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

COMM ARBITRATION PETITION (L) NO.21544 OF 2026

AND

COMM ARBITRATION PETITION (L) NO.21545 OF 2026

Jubilant Restaurants and Hotels
Private Limited … Petitioner

V/s.

Salsette Developers Private Limited … Respondent

Mr. Sushil K. Tekriwal with Resham I. Sahni for the petitioner.

Mr. Rohaan Cama with Abinash Pradhan, Garima Agrawal, and Yash Dedhia i/by Wadia Ghandy & Co. for the respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : JUNE 30, 2026

PRONOUNCED ON : JULY 1, 2026

JUDGMENT:

1. The petitioner has filed these arbitration petitions under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim protection against the respondent. The petitioner has prayed for the following reliefs:

> "a) Respondent, its directors, servants, officers, agents, mall management personnel, security agencies and all

persons claiming through or under them from dispossessing the Petitioner from Unit No.FF-10 First Floor, (CARBPL/ 21544/2026) and Unit No.GF-79, Ground Floor, (CARBPL/21545/2026) LakeShore Thane Mall, Eastern Express Highway, Thane (West), otherwise than by due process of law and also restraining them from obstructing or interfering with the Petitioner's ingress and egress and the conduct of its business form the said premises;

b) Restrain the Respondent from disconnecting or causing disconnection of electricity, water supply, HVAC/chiller facilities, internet connectivity, gas supply and any other utility or amenity being enjoyed by the Petitioner without following due process of law;

c) maintenance of status quo with respect to the Petitioner's possession and enjoyment of the Licensed Premises;"

2. Both these petitions involve almost the same facts and the same legal issues. The only difference is that the premises involved in the two petitions are different units in the same mall. Therefore, both the petitions are being decided together by this common judgment and order.

3. The facts giving rise to these petitions are as follows. The parties entered into registered leave and license agreements in respect of two different premises situated in Lake Shore Thane Mall. The agreement relating to Unit No. FF-10 on the first floor was executed on 11 August 2021, whereas the agreement relating

to Unit No. GF-79 on the ground floor was executed on 2 August 2021. In both cases, the original license period commenced from 1 July 2021. Thereafter, on 7 June 2023, the National Company Law Tribunal, Mumbai approved a scheme of amalgamation. As a result of the said order, all the rights and obligations under the agreements came to vest in the respondent.

4. The original leave and license agreements came to an end on 30 June 2024 by expiry of their fixed period. Thereafter, the parties continued the arrangement by issuing extension letters from time to time. The first extension letter dated 18 June 2024 extended the occupation from 1 July 2024 till 30 September 2024. Accordingly, 1 July 2024 became the commencement of the first extended period. Thereafter, by letter dated 29 September 2024, the arrangement was further extended from 1 October 2024 till 31 December 2024, with 1 October 2024 being the commencement of the second extension period. Again, by letter dated 26 December 2024, the parties extended the arrangement from 1 January 2025 till 31 March 2025 and, therefore, 1 January 2025 became the commencement of the third extension period. Thereafter, another extension letter dated 30 March 2025 continued the arrangement from 1 April 2025 till 30 June 2025, making 1 April 2025 the commencement of the fourth extension period. Lastly, by extension letter dated 26 June 2025, the arrangement was extended from 1 July 2025 till 30 September 2025 and 1 July 2025 became the commencement of the fifth extension period.

5. Thereafter, on 11 March 2026, the parties executed and registered fresh leave and license agreements. These fresh

agreements also contained an arbitration clause providing that disputes would be referred to arbitration under the MCLA Rules with Mumbai as the seat and venue of arbitration. According to the petitioner, by executing these registered agreements, the parties consciously replaced and substituted all their earlier arrangements with the new agreements.

6. Thereafter, on 18 May 2026, the respondent issued a communication stating that the agreement would expire on 30 June 2026 and called upon the petitioner to hand over vacant possession on or before 24 June 2026. The petitioner, by its detailed reply dated 2 June 2026, disputed the stand taken by the respondent. According to the petitioner, the agreement contained a lock in period and the fresh registered agreement had substituted all the earlier arrangements. Therefore, according to the petitioner, the respondent was not entitled to demand possession in the manner sought.

7. According to the petitioner, disputes between the parties arose during May 2026 within the meaning of Clause 21 of the leave and license agreement. The petitioner further states that during June 2026 it developed a genuine apprehension that the respondent may forcibly dispossess it from the licensed premises and may also disconnect the essential services required for carrying on its business. It is the petitioner's case that the cause of action for approaching this Court under Section 9 of the Arbitration and Conciliation Act, 1996 arose on 20 June 2026 and, therefore, these petitions came to be filed seeking interim protection.

8. Mr. Tekriwal, learned Advocate appearing for the petitioner, invited my attention to Clause 4.1 of the registered leave and license agreement dated 11 March 2026. He submitted that under the said clause the license was granted for a period of two years from the License Commencement Date, subject to earlier termination in accordance with the terms and conditions of the agreement. He argued that even if the License Commencement Date mentioned in Clause 1.23 is taken as 1 July 2024, the respondent could not have demanded possession before completion of two years, namely before 1 July 2026. He further submitted that even assuming that the license period had expired on 30 June 2026, the petitioner was still entitled to protection against dispossession except by following due process of law.

9. In reply to the objection raised by the respondent regarding the applicability of the provisions of the Provincial Small Cause Courts Act, 1887, learned counsel for the petitioner submitted that the reliefs claimed in these petitions are not confined to recovery of possession. According to him, the petitioner has also sought protection regarding free ingress and egress to the premises and against disconnection of electricity and other essential services. He submitted that such reliefs do not fall within the scope of Section 26 of the Provincial Small Cause Courts Act and, therefore, the present petitions are maintainable.

10. Relying upon the judgment of the Supreme Court in the case of *Motilal Oswal Financial Services Limited vs. Santosh Cordeiro & Another,* (2026) 2 SCC 801, learned counsel submitted that the Supreme Court had considered the earlier Full Bench judgment of

this Court in *Central Warehousing Corporation, Mumbai vs. Fortpoint Automotive Private Limited, Mumbai,* 2009 SCC OnLine Bom 2023. He submitted that the Supreme Court was dealing with a dispute arising between a licensor and a licensee and, in those circumstances, referred the dispute to arbitration. On that basis, he argued that at least the petitioner's possession deserves protection against any attempt to dispossess it otherwise than by following due process of law.

11. On the other hand, Mr. Cama, learned Advocate appearing for the respondent, relied upon the decision of a coordinate Bench of this Court in *Anuj Kabra & Another vs. CL Educate Limited,* Arbitration Application No. 202 of 2023 decided on 17 June 2025. He submitted that the Court in that case had considered a similar dispute while dealing with an application under Section 11 of the Arbitration and Conciliation Act, 1996. According to him, the coordinate Bench held that where a Small Causes Court is established and the dispute between the licensor and the licensee falls within its pecuniary jurisdiction, such dispute is governed by the principles laid down by the Full Bench in Central Warehousing Corporation. However, where no Small Causes Court is available, there would be no exclusion of the arbitration agreement.

12. Learned counsel for the respondent also relied upon the Division Bench judgment of this Court in *Bombay Forging Limited vs. Messers Manilal & Son,* Appeal (L) No. 579 of 2015 decided on 22 and 23 March 2016. He submitted that in that case the dispute arose between a lessor and a lessee. The plaintiff had sought a declaration that the lease agreement continued to remain valid

and subsisting and had also claimed renewal of the lease along with a perpetual injunction for protection of possession. While considering those reliefs, the Division Bench relied upon the judgments of the Supreme Court and interpreted Section 41 of the Small Cause Courts Act. It was held that the expression "relating to recovery of possession" has a wide meaning and includes every relief which a plaintiff may seek in connection with recovery of possession or termination of a tenancy or license.

13. Learned counsel further relied upon the judgment of the Supreme Court in *Mansukhlal Dhanraj Jain vs. Eknath Vithal Ogale,* 1995 (3) Bom C.R. 240. According to him, while following the principles laid down in that judgment, the Division Bench held that the expression "relating to recovery" is of wide import. Therefore, if the substance of the dispute arises out of the continuing relationship between a licensor and a licensee, such dispute is covered by the provisions of the Small Cause Courts Act. He submitted that such disputes are non-arbitrable and, once the dispute itself is non-arbitrable, no interim protection under Section 9 of the Arbitration and Conciliation Act, 1996 can be granted.

14. Learned counsel for the respondent lastly submitted that there is no dispute that a Small Causes Court has already been established at Thane and, therefore, the principles governing the jurisdiction of that Court would squarely apply to the present dispute.

15. I have considered the submissions made from both the sides. I have also gone through the leave and license agreement, the

papers exchanged between the parties and the judgments relied by the learned Advocates. In my opinion, before going into the question whether the petitioner has made out a case on merits for continuing the licence, one other issue is required to be first looked into. It is necessary to see whether this Court itself can exercise powers under Section 9 of the Arbitration and Conciliation Act, 1996. If the dispute itself is of such nature that it cannot go before the Arbitrator, then ordinarily interim protection under Section 9 also may not be available. Therefore, according to me, the issue regarding jurisdiction and arbitrability is required to be considered first. Only after deciding that issue, the other questions can be properly looked into.

16. For deciding the controversy involved in these petitions, it is necessary to reproduce Clauses 1.21 and 4.1 of the leave and license agreement, which read as follows:

> "1.21 License Commencement Date shall mean July 1, 2024.
>
> 4.1 The License shall be for a period of 2 (two) years commencing from the License Commencement Date, subject to the earlier termination thereof in accordance with the terms and conditions of this Agreement (the "License Period"). The Licensed Premises shall be handed over to the Licensee in "as is where is" and "as is what is" condition."

17. Learned Advocate for the petitioner submitted that the present dispute is not about getting possession of the premises. According to him, the petitioner is seeking protection against forcible dispossession, obstruction in ingress and egress and also against disconnection of electricity, water, internet and other facilities which are necessary for running the business. He

submitted that such reliefs are outside the scope of Section 26 of the Provincial Small Cause Courts Act. At first sight this submission appears to have some force because the reliefs are not only regarding possession. However, merely because different words are used while drafting the prayers or some additional reliefs are also claimed, the Court cannot decide the issue of jurisdiction by reading those prayers. The Court has to see the pleadings as a whole and understand what is the dispute between the parties.

18. If the petitions are read, it appears that every relief claimed by the petitioner is connected with continuing its occupation in the licensed premises. The prayer against dispossession, the prayer regarding ingress and egress, the prayer against stopping electricity and other services and the prayer for maintaining status quo appear to be connected with one another. If the petitioner has no legal right to remain in possession, then other reliefs also may not survive. Therefore, though the reliefs are drafted in different language, in substance they appear to arise because of the relationship of licensor and licensee and the petitioner's claim to continue in occupation. Merely because consequential reliefs are also claimed, the real dispute cannot be ignored.

19. Learned Advocate for the petitioner thereafter relied upon Clause 4.1 of the agreement. According to him, the licence was granted for two years from the License Commencement Date. He submitted that if the License Commencement Date is taken as 1 July 2024, then the respondent could not have demanded possession before 1 July 2026. He further submitted that even if it is assumed that the licence came to an end on 30 June 2026, the

petitioner could not have been dispossessed except by following due process of law.

20. In my opinion, this submission cannot be brushed aside at this stage. Clause 4.1 does show that the licence was to continue for two years from the License Commencement Date unless it was earlier terminated in accordance with the agreement. The petitioner has relied upon the fresh registered agreement dated 11 March 2026 and submitted that because of execution of that agreement the earlier arrangements came to be substituted. Whether this contention is correct or not may require examination of the evidence and proper interpretation of the contractual clauses. Such disputed issues are required to be finally decided by the forum having jurisdiction over the dispute.

21. The respondent, however, has raised basic objection. According to the respondent, irrespective of the merits of the dispute under the agreement, the controversy falls within the jurisdiction of the Small Causes Court. Therefore, according to the respondent, the dispute is not arbitrable and this Court cannot grant any relief under Section 9 of the Arbitration and Conciliation Act. For supporting this submission, reliance has been placed upon the judgments in *Bombay Forging Limited, Mansukhlal Dhanraj Jain* and the Full Bench decision in *Central Warehousing Corporation*.

22. In *Bombay Forging Limited*, after considering the judgment of the Supreme Court in *Mansukhlal Dhanraj Jain*, it was explained that the words "relating to recovery of possession"

occurring in the Small Cause Courts legislation have a wide meaning. It was observed that where the dispute comes because of the relationship between licensor and licensee or landlord and tenant, such expression is not restricted to a suit asking for possession. It also covers other reliefs which are connected with that relationship. Therefore, according to the said judgment, while deciding the issue of jurisdiction, the Court has to see the nature of the dispute and not the way in which the prayers are drafted.

23. Applying the above principle, it appears that the present controversy arises from the relationship of licensor and licensee. The petitioner wants protection of its possession under the leave and license agreement, whereas the respondent disputes such right and seeks possession of the premises. Therefore, though the prayers are drafted in different forms, the foundation of the dispute still remains the relationship between the parties and the petitioner's claim to continue in occupation. Because of this, at least prima facie, the submission made on behalf of the respondent that the dispute relates to possession cannot be said to be without substance.

24. The petitioner, however, relied upon the recent judgment of the Supreme Court in *Motilal Oswal Financial Services Ltd*. It was submitted that the Full Bench judgment in *Central Warehousing Corporation* cannot be applied in dispute between licensor and licensee without examining the facts of the particular case. According to the petitioner, the Supreme Court has recognised that because a statute gives jurisdiction to a particular Court, it does not mean that arbitration stands excluded in every matter.

25. There is no dispute regarding the legal principles explained by the Supreme Court in *Motilal Oswal Financial Services Ltd*. The Supreme Court has observed that creation of a special forum by does not make every dispute non-arbitrable. It has also explained that Section 41 of the Presidency Small Cause Courts Act confers jurisdiction upon a particular Court and does not wipe away or nullify an arbitration agreement entered into by the parties. At the same time, the Supreme Court distinguished the facts before it from the facts considered in *Central Warehousing Corporation*. It noticed that possession had been handed over much before arbitration was invoked. The dispute remaining between the parties was regarding money claim and refund of the security deposit. Since there was no dispute regarding possession, the Supreme Court held that such dispute could be referred to arbitration.

26. In my opinion, the facts in the present petitions do not appear to be similar. Here possession has not been handed over. On the contrary, the main relief sought by the petitioner is protection of possession. The other reliefs regarding electricity, water, internet, ingress, egress and other facilities also appear to be connected with continuation of such possession. Therefore, the distinguishing feature which was available before the Supreme Court in *Motilal Oswal Financial Services Ltd.* is not available here. Because of this factual difference, that judgment, in my view, cannot be read to mean that every dispute between licensor and licensee is required to be referred to arbitration irrespective of the nature of the controversy.

27. While considering the issue, the Coordinate Bench of this Court in *Anuj Kabra* observed that the main question was whether there was a competent Small Causes Court available to decide the dispute. The Court held that if no Small Causes Court is available and the parties have agreed under the contract to resolve their disputes by arbitration, then parties cannot be denied that remedy. The Coordinate Bench observed that the Full Bench judgment in *Central Warehousing Corporation* excludes the jurisdiction of the arbitral forum where a competent Small Causes Court is available. If a Court is not available, there is no reason to ignore the arbitration agreement and, in that situation, the disputes between the parties can be referred to arbitration in accordance with the agreement.

28. Even otherwise, this Court is not required to decide whether the petitioner is correct in saying that the licence continued till a particular date or whether the respondent was justified in asking for possession. Those issues may require detailed examination before the competent forum. At present, the question before this Court is regarding exercise of powers under Section 9 of the Arbitration and Conciliation Act. If the dispute falls within the jurisdiction of the Small Causes Court, then merely because an arbitration clause is there, this Court may not be able to assume jurisdiction which otherwise is not available.

29. Taking an overall view of the contractual clauses, the reliefs claimed, the admitted relationship between the parties and the principles flowing from the judgments cited before me, in my opinion, the present controversy relates to the petitioner's claim to

continue in possession of the licensed premises as against the licensor. Such dispute arises because of the relationship of licensor and licensee. The reliefs regarding ingress, egress, electricity, water supply, internet and other facilities appear to be only consequential to the principal relief relating to possession. The judgment in *Motilal Oswal Financial Services Ltd*. was delivered on different facts where possession had already been handed over. Therefore, in my opinion, those judgments do not assist the petitioner..

30. In view of the above discussion, I am satisfied that the preliminary objection raised by the respondent regarding maintainability deserves to be accepted. Once it is found that the dispute falls within the jurisdiction of the Small Causes Court, this Court cannot exercise powers under Section 9 of the Arbitration and Conciliation Act for granting the reliefs claimed in these petitions.

31. The petitioner, however, shall be free to avail such remedy as may be available before the forum competent under law.

32. The petitions are, therefore, disposed of. No order as to costs.

(AMIT BORKAR, J.)