

Whether disputes under Leave and License Agreements are arbitrable?

By its judgment dated June 17, 2025, the Bombay High Court ("HC") examined whether disputes arising under a Leave and License Agreement ("L&L") are arbitrable, considering the usual jurisdiction of the Small Causes Court ("SCC").

A. Factual Background:

Disputes arose between the parties to an L&L concerning premises situated in Navi Mumbai, which contained an arbitration clause. Consequently, the parties approached the HC under Section 11 of the Arbitration and Conciliation Act, 1996.

B. Legal Issue:

The central issue was whether a dispute arising under an L&L could be arbitrated at all, considering the nature of the agreement as a leave and license arrangement and the parties' agreement to refer disputes to arbitration. This question arose in light of the HC's decision in *Central Warehousing Corporation, Mumbai vs. Fortpoint Automotive Pvt. Ltd.* – 2010 (1) MhLJ 658, which held that disputes relating to L&L fall exclusively within the jurisdiction of SCCs established under the Presidency Small Cause Courts Act, 1882 ("Presidency Act"), thereby ousting the jurisdiction of any arbitral tribunal.

C. HC's Analysis and Findings:

In examining the issue, HC has considered the following:

- i. Applicable Law: Since the premises was in Vashi (Navi Mumbai), the jurisdiction of the Provincial Small Causes Court Act, 1887 ("Provincial Act") was attracted and not that of the Presidency Act.
- ii. Establishment of an SCC having territorial jurisdiction: Upon the HC's previous directions, applications had been filed under the Right to Information Act, 2005, to formally ascertain the latest position on whether SCC with territorial jurisdiction had been set up. In response thereto, the State Government confirmed that it had neither established any SCC having jurisdiction over the subject matter in Vashi (Navi Mumbai), nor had it received any proposal for such establishment from the HC. The Registrar of the HC on the Appellate Side also confirmed that no SCC had been established under the Provincial Act having jurisdiction over Vashi and that no court had been designated to carry out the function of SCC under Section 28 of the Maharashtra Civil Courts Act, 1869 ("Civil Courts Act").
- iii. Pecuniary jurisdiction of civil judges conferred with SCC powers: HC noted that under Section 28 of the Civil Courts Act, Civil Judges, Senior and Junior Divisions, invested with small cause powers by the HC have pecuniary jurisdiction of up to Rs. 12,000/- and Rs. 6,000/-, respectively. As the claim under the L&L was nearly Rs. 7,00,000/-, thereby exceeding the pecuniary jurisdiction, the civil judges in Thane District with such conferment could not exercise their SCC powers.
- iv. Conscious limitation of pecuniary jurisdiction: The HC stated that Section 26 of the Provincial Act (which grants jurisdiction to SCC for disputes between *inter-alia*, licensors

and licensees, irrespective of the value of the subject matter) would have to be read harmoniously with Section 28 of the Civil Courts Act. It further stated that this *non-obstante* provision overrides the other provisions of the Provincial Act and not those of the Civil Courts Act. The limitation of the pecuniary jurisdiction being a conscious limitation defines the size of disputes that could at all be considered by a civil judge not otherwise being a judge in a duly established SCC.



D. Summary:

The HC summarized that powers of an SCC can be exercised, either by an established SCC or by a civil judge invested with such powers, subject to the pecuniary jurisdiction. In the absence of either, ordinary original civil jurisdiction of civil judges is available. Further, a small causes suit being summary nature, a suit exceeding the aforesaid pecuniary limits would have to be decided as a regular suit in accordance with the procedure laid down by the Code of Civil Procedure. Reliance was placed on its previous judgement in *Radheshyam s/o Zumbarlal Candak vs. District Judge, Amravati & Anr.* – 2011 (1) MhLJ 399, that explicitly ruled the above.

E. Conclusion:

The HC concluded that if the summary procedure and special jurisdiction of the SCC is not available, the intention of the parties would follow. If the parties did not have an arbitration agreement, they would have to litigate in a civil court without the summary procedure of the SCC. In the absence of the existence of an SCC, read with the existence of the arbitration agreement, the parties cannot be left denuded of the benefit of the conscious remedy of arbitration chosen by them in exercise of their sovereign autonomy. The HC ordered that all disputes and differences under the L&L were to be referred to arbitration and further issued ancillary directions to the parties regarding the arbitration process and associated costs.

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