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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 36 of 2026
(@ Special Leave Petition (Civil) No. 5834 of 2025)

Motilal Oswal Financial Services Limited …Appellant(s)

VERSUS

Santosh Cordeiro and Another …Respondent(s)

J U D G M E N T

K.V. Viswanathan, J.

1. Leave granted.

2. The present appeal calls in question the correctness of the order dated 02.05.2024 passed by the Single Judge of the High Court of Judicature at Bombay in Commercial Arbitration Application No.9 of 2024. By the said order, the learned Single Judge allowed the Section 11 Application filed by the respondent under the Arbitration & Conciliation Act, 1996 (for short "the A&C Act") and appointed an arbitrator to

adjudicate the dispute between the parties. The only objection taken by the appellant herein was that the dispute is non-arbitrable in view of Section 41 of the Presidency Small Cause Courts Act, 1882 (for short "the 1882 Act"). The learned Single Judge made a short shrift of the said objection by holding that the place where the property in question, which was the subject matter of the dispute, was situated, i.e. Malad, was outside the jurisdiction of the Small Causes Court. This finding has now turned out to be a damp squib, since parties before us are *ad idem* that Malad area is covered under the jurisdiction of the Small Causes Court. We could have rest content by remanding the matter to the High Court for fresh consideration. However, that will only prolong the dispute and, hence, we have decided to answer the issues arising in the case ourselves.

BRIEF FACTS OF THE CASE: -

3. With regard to the premises situated at Unit No.718, admeasuring 2925 sq. ft., 7th Floor, Palm Spring Centre, Link Road, Malad (West), Mumbai, the appellant entered into a

Leave and License Agreement on 06.10.2017 with the respondent. The period of the Leave and License was 60 months from 01.10.2017 to 30.10.2022. Though the appellant terminated the said agreement on 31.12.2019, after exchange of correspondence between the parties, the said termination was reversed and an Addendum dated 13.03.2020 was entered into extending the Leave and License period from 60 months to 96 months with a lock-in period of 72 months.

4. According to the appellant, due to COVID-19 pandemic, they were unable to continue the arrangement and citing the force majeure clause in the agreement, they handed over the keys and vacant peaceful possession of the premises to the respondent on 09.09.2020. According to the appellant, they intimated the respondents about the same on 10.10.2020 by writing an email. The appellant also sought refund of the security deposit.

5. On 28.06.2023, the respondent No.1 called upon the appellant to pay a sum of Rs.94,40,152/- along with interest @ 24% towards the alleged arrears of license fees for the

balance lock-in period i.e. from 01.09.2020 to 14.06.2023. The appellants wrote back on 17.07.2023 denying any liability and seeking refund of security deposit of Rs. 10 lakhs.

6. The appellant on 17.07.2023 received a notice dated 15.07.2023 issued by the respondent under Section 21 of the A&C Act invoking Clause 33 of the arbitration agreement of the Leave and License Agreement dated 06.10.2017 and Addendum dated 13.03.2020. Clause 33 of the Leave and License Agreement dated 06.10.2017 reads as under: -

> "In the event of the any dispute or difference arising between the Licensors and the Licensee hereto concerning or relating to the interpretation of these presents or the interpretation or effect of any provisions thereof or relating to the liability or obligation on the part of any of the parties hereto, the same shall be referred to arbitration and Sole Arbitrator shall be appointed by the mutual consent of the Parties. The award passed by the sole arbitrator shall be binding on both the parties. The arbitration shall be in Mumbai and in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enhancements thereof for the time being in force."

This was followed by an application under Section 11 of the A&C Act filed on 13.08.2023 by the respondent seeking

appointment of a sole arbitrator in accordance with clause 33 set out above.

7. On 01.11.2023, the appellant filed its reply objecting to the appointment of the arbitrator and specifically relied on Section 41 of the 1882 Act and contended that only the Small Causes Court would have exclusive jurisdiction to entertain and try any suit or proceeding arising from the relationship between a licensor and licensee and that since the said statute is a special remedy, the dispute is not arbitrable. The High Court, by its order dated 02.05.2024, allowed the application and appointed the arbitrator.

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

> **"41. Suits or Proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and license fees or rent, except to those to which other Acts apply to lie in Small Cause Court.-** (1) Notwithstanding anything contained elsewhere in this Act but subject to the provisions of sub-section (2), the Court of Small Cause shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of the licence fee or charges or

rent therefor, irrespective of the value of the subject-matter of such suits or proceedings.

(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property, or of licence fee for charges of rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Municipal Corporation Act, the Maharashtra Housing and Area Development Act, 1976 or any other law for the time being in force, apply."

9. Proceedings before the arbitrator were carried on. On 03.06.2024, the appellant raised the ground of non-arbitrability under Section 41 of the 1882 Act and filed a Section 16 application under the A&C Act before the arbitrator. On 11.10.2024, the arbitrator dismissed the Section 16 application by holding that the amount sought to be recovered partakes the character of a 'debt' and is not a claim for license fee for use and occupation. On 28.01.2025, the Special Leave Petition was filed before this Court and this Court, on 21.02.2025, stayed the impugned order. That is how the matter presents itself before us.

10. We have heard Mr. Chirag M. Shah, learned advocate, for the appellant and Mr. Rishabh Shah, learned advocate for the respondents. We have perused the records as well as written submissions filed by the respective parties.

CONTENTIONS OF THE APPELLANT: -

11. The learned counsel for the appellant contends that in the Section 11 application filed by the respondents, a clear case for recovery of license fee was sought, and expressly it was stated that the amount claimed did not partake the character of damages; that the reliance on the judgment of the Division Bench of the Bombay High Court in ***Globsport India Pvt. Ltd. vs. Mayfair Housing Pvt. Ltd***[1] was untenable in view of the Full Bench judgment of the Bombay High Court in ***Central Warehousing Corporation, Mumbai v. Fortpoint Automotive Pvt. Ltd., Mumbai***[2]***;*** that ***Central Warehousing*** (*supra*) clearly holds that exclusive jurisdiction is conferred on the Court of Small Causes to entertain and decide all suits and

[1] (2015) OnLine Bom 4176
[2] 2009 SCC OnLine Bom 2023

proceedings between a licensor and licensee or a landlord and tenant relating to recovery of possession or recovery of license fee/rent in respect of premises situated in Greater Bombay; that this Court in ***Natraj Studios Private Limited***. v. ***Navrang Studios and Another***[3], while interpreting a *pari materia* provision held that the parties could not contract out of a special legislation that conferred exclusive jurisdiction over landlord-tenant disputes to the Small Causes Court; that as long as the suit was between a licensor and licensee or a landlord and tenant, concerning immovable property, relating to recovery of possession or recovery of license fee, charges or rent, it will lie only before the Small Causes Court and the jurisdiction of all other courts is ousted; that the 1882 Act is a special legislation with a special purpose and grants exclusive jurisdiction on special courts which have been set up under such legislation and that in ***Booz Allen and Hamilton Inc*** vs. ***SBI Home Finance Limited And Others***[4], this Court

[3] (1981) 1 SCC 523
[4] (2011) 5 SCC 532

held that tenancy/licensor/licensee disputes governed by special statutes are not arbitrable.

CONTENTIONS OF THE RESPONDENT: -

12. The learned counsel for the respondent submitted the only exclusion in Clause 35[5] of the agreement was that the arbitrator was not to have power to interfere or arbitrate on issue of vacating the premises on expiry of license period and there was no bar to arbitrate on the obligation on the parties to pay the license fee/rent/use and occupation charges; that the dispute was only for payment of compensation for the ''balance lock-in period''; that the claim of the respondents is neither for recovery of possession nor license fee; that the respondents' case is supported by the judgment in ***Globsport* (*supra*)**; that the judgment in ***Vidya Drolia And Others*** vs. ***Durga Trading Corporation***[6], (hereinafter called Vidya Drolia - II), makes it clear that mere conferral of jurisdiction on a

[5] The reference to arbitration will in no way affect the obligation of the Licensee to vacate the licensed premises on the expiry or earlier determination of the License period and the arbitrators shall have no power to interfere with or arbitrate on issue of vacating the licensed premises on expiry of the licensed period.
[6] (2021) 2 SCC 1

specific court or creation of a public fora would not be decisive to answer the issue of arbitrability or otherwise of a dispute; and that no statutory protection under the Maharashtra Rent Control Act was denied to the appellant.

QUESTION FOR CONSIDERATION: -

13. In the above background, the question for consideration is whether the High Court has rightly allowed the application filed by the respondent under Section 11 of the A&C Act?

ANALYSIS AND DISCUSSION: -

14. There is no dispute that the Leave and License agreement of 06.10.2017, in Clause 33, contained an Arbitration clause. In a proceeding under Section 11 of the A&C Act, the Court is to confine the examination to the existence of an Arbitration Agreement. Section 11 (6-A) which was brought into force with effect from 23.10.2015, though omitted by Act 33 of 2019, the omission has not yet been notified.

15. Section 11(6A) of the A&C Act is reproduced hereunder:-

> **"11. Appointment of arbitrators.**—(1) xxx xxx .
> (2) xxx xxx
> (3) xxx xxx

(4) xxx xxx
(5) xxx xxx
(6) xxx xxx

(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement."

16. A Seven Judge Bench of this Court in ***In re Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899***[7], (hereinafter called as 'In re-Interplay') while dealing with the aspect of how ***Vidya Drolia (Supra)*** proceeded on the assumption that Section 11(6-A) has been omitted, clarified the position thus:-

"62. A plain reading of Section 11(6-A) makes it evident that it is referring to an arbitration *agreement*. Section 11(6-A) provides that courts must *confine* themselves to an examination of the existence of the arbitration agreement. The word "confine" indicates the intention of the legislature to limit the jurisdiction of the Courts at the stage of the appointment of an arbitrator.

63. In *Vidya Drolia* [*Vidya Drolia* v. *Durga Trading Corpn.*, (2021) 2 SCC 1], this Court held : (SCC p. 49, para 21)

"*21*. The term "agreement" is not defined in the Arbitration Act, albeit it is defined in Section 10 of the Contract Act, 1872 (for short "the Contract Act"), … as contracts made by free

[7] (2024) 6 SCC 1

consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not thereby expressly declared to be void. Section 10 of the Contract Act also stipulates that aforesaid requirements shall not affect any law in force in India (and not expressly repealed) by which a contract is required to be made in writing, in presence of witnesses or any law relating to registration of documents. Thus, an arbitration agreement should satisfy the mandate of Section 10 of the Contract Act, in addition to satisfying other requirements stipulated in Section 7 of the Arbitration Act."

64. The above observations are correct insofar as the arbitration agreement must satisfy the requirements of the Contract Act. However, the authority empowered to adjudicate whether the requirements of the Contract Act are satisfied is the Arbitral Tribunal, under Section 16 of the Arbitration Act. This is addressed in greater detail in the following segments.

163. We are of the opinion that the above premise of the Court in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., [(2021) 2 SCC 1] is erroneous because the omission of Section 11(6-A) has not been notified and, therefore, the said provision continues to remain in full force. Since Section 11(6-A) continues to remain in force, pending the notification of the Central Government, it is incumbent upon this Court to give true effect to the legislative intent.

164. The 2015 Amendment Act has laid down different parameters for judicial review under Section 8 and Section 11. Where Section 8 requires the Referral Court to look into the prima facie existence of a valid arbitration agreement, Section 11 confines the Court's jurisdiction to the examination of the existence of an arbitration agreement. Although the object and purpose behind both Sections 8 and 11 is to compel parties to abide by their contractual understanding, the scope of power of the

Referral Courts under the said provisions is intended to be different. The same is also evident from the fact that Section 37 of the Arbitration Act allows an appeal from the order of an Arbitral Tribunal refusing to refer the parties to arbitration under Section 8, but not from Section 11. Thus, the 2015 Amendment Act has legislatively overruled the dictum of Patel Engg. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] where it was held that Section 8 and Section 11 are complementary in nature. Accordingly, the two provisions cannot be read as laying down a similar standard.

165. The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of "existence" of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In Duro Felguera [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729, this Court held that the Referral Courts only need to consider one aspect to determine the existence of an arbitration agreement — whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by Arbitral Tribunal under

Section 16. We accordingly clarify the position of law laid down in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 in the context of Section 8 and Section 11 of the Arbitration Act.

166. The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal. This position of law can also be gauged from the plain language of the statute.

167. Section 11(6-A) uses the expression "examination of the existence of an arbitration agreement". The purport of using the word "examination" connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression "examination" does not connote or imply a laborious or contested inquiry. [P. Ramanatha Aiyar, The Law Lexicon (2nd Edn., 1997) 666.] On the other hand, Section 16 provides that the Arbitral Tribunal can "rule" on its jurisdiction, including the existence and validity of an arbitration agreement. A "ruling" connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A

similar view was adopted by this Court in Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234].

169. When the Referral Court renders a prima facie opinion, neither the Arbitral Tribunal, nor the Court enforcing the arbitral award will be bound by such a prima facie view. If a prima facie view as to the existence of an arbitration agreement is taken by the Referral Court, it still allows the Arbitral Tribunal to examine the issue in depth. Such a legal approach will help the Referral Court in weeding out prima facie non-existent arbitration agreements. It will also protect the jurisdictional competence of the Arbitral Tribunals to decide on issues pertaining to the existence and validity of an arbitration agreement."

[Emphasis supplied]

17. Hence, it is very clear that our jurisdiction is only to inspect or scrutinize the dealings between the parties for determination about the existence of an Arbitration Agreement. We are not to launch a laborious or a contested inquiry.

18. Our task would have been much simpler but for the reliance placed by the learned counsel for the appellant on the Full Bench judgment of the Bombay High Court in ***Central Warehousing*** (*supra*). ***Central Warehousing*** (supra)

examined the question whether in view of Section 5[8] of the A&C Act, if in any agreement between licensor and licensee an arbitration clause exists, the jurisdiction of the Small Causes Court under the Presidency Small Causes Court Act, 1882, would be ousted.

19. While answering the said question, the Full Bench traced the legislative history of Section 41(2) of the Act of 1882. It found that the object of introducing Section 41 in the amended form, was to avoid multiplicity of proceedings in different Courts and consequent waste of public time and money and to avoid unnecessary delay and hardship to the suitors. The Full Bench found that the objective was to have uniformity of the procedure so that all suits and proceedings between a landlord and tenant or a licensor and licensee for recovery of possession of premises or for recovery of rent or license fee, irrespective of the value of the subject matter, should go to and be disposed of by Small Causes Court. The Full Bench

[8] **Extent of judicial intervention.-** Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

found that the provision vested exclusive jurisdiction of the Court of Small Causes to entertain such suits. Ultimately, for the purpose of our case we only need to deal with the operative portion set out in Para 40 of the said judgment which reads as under: -

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

submitted to arbitration, as stipulated in section 2(3) of the Act of 1996. **We hold that section 41 of the Act of 1882 falls within the ambit of section 2(3) of the Act of 1996. As a result of which, even if the Licence Agreement contains Arbitration Agreement, the exclusive jurisdiction of the Courts of Small Causes under section 41 of the Act of 1882 is not affected in any manner. Whereas, Arbitration Agreement in such cases would be invalid and inoperative on the principle that it would be against public policy to allow the parties to contract out of the exclusive jurisdiction of the Small Causes Courts by virtue of section 41 of the Act of 1882.**"

[Emphasis supplied]

20. The appellant relies on the above paragraph which holds that the Arbitration Agreement in the situation referred to in the paragraph would be invalid and inoperative on the principle that it would be against public policy to allow the parties to contract out of the exclusive jurisdiction of Small Causes Court by virtue of Section 41 of the Act of 1882.

21. The learned counsel for the appellant submits that in view of this holding, even while examining within the contours of Section 11(6-A) this Court will be obliged to conclude that no arbitration agreement existed. We are not able to countenance the submission of the learned counsel for the appellant for the following reasons: -

I. ***(a).*** Firstly, ***Central Warehousing*** (*supra*) has to be understood in the context in which it came to be decided. The said context does not obtain here. In ***Central Warehousing*** *(supra)*, the petitioner therein, issued termination notices terminating the storage warehouse facilities of the respondent therein – FAP Limited. In response thereto, the respondent therein FAP Limited invoked the arbitration clause. Respondent-FAP Limited thereafter, filed a suit under Section 41 of the Act of 1882 for a declaration that the agreement providing storage facility was subsisting and obtained interim orders restraining the petitioner therein from giving effect to the termination notices. The petitioner therein - Central Warehousing raised an objection based on the provisions of Section 8 of the A&C Act. The preliminary objection was overruled. Aggrieved, Central Warehousing approached the High Court under Article 227 of the Constitution of India. What is significant to notice is that the

respondent therein FAP Limited was in possession of the premises.

(b). In the present case, it is undisputed by both parties that possession had been handed over by the appellant to the respondents in September 2020. The dispute between the parties is with regard to a monetary claim with the appellant asserting that the security deposit should be repaid by the respondents and the respondents claiming sums of money towards alleged arrears of amounts payable for the balance lock-in period. This aspect is set out only for explaining the context of the present case and contrasting with the context in ***Central Warehousing*** *(supra)*.

II. ***(a).*** Secondly, pursuant to a reference made to a three-Judge Bench in ***Vidya Drolia and Others*** v. ***Durga Trading Corporation***[9]., (hereinafter called Vidya

[9] (2019) 20 SCC 406

Drolia-I), this Court pronounced the judgment in ***Vidya Drolia–II*** (*supra*). Though the judgment in ***re - Interplay*** (*supra*) corrected ***Vidya Drolia-II*** on the aspect of the continuance of Section 11(6-A) in the statute and the interpretation of the said sub-section, the other aspects in ***Vidya Drolia-II*** have not been diluted in ***re - Interplay*** (*supra*).

(b). **Vidya Drolia-II** was actually occasioned due to another judgment of this Court in ***Himangni Enterprises*** v. ***Kamaljeet Singh Ahluwalia***[10], which had treated cases of ejectment under the Transfer of Property Act similar to cases of eviction under the Rent Control Act of the State. The Bench in ***Vidya Drolia-I*** doubted the said judgment and in a detailed referral order distinguished the applicability of the prior judgments of this Court in ***Natraj Studios*** (*supra*) and

[10] (2017) 10 SCC 706

Booz Allen (*supra*) to ejectment suits under the Transfer of Property Act.

(c). While dealing with the aspect of implied bars on arbitrability, **Vidya Drolia-II** made the following pertinent observations: -

> **"53.***Dhulabhai case* [*Dhulabhai* v. *State of M.P.*, (1968) 3 SCR 662 : AIR 1969 SC 78] is not directly applicable as it relates to exclusion of jurisdiction of civil courts, albeit we respectfully agree with the order of reference [*Vidya Drolia* v. *Durga Trading Corpn.*, (2019) 20 SCC 406] that Condition 2 is apposite while examining the question of non-arbitrability. Implied legislative intention to exclude arbitration can be seen if it appears that the statute creates a special right or a liability and provides for determination of the right and liability to be dealt with by the specified courts or the tribunals specially constituted in that behalf and further lays down that all questions about the said right and liability shall be determined by the court or tribunals so empowered and vested with exclusive jurisdiction. **Therefore, mere creation of a specific forum as a substitute for civil court or specifying the civil court, may not be enough to accept the inference of implicit non-arbitrability. Conferment of jurisdiction on a specific court or creation of a public forum though eminently significant, may not be the decisive test to answer and decide whether arbitrability is impliedly barred.**"
>
> **[Emphasis supplied]**

What is crucial to notice is that this Court clearly emphasized that creation of a specific forum as a

substitute for Civil Court or specifying the Civil Court may not be enough to accept the inference of implicit non-arbitrability. Conferment of jurisdiction on a specific court or creation of a public forum though eminently significant, may not be the decisive test to answer and decide whether arbitrability is impliedly barred.

(d). Further for the completion of record, it is also mentioned herein that ***Vidya Drolia-II*** expressly overruled ***Himangni*** (*supra*) and held as under: -

> "**79**. Landlord-tenant disputes governed by the Transfer of Property Act are arbitrable as they are not actions in rem but pertain to subordinate rights in personam that arise from rights in rem. Such actions normally [Ed. : Certainly in those cases where the dispute only affects the parties to the arbitration clause, third-party rights would not be affected, as in the facts of the present case. It is in such cases that "such actions under the TPA normally would not affect third-party rights or have erga omnes effect". However, one may consider cases for instance, where a sub-tenancy exists or where the head lessee has taken a mortgage on the lease, and the landlord invokes the arbitration clause against the head lessee seeking to terminate the head lease, can the sub-tenant or mortgagee of the head lessee seek to be impleaded in the arbitration proceedings? For termination of the head lease would also extinguish the rights of the sub-tenant

and the mortgagee of the head lessee. The situations posited are relatively simple ones. Often there are numerous prior and subsequent transferees who might be affected by the result of a dispute between a landlord and tenant, or even between other transferees. In such complex situations involving prior and subsequent transfers, it would appear that the matter would be non-arbitrable as it would appear to satisfy the first two tests of non-arbitrability laid down herein—see Shortnotes B and C. In a case where the mortgagee is covered by the RDB Act and the Sarfaesi Act, it might be rendered non-arbitrable by virtue of the fourth test as well—see Shortnotes E and G.] would not affect third-party rights or have erga omnes effect or require centralised adjudication. An award passed deciding landlord-tenant disputes can be executed and enforced like a decree of the civil court. Landlord-tenant disputes do not relate to inalienable and sovereign functions of the State. The provisions of the Transfer of Property Act do not expressly or by necessary implication bar arbitration. The Transfer of Property Act, like all other Acts, has a public purpose, that is, to regulate landlord-tenant relationships and the arbitrator would be bound by the provisions, including provisions which enure and protect the tenants.

80. In view of the aforesaid, we overrule the ratio laid down in Himangni Enterprises [Himangni Enterprises v. Kamaljeet Singh Ahluwalia, (2017) 10 SCC 706 : (2018) 1 SCC (Civ) 82] and hold that landlord-tenant disputes are arbitrable as the Transfer of Property Act does not forbid or foreclose arbitration. However, landlord-tenant disputes covered and governed by rent control legislation would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations. Such rights and

obligations can only be adjudicated and enforced by the specified court/forum, and not through arbitration."

III. Thirdly, if in this context, Section 41 is appreciated, it will be clear that Section 41 is a provision conferring jurisdiction on the Small Causes Court for certain types of disputes and cannot be interpreted to mean that *ex proprio vigore* (by its own force), it neutralizes arbitration clauses in agreements.

IV. Fourthly, Arbitration clauses have their roots in Section 28 of the Contract Act, 1872, a provision completely missed in ***Central Warehousing (Supra)***. Section 28 which speaks of agreements in restraint of legal proceeding being void, has two important exceptions. Relevant part of Section 28 and exceptions are extracted hereinbelow.

"**28. Agreements in restraint of legal proceedings, void.—** Every agreement,— (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or (b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of

any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to the extent."

Exception 1.—**Saving of contract to refer to arbitration dispute that may arise.—**This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception 2.- **Saving of contract to refer questions that have already arisen.-** Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration."

It will be clear that when two or more persons agree to refer a matter to arbitration, Section 28 will not render that agreement invalid.

22. Considerable arguments were advanced both in the oral submissions and in the written note about whether the nature of the claim is in the form of debt or whether it pertains to a matter covered by the ambit of Section 41(1). Arguments were also advanced on the issue as to how the dispute between the

parties is a dispute in personam (as contended by the respondent) pertaining only to the recovery of a debt as opposed to the appellant contending that it is a dispute relating to the recovery of the license fee or charges or rent, covered under Section 41(l) of the 1882 Act. Reliance was placed on ***Natraj Studios*** (*supra*) and ***Booz Allen*** (*supra*) by the appellant and ***Globsport*** (*supra*) by the respondents.

23. In exercise of our jurisdiction under Section 11, we are not concerned with the said dispute. That will be for the arbitrator to decide. We have been told that the Arbitrator has taken a decision on the Section 16 application. If that be so, parties have to work out their remedies in accordance with law. As and when such remedies are resorted to, they will be decided uninfluenced by any of the observations made herein. All questions between the parties other than the one answered herein based on Section 11(6-A) of the A&C Act are left open.

24. Section 16 of the A&C Act reads as under: -

> "**16. Competence of arbitral tribunal to rule on its jurisdiction.—**(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—
>
> (a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
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> (b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.
>
> (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.
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> (3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.
>
> (4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.
>
> (5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.
>
> (6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34."

25. In ***re Interplay*** (supra), this Court held as follows: -

> **"123.** The doctrine of kompetenz-kompetenz (also known as competence-competence), as originally developed in Germany, was traditionally understood to imply that arbitrators are empowered to make a final ruling on their own jurisdiction, with no subsequent judicial review of the decision by any court. [Fouchard, Gaillard, *Goldman on International Commercial Arbitration*, Emmanuel Gaillard and John Savage (Eds.), (1999) 396.] However, many jurisdictions allow an Arbitral Tribunal to render a decision on its jurisdiction, subject to substantive judicial review. [Gary Born, *International Arbitration Law and Practice* (3rd Edn., 2021) 1143.]
>
> **124.** It is a well-recognised principle of public international law that a legal authority possessing adjudicatory powers has the right to decide its own jurisdiction. [*Interpretation of the Greco-Turkish Agreement of December 1st, 1926, In re*, 1928 SCC OnLine PCIJ 5] Similarly, it is a general rule of international arbitration law that an Arbitral Tribunal has the power to determine its own jurisdiction. The ability of an Arbitral Tribunal to determine its own jurisdiction is an important facet of arbitration jurisprudence because it gives effect to the separability presumption. The separability presumption insulates the arbitration agreement from the defects of the underlying contract, and thereby ensures the sustenance of the tribunal's jurisdiction over the substantive rights and obligations of the parties under the underlying contract even after such a contract is put to an end. The doctrine of competence-competence allows the tribunal to decide on all substantive issues arising out of the underlying contract, including the existence and validity of the arbitration agreement."

26. For the reasons set out hereinabove, paragraph 40 of ***Central Warehousing (Supra)*** cannot be understood on the facts of the present case to mean that Clause 33 of the Leave and License Agreement has ceased to exist.

27. We have been constrained to deal with the judgement in ***Central Warehousing*** (*supra*) only to decipher whether on account of the said judgement, Clause 33 of the Leave and License Agreement dated 06.10.2017, in the present case, containing the arbitration clause is non-existent. We hold that it is not and that an examination under Section 11(6-A) indicates that there exists an arbitration agreement between the parties. We are conscious that an appeal is pending in this Court against the judgement in ***Central Warehousing*** (*supra*). That appeal may be decided on its own merits and we are not to be taken to have pronounced on the correctness of ***Central Warehousing*** (*supra*) one way or the other.

28. The appeal is dismissed for the reasons stated above. No order as to costs. The Arbitrator shall proceed with the adjudication of the disputes and conclude the proceedings within 6 months from today.

.....J.
[**J. B. PARDIWALA**]

.....J.
[**K. V. VISWANATHAN**]

New Delhi;
5th January, 2026