studios and other premises together with machinery and equipment from the appellant-licensee-tenant. [476 G-H]

Section 28(1) of the 1947 Act positively confers

jurisdiction on the Court of Small Causes to entertain and try any suit between, among others, a licensor and a licensee relating to the recovery of licence fee and to decide any application made under the Act and negatively excludes the jurisdiction of any other Court from entertaining and such suit, proceeding or application or dealing with such claim or question. [477 D-E]

The scheme of the 1947 Act shows that the conferment of exclusive jurisdiction on certain Courts is pursuant to the social objective at which the legislation aims. Public policy requires that contracts to the contrary cannot be permitted. Therefore, public policy requires that the parties cannot be permitted to contract out of the legislative mandate which requires certain kinds of disputes to be settled by special courts constituted by the Act. [477G]

Exclusive jurisdiction to entertain and try certain suits, to decide certain applications or to deal with certain claims or questions given to the Court of Small Causes does not necessarily mean exclusive jurisdiction to decide jurisdictional facts also. Jurisdictional facts have necessarily to be decided by the Court where the jurisdictional question falls to be decided and the question may fall for decision before the Court of exclusive jurisdiction or before the Court of ordinary jurisdiction. A suit by the landlord against the tenant for recovery of possession of his premises on grounds specified in the Rent Act will have to be brought in the Court of Small Causes which has been made the Court of exclusive jurisdiction. [478 A-C]

In the instant case the relationship between the parties being that of licensor-landlord and licensee-tenant and the dispute between them relating to the possession of the licensed-demised premises the Court of Small Causes alone has the jurisdiction and the Arbitrator has none to adjudicate upon the dispute between the parties.

Babulal Bhuramal & Anr. v. Nandram Shivram & Ors. [1959] S.C.R. 367, Raizada Topandas & Anr. v. M/s Gorakhram Gokalchand [1964] 3 S.C.R. 214, Vasudev Gopalkrishna Tamwekar v. The Board of Liquidators, Happy Home Cooperative Housing Society [1964] 3 S.C.R. 964 and Deccan Merchants Cooperative Bank Ltd. v. M/s Dalichand Jugraj Jain & Ors. [1969] 1 S.C.R. 887 referred to.

Chadha Motor Transport Co. (P) Ltd., Delhi v. R. N. Chopra A.I.R. 1968 Delhi 75, and Basanti Cotton Mills v. Dhingra Brothers, A.I.R. 1949 Cal. 684 approved.

The Court of Small Causes is not exercising jurisdiction over any arbitration proceedings merely because the agreement between the parties contains an arbitration clause and the Court is asked to stay a proceeding before itself. The jurisdiction under section 34 of the Arbitration Act may be exercised by the judicial authority before which the proceedings are pending and not by the court which has

jurisdiction over the arbitration proceedings. This is clear from the
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language of section 34 of the Arbitration Act. An application under section 34 is not an arbitration proceeding; nor is it an application arising thereout. The bar under section 40 does not come in the way of the Court of Small Causes exercising jurisdiction under section 34 of the Arbitration Act to stay proceeding pending before it. [483 F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1906- 1907 of 1980.

Appeals by Special Leave from the Judgments and Orders dated 12-11-1979 and 29-2-1980 of the Bombay High Court in Arbitration Petition Nos. 94/79 and 9/80.

Soli J. Sorabji, Talat Ansari and A. N. Haksar for the Appellant.

P. R. Mridul, P. H. Parekh, Jushubhai and R. N. Karanjawala for the Respondents.

The Judgment of the Court was delivered by CHINNAPPA REDDY, J. The appellant Natraj Studies (P.) Ltd., and the first respondent Navrang Studios, a firm, entered into an agreement on March 28, 1970, by which the latter granted the former "leave and licence" for the use of their two studios and other premises described in list I annexed to the agreement and situated at 194 Kurla Road, Andheri Bombay, and the machineries, equipments, property setting materials etc. mentioned in list No. 2 annexed to the agreement. Though the agreement was initially for a period of 11 months it was extended from time to time. By an agreement dated November 5, 1972, the original agreement was extended for a period of eleven months from January 1, 1973. The 'leave and licence' agreement was thus in force on February 1, 1973, with effect from which date S. 15A was inserted in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, by an amendment (Maharashtra Act 17 of 1973). The effect of S. 15A was that any person who was in occupation of any premises on February 1, 1973 as a licencee was deemed to have become, on that date, for the purposes of the Act, a tenant of the landlord, in respect of the premises or part thereof in his occupation. On April 28, 1979, the first respondent purported to terminate the 'leave and licence' agreement and called upon the appellant to hand over possession of the Studios to the first respondent. Immediately, on May 8, 1979, the appellant filed Declaratory Suit No. 2326 of 1979 in the Court of Small Causes, Bombay, praying for a declaration that the plaintiff-appellant was a monthly tenant of the two studios and all other structures and open land covered by the agreement and for fixation of standard rent and other reliefs. A written statement was filed by the first respondent contesting the suit. Pending disposal of the suit an interim order was made provisionally fixing the rent as Rs. 11500 per month. On August 4, 1979, the appellant filed an application under S. 33 of the Arbitration Act in the Bombay High Court for a declaration that the arbitration clause in the 'leave and licence' agreement was invalid, inoperative etc. The application was dismissed by the High Court on November 12, 1979, by a

learned single Judge on the ground that, he had no jurisdiction to determine the alleged rights if any of the appellant as a tenant. On January 21, 1980, the first respondent filed an application under s.8 of the Arbitration Act praying that the second respondent might be appointed as the sole arbitrator to decide the disputes and differences between the parties under the 'leave and licence' agreement dated March 28, 1970. On February 29, 1980, the High Court allowed the application of the first respondent and appointed the second respondent as the sole arbitrator. A day earlier that is, on February 28, 1980, an appeal filed by the appellant against the judgment and order dated November 12, 1979 of the learned single Judge was dismissed by a Division Bench of the High Court on the ground that it was not maintainable under S.39 of the Arbitration Act. The present two Civil Appeals have been filed by the appellant against the orders of the High Court dated November 12, 1979, and February 29, 1980.

Shri Soli Sorabji and Shri Talat Ansari learned counsel for the appellant submitted that the essence of the dispute between the parties was the right to the possession of the two Studios, that after the 1973 Amendment to the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the status of the appellant was at least that of a 'deemed tenant', that under the scheme of the Bombay Rent, Hotel & Lodging House Rates Control Act, 1947, the dispute between the parties could only be resolved by the Court of Small Causes and that every other Court's jurisdiction including that of an arbitrator was excluded. Shri Mridual, learned counsel for the first respondent, argued that the subject matter of the 'leave and licence' agreement was not 'premises' within the meaning of that expression as defined in the Bombay Act but the business as such and, therefore, the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act were not attracted at all.

For a clear appreciation of the rival submissions, the relevant provisions of the Bombay Rent, Hotel & Lodging House Rates Control Act, 1947, may first be set out.

Section 5(4A) defines a licensee as follows:

> "(4A) 'licensee', in respect of any premises or any part thereof, means the person who is in occupation of the pre-

mises or such part, as the case may be, under a subsisting agreement for licence given for a licence fee or charge; and includes any person in such occupation of any premises or part thereof in a building vesting in or leased to a cooperative housing society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1960; but does not include a paying guest, a member of a family residing together, a person in the service or employment of the licensor, or a person conducting a running business belonging to the licensor, or a person having any accommodation in a hotel, lodging house, hostel, guest house, club, nursing home, hospital sanatorium, dharmashala, home for widows, orphans or like premises, marriage or public hall or like premises, or in a place of amusement or entertainment or like institution, or in any premises belonging to or held by any employee or his spouse who on account of the exigencies of service or provision of a residence attached to his or her post or office is temporarily not occupying the premises, provided that he or she charges licence fee or charge for such premises of the employee or spouse not exceeding the standard rent and permitted increases for such premises, and any

additional sum for services supplied with such premises, or a person having accommodation in any premises or part thereof for conducting a canteen, creche, dispensary or other services as amenities by any undertaking or institution; and the expressions 'licence', 'licensor' and 'premises given on licence' shall be construed accordingly";

Section 5(8) defines premises as follows:

> "(8) 'premises' means-
>
> (a) any land not being used for agricultural purposes,
>
> (b) any building or part of a building let or given on licence separately (other than a farm building) including-
>
> (i) the garden, grounds, garages and out-

houses, if any, appurtenant to such building or part of a building,

(ii) any furniture supplied by the landlord for use in such building or part of a building,

(iii)any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or lodging house."

Section 5(8A) is as follows:

> "(8A) 'premises let or given on licence for business' includes, and shall be deemed always to have included, premises let or given on licence for the purpose of practising any profession or carrying on any occupation therein";

Section 5(11) defines tenant as follows:-

> "tenant" means any person by whom or on whose account rent is payable for any premises and includes-
>
> (a)xxx xxx xxx
> (aa)xxx xxx xxx
> (b) xxx xxx xxx
>
> (bb) such licensees as are deemed to be tenants for the purposes of this Act by Section 15A.
>
> (c) xxx xxx xxx We may add here that the definition of landlord in S.5(3) was suitably amended in 1973 so as to include 'in respect of a licensee deemed to be a tenant by S.15A' 'the licensor who has given such licence'.

Sec. 6(1) provides:

"(1) In areas specified in Schedule I, this part shall apply to premises let or given on licence for residence, education, business, trade or storage."

Sec. 15A which deems certain licensees in occupation of premises on 1.2.1973 as tenants says:

"15A. (1) Notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or in any contract, where any person is on the 1st day of February, 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee he shall on that date be deemed to have become, for the purposes of this Act, the tenant of the landlord, in respect of the premises or part thereof, in his occupation. (2) The provisions of sub-section (1) shall not affect in any manner the operation of sub-section (1) of section 15 after the date aforesaid."

Sec. 28(1) which prescribes and prohibits the jurisdiction of certain Courts says:

"28(1) Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction,

(a) in Greater Bombay, the Court of Small Causes, Bombay, (aa) in any area for which, a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887, such Court and

(b) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the Court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a land-lord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply or between a licensor and a licensee relating to the recovery of the licence fee or charge and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question."

Sec. 6(1) which occurs in Part II of the Act makes the provisions of Part II applicable to "premises let or given on licence for business" also. Sec. 5(8A) expands the meaning of the expression "premises let or given on licence for business" so as to include premises let or given on licence for the purpose of practising any profession or carrying on any occupation therein. Sec. 5(8) defines "premises" among other things, as any building or part of a building let or given on licence separately', including, among other things, 'any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof'. Sec. 5(4A), while defining licensee as the person who is in

occupation of the premises or any part thereof under a subsisting agreement for a licence, excludes a person conducting a running business belonging to the licensor. If the definitions of "premises let or given on licence for business", "premises" and "licensee" are read together it will at once become clear that even a building so constructed or designed as to be capable of being used for running a certain business only is "premises" within the meaning of Sec. 5(8) and Sec. 5(8A) and does not cease to be premises merely because the building is capable of being used for the particular business only or merely because machinery or equipment must necessarily go alongwith the building if it is to be used for the business. If "premises" did not, by definition include a building given on licence but meant only a building which was let, it could perhaps be argued with great force that the expression premises would not take within its stride a business let as a business, but the situation is changed by the inclusion of any building given on licence in the definition of "premises", and by the deeming of a licensee as a tenant under S. 15A of the Act. A licensee is not really a tenant but is a person deemed to be a tenant because of Sec. 15A of the Act. A building in which a person is licensed to run a business is "premises" within the meaning of S. 5 (8) and 5 (8A), to which Part II of the Act is made applicable by S. 6(1) notwithstanding the fact that the building is not let as such.

Shri Mridul relied upon Uttamchand v. S. M. Lalwani and Dwarka Prasad v. Dwarka Das Saraf in support of his contention that having regard to the definition of "premises" the licensee of a business or industry which is carried on in a building cannot be considered to be the licensee of the premises as such, independently of the business, so as to be deemed to be a tenant entitled to the protection of the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. In Uttamchand v. S. M. Lalwani (supra) the facts were that Dal Mill Building with fixed machinery and other accessories was the subject matter of a lease. The object was to use the building as a Dal Mill. The question arose whether the subject matter of the lease was 'accommodation' within the meaning of S. 3(A) of the Madhya Pradesh Accommodation Control Act which defined 'accommodation' as meaning, among other things, any building or part of a building and including any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. This Court held that in construing the lease it was necessary to determine the dominant intention of the parties. It was found that the dominant intention of the parties was that the building should be used as a Dal Mill. It was not a case where the subject matter of the lease was the building and alongwith the leased building, incidentally, passed the fixtures of the machinery in regard to the mill. In truth the Mill was the subject matter of the lease and it was because the Mill was intended to be let out that the building had inevitably to be let out alongwith the mill. On that finding it was held that the lease was of the mill and not of the building and therefore, there was no lease of any 'accommodation'. Dwarka Prasad v. Dwarka Das Saraf (Supra) was a case of a composite lease of a Cinema theatre consisting of the building for which the rent was Rs. 400/- per month and the projector, fittings, fans and other fixtures for which the rent was Rs. 1000 per month. The question arose whether there was a lease of 'accommodation' as defined by Sec. 2(a) of the Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947. Accommodation was there defined as meaning residential and non-residential accommodation in any building or part of a Building including any fittings, affixed to such building or part of the building for the more beneficial enjoyment thereof. This Court held that where the lease was composite and had a plurality of purposes, the decisive test was the dominant purpose of the demise. Applying the test it was found that the real subject of the lease was the cinema apparatus and fittings including, 'subsidiarily and incidentally', the building. It will be seen that in both the

cases there was no question of a licence, nor any question of a licensee being deemed to be a tenant. The question concerned a lease and the question was whether what was demised was a business or a building as such. If what was intended to be demised was a business, the Act would not apply. If what was intended to be demised was a building the Act would apply. The test of dominant intention was applied and it was found in each of the cases that the lease was of a business and not of accommodation'.

The question in the present case is entirely different and is one of construction of the provisions of the Bombay Rent, Hotel & Lodging House Rates (Control) Act, 1947, which deem a licensee to be a tenant and, by definition, include a building or a part of a building given on licence within the meaning of the expression "premises", and, expressly make the Act applicable to "premises" given on licence for business. We are of the view that the Bombay Rent, Hotel & Lodging House Rates (Control) Act, 1947, applies to a licence to use a building even if the building is to be used necessarily and simultaneously along with machinery and fixtures separately licenced to be used. In such a situation there can be no question of the licence to use the machinery etc. and the licence to use the building being dominant and subsidiary purposes of the agreement as suggested by Shri Mridul in his argument. The submission of Shri Mridul that the agreement was primarily a licence to carry on the business of shooting films by using the machinery and equipments listed in the agreement and that the licence to use the building was only subsidiary incident of the dominant purpose of the agreement does not appeal to us. On the construction placed by us upon the provisions of the Bombay Rent, Hotel & Lodging House Rates (Control) Act, 1947, the two studios given on licence would still be premises given on licence for business within the meaning of the Act so as to attract its protective provisions.

At this juncture we may refer to the terms of the agreement. The agreement provided for (1) "leave and licence in respect of studios Nos. 2 and 3 duly sound proofed and electrified and other premises more particularly described in list No. 1 hereto annexed situated at 194 Kurla Road, Andheri, Bombay, on a monthly compensation of Rs. 250 including sound proofing and electrification" and (2) "leave and licence in respect of the machineries, lights, equipments, setting and property materials etc. mentioned in list No. 2 hereto annexed on a monthly compensation of Rs. 7500". The two licences, it was stipulated, were to be "in force and operation simultaneously and together" and "not subject to divisibility". The licensees were entitled to carry on their work of producing motion picture films in the studios and the machineries and other equipments were to be used for that purpose only. The licensees were also entitled to permit the use of the studios and other premises, machineries and other articles temporarily, by others, whomsoever they liked during the subsistence of the licences for the purpose of producing motion pictures only. Property tax and other taxes were to be borne and paid by the licensors while the licensees were required to pay for the consumption of electricity and water. During the subsistence of the licences the licensees were not to part with the possession of the studios and other premises, machineries and equipments. The Studios and other premises, machineries and equipments were to be used by the licensees in a prudent manner. The agreement further stipulated that no tenancy rights were to be understood as having been created by the licensors in favour of the licensees. The interest created was that of licensees only. The licensees were to carry on their business of motion picture films' production in the licensed premises under the name and style of Natraj Studios (P) Ltd. The agreement is thus seen to be a composite

agreement which gave 'leave and licence' (1) to use the studios and other premises for producing films and (2) to use the machinery and equipment for the same purpose. The licensors parted with possession of the Studios and the machinery in favour of the licensees. Notwithstanding the fact that the agreement was a composite one and the two licences were to operate 'simultaneously and together', there could be no gainsaying the fact that the Studios and other premises were certainly given on licence for the business of producing films. The parties themselves were conscious that the licence granted by the licensor in favour of the licensee was in respect of the Studios and other premises and that there was even a risk the licence being construed as a lease So they were anxious, at that stage, to emphasise that what was granted as a licence and not a lease. That was obviously to circumvent the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. It was apparently thought that the sophisticated description of the transaction as a 'licence' instead of a lease would take it out of the clutches of the Bombay Rent, Hotel and Lodging House Rates Control Act. It was precisely the type of agreement that forced the hand of the legislature to intervene and amend the Act by introducing S. 15 A by which such licensees were deemed to be tenants of the landlord.

We may now proceed to consider the submission that the Court of Small Causes alone has exclusive jurisdiction to resolve the dispute between the parties. S. 28(1) of the Bombay Rent Act, positively confers jurisdiction on the Court of Small Causes to entertain and try any suit or proceeding between a landlord and tenant relating to the recovery of rent or possession of any premises or between a licensor and a licensee relating to the recovery of licence fee or charge and to decide any application made under the Act and to deal with any claim or question arising out of the Act or any of its provisions, and negatively it excludes the jurisdiction of any other Court from entertaining any such suit, proceeding or application or dealing with such claim or question.

The Bombay Rent Act is a welfare legislation aimed at the definite social objective of protection of tenants against harassment by landlords in various ways. It is a matter of public policy. The scheme of the Act shows that the conferment of exclusive jurisdiction on certain Courts is pursuant to the social objective at which the legislation aims. Public policy requires that contracts to the contrary which nullify the rights conferred on tenants by the Act cannot be permitted. Therefore, public policy requires that parties cannot also be permitted to contract out of the legislative mandate which requires certain kind of disputes to be settled by special courts constituted by the Act. It follows that arbitration agreements between parties whose rights are regulated by the Bombay Rent Act cannot be recognised by a Court of law.

Thus exclusive jurisdiction is given to the Court of Small Causes and jurisdiction is denied to other Courts (1) to entertain and try any suit or proceeding between a landlord and a tenant relating to recovery of rent or possession of any premises, (2) to try any suit or proceeding between a licensor and a licensee relating to the recovery of licence fee or charge, (3) to decide any application made under the Act and, (4) to deal with any claim or question arising out of the Act or any of its provisions. Exclusive jurisdiction to entertain and try certain suits, to decide certain applications or to deal with certain claims or questions does not necessarily mean exclusive jurisdiction to decide jurisdictional facts also. Jurisdictional facts have necessarily to be decided by the Court where the jurisdictional question falls to be decided, and the question may fall for decision before the Court of

exclusive jurisdiction or before the Court or ordinary jurisdiction. A person claiming to be a landlord may sue his alleged tenant for possession of a building on grounds specified in the Rent Act. Such a suit will have to be brought in the Court of Small Causes, which has been made the Court of exclusive jurisdiction. In such a suit, the defendant may deny the tenancy but the denial by the defendant will not oust the jurisdiction of Court of Small Causes. If ultimately the Court finds that the defendant is not a tenant the suit will fail for that reason. If the suit is instituted in the ordinary Civil Court instead of the Court of Small Causes the plaint will have to be returned irrespective of the plea of the defendant. Conversely a person claiming to be the owner of a building and alleging the defendant to be a trespasser will have to institute the suit, on the plaint allegations, in the ordinary Civil Court only. In such a suit the defendant may raise the plea that he is a tenant and not a trespasser. The defendant's plea will not straightaway oust the jurisdiction of the ordinary Civil Court but if ultimately the plea of the defendant is accepted the suit must fail on that ground. So the question whether there is relationship of landlord and tenant between the parties or such other jurisdictional questions may have to be determined by the Court where it falls for determination-be it the Court of Small Causes or the ordinary Civil Court. If the jurisdictional question is decided in favour of the Court of exclusive jurisdiction the suit or proceeding before the ordinary Civil Court must cease to the extent its jurisdiction is ousted.

In Babulal Bhauramal & Anr. v. Nandram Shivram & Ors., it was held that S.28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, excluded the jurisdiction of the City Civil Court from entertaining a suit for a declaration that one of the plaintiffs was the tenant of the defendant-landlord and the other plaintiffs were his sub-tenants and that they were entitled to be protected from eviction, under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The argument that S.28 applied only to suits where the relationship of landlord and tenant was admitted was repelled with the observation that the suit did not cease to be a suit between a landlord and a tenant merely because the defendants denied the claim of the plaintiffs. It was said:

> "On a proper interpretation of the provisions of S.28 of the suit contemplated in that section is not only a suit between a landlord and a tenant in which that relationship is admitted but also a suit in which it is claimed that the relationship of a landlord and a tenant within the meaning of the Act subsists between the parties. The Courts which have jurisdiction to entertain and try such a suit are the Courts specified in S.28 and no other".

In Raizada Topandas & Anr. v. M/s. Gorakhram Gokalchand the plaintiff instituted a suit in the City Civil Court, Bombay, against the defendant for a declaration that the plaintiff was in lawful possession of a shop and for an injunction restraining the defendants from entering the shop. The plaintiff alleged that the defendant was licensee for a definite term of years and that the period of licence stipulated under the agreement had expired (The suit was instituted before S.15A was introduced into the Act by the 1973 amendment). The defendant's plea was that there was a relationship of landlord and tenant between the parties and that the Court of Small Causes alone had jurisdiction to try the suit and not the City Civil Court. It was held by this Court that since the plaintiff did not admit the relationship of landlord and tenant between him and the defendant, the

defendant could not, by his plea force the plaintiff to go to a forum where, on his own averments, he could not go. The Court, however, did not say that the defence could never be considered to decide the question of jurisdiction. It would be the duty of the Court to consider the defence at some stage, and come to a conclusion, if the facts warrant whether the plaintiff's denial of the relationship of landlord and tenant was a mere camouflage and whether on the facts there was a relationship of landlord and tenant between the parties which precluded the Court from trying the suit any further.

In Vasudev Gopalkrishna Tamwekar v. The Board of liquidators, Happy Home Cooperative Housing Society, there was a dispute between a House Building Cooperative Society and one of its members. The question arose whether the relationship between the Society and the member was that of a landlord and a tenant. The dispute was referred to a Committee of Arbitrators under the Bombay Cooperative Societies Act and an award was made. When the award was sought to be executed it was claimed that it was without jurisdiction as the question whether the relationship between the parties was that of landlord and tenant could only be determined by the Court of Small Causes under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and not by any other authority. The Court found that if the jurisdiction of the Arbitrators was to be excluded, the proceedings before the Arbitrators must be between landlord and tenant and must relate to the recovery of rent or possession of a premises. Where the person invoking the jurisdiction of the Court did not set up a claim that the opposite party was a tenant or a landlord, the defendant was not entitled to displace the jurisdiction of the ordinary Court by alleging the relationship of landlord and tenant between them. It was held that the jurisdiction was not ousted as soon as the contesting party raised a plea about the relationship of a landlord and a tenant. The Court, however, did not go further and say that the ordinary Court's jurisdiction would not be ousted even if the Court came to the conclusion that the relationship between the parties was of a landlord and a tenant. The Court, however, found as a fact that there was no relationship of landlord and tenant between the parties.

In Deccan Merchants Cooperative Bank Ltd. v. M/s. Dalichand Jugraj Jain & Ors., the conflict was between the jurisdiction of the Registrar of Cooperative Societies under the Maharashtra Cooperative Societies Act and the jurisdiction of the Court of Small Causes under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The Court held that whether or not the Registrar of Co-operative Societies was a 'Court' whose jurisdiction was ousted under S.28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the jurisdiction of the Registrar was surely ousted on broader considerations of public policy. The Court pointed out that the Rent Act had a specific social objective in view and for the achievement of that objective it was necessary that the Court set up under the Rent Act alone should deal with a dispute between a landlord and a tenant and that in accordance with the provisions of the Rent Act. Necessarily, the jurisdiction of the Registrar was ousted. The Court said (at pp. 901, 902);

> "The scheme of the various Rent Acts and the public policy underlying them are clear; the policy is to give pro-
>
> tection to the tenants. Various powers have been conferred on the authorities under the Rent Acts to grant protection to the tenants against ejectment and other reliefs claimed by the landlords ..... If the matter is heard by the Registrar, none of these

provisions would apply. We can hardly imagine that it was the intention of the legislature to deprive tenants in buildings owned by cooperative societies of the benefits given by the Rent Act. It seems to us that the Act was passed, in the main, to shorten litigation, lessen its costs and to provide a summary procedure for the determination of the disputes relating to the internal management of the societies. But under the Rent Act a different social objective is intended to be achieved and for achieving that social objective it is necessary that a dispute between the landlord and the tenant should be dealt with by the Courts set up under the Rent Act and in accordance with the special provisions of the Rent Act. This social objective does not impinge on the objective underlying the Act. It seems to us that the two acts can be harmonised best by holding that in matters covered by the Rent Act, its provisions, rather than the provisions of the Act, should apply.

In Govindram Salamatrai Bachani v. Dharampal Amarnath Puri, a Division Bench of the Bombay High Court consisting of Chagla C.J. and Bhagwati J. considered whether the question as to whether the defendant was a tenant or a licensee was a question which arose out of the Act or any of its provisions (the case was decided long before the 1973 amendment). Chagla, C.J., observed that the question was a jurisdictional question and had nothing to do with the Act or any of its provisions. Whether a person was a tenant or a licensee or a trespasser was a question which was not left to the exclusive determination of the Special Court set up under the Rent Control Act but the question whether a person was entitled to the benefits of any of the provisions of the Act was a question which could only be decided and determined by Special Court. It was observed by Bhagwati J. (at p. 391-392):

'There was no bar to the High Court entertaining a suit for ejectment of a licensee as such or a trespasser as such. It would be determined by a perusal of the plaint which was filed in the High Court as to whether such a suit was capable of being entertained by the High Court. Once it was a suit which could be entertained by the High Court, there was no question of its not being entertained by it. It would only be when the defendant filed a written statement and claimed the protection of the Rent Act that the question would arise to be determined by the High Court whether the relationship between the plaintiff and the defendant in the particular case before it was that as between landlord and tenant. If it came to the conclusion that it was not so, it would continue to have the jurisdiction to try the suit and would be able to try the suit on the merits to its logical conclusion. If, on the other hand, the High Court came to the conclusion that the relationship between the plaintiff and the defendant was as between landlord and tenant it would cease to have jurisdiction on that determination and the suit would be liable to be transferred to the Small Causes Court which, under s. 28 of Bombay Act LVII of 1947, would be the only Court to have jurisdiction to try the suits as between landlords and tenants falling within the purview of s. 28".

In Sabavva Kom Hanmappa Simpiger v. Basappa Andaneppa Chiniwar, the question directly arose, as in the present case, whether s. 28 of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947, excluded reference to arbitration of a dispute relating to recovery of rent or possession of premises. It was held by a Division Bench of the Bombay High Court that the expression Court occurring in s.28 of the Bombay Rents, Hotel and Lodging House Rates Control Act 1947 included an arbitrator and therefore, the jurisdiction of the Arbitrator to make an award in respect of any dispute of the nature mentioned in s. 28 was excluded.

In the light of the foregoing discussion and the authority of the precedents, we hold that both by reason of S.28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and by reason of the broader considerations of public policy mentioned by us earlier and also in Deccan Merchants Cooperative Bank Ltd. v. M/s. Dalichand Jugraj Jain & Ors. (supra), the Court of Small Causes has and the Arbitrator has not the jurisdiction to decide the question whether the respondent-licensee-landlord is entitled to seek possession of the two studios and other premises together with machinery and equipment from the appellant-licensee-tenant. That this is the real dispute between the parties is abundantly clear from the petition filed by the respondents in the High Court of Bombay, under S. 8 of the Arbitration Act seeking a reference to Arbitration.

The petition refers to the notices exchanged by the parties, the respondent calling upon the appellant to hand over possession of the studios to him and the appellant claiming to be a tenant or protected licensee in respect of the studios. The relationship between the parties being that of licensor-landlord and licensee-tenant and the dispute between them relating to the possession of the licensed- demised premises, there is no help from the conclusion that the Court of Small Causes alone has the jurisdiction and the Arbitrator has none to adjudicate upon the dispute between the parties.

Learned counsel for the appellant further argued that the respondent had filed a written statement in the suit instituted by the appellant in the Court of Small Causes and was therefore, precluded from seeking a reference to Arbitration.

On the other hand it was submitted by the learned counsel for the respondent that S. 40 of the Arbitration Act prevented the Small Cause Court from exercising any jurisdiction over arbitration proceedings. It was also urged that the questions at issue in the Court of Small Causes and before the arbitrator were not identical.

The suit was properly instituted in the Court of Small Causes and if the respondent wanted to rely upon the arbitration clause an application under s. 34 of the Arbitration Act should have been made to the Court of Small Causes before the written statement was filed. That was not done. It was said that the Court of Small Causes would have no jurisdiction to stay the proceedings under s. 34 of the Act as it was precluded from exercising any jurisdiction over arbitration proceedings under s.40. There is no substance in this argument. S. 40 of the Arbitration Act declares that a Small Cause Court shall have no jurisdiction over any arbitration proceeding or over any application arising thereout. We do not see how it can be said that the Court of Small Causes is exercising jurisdiction over any arbitration proceedings merely because the agreement between the parties contains an

arbitration clause and the Court is asked to stay a proceeding before itself. The jurisdiction under s. 34 may be exercised by the judicial authority before which the proceedings are pending and not by the Court which has jurisdiction over the arbitration proceedings. This is clear from the language of s. 34 of the Arbitration Act. An application under s. 34 is not an arbitration proceeding; nor is it an application arising thereout. The bar under s. 40 does not come in the way of the Court of Small Causes exercising jurisdiction under s. 34 of the Arbitration Act to stay a proceeding pending before it. If authority is necessary for this proposition it may be found in Chadha Motor Transport Co. (P) Ltd. Delhi v. R. N. Chopra and Basanti Cotton Mills v. Dhingra Brothers. The submission that there is no identity of dispute is also without substance. As already pointed out by us the dispute is between the licensor-landlord and licensee-tenant about the right to possess two studios and other premises. The identity of the dispute is clear from a perusal of the pleadings in the suit in the Court of Small Causes and the petition for reference to Arbitration filed in the High Court.

In the result both the appeals are allowed with costs. The arbitration clause in the agreement dated March 28, 1970 is declared to be inoperative . The application for reference to Arbitration is dismissed.

P.B.R. Appeals allowed.