

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.4614 OF 2009**

Central Warehousing Corporation  
(A Govt. of India Undertaking)  
having their Regional Office at  
Baldota Bhavan, IInd Floor,  
M.K.Marg, Churchgate,  
Mumbai – 400 020.

..Petitioners

Versus

M/s. Fortpoint Automotive Pvt.Ltd.  
A Private Limited Company,  
incorporated under Companies Act, 1956,  
having its Office at TW-I,  
“B” Block, Bay No.1,  
Off. P.D’Mello Road,  
Cottongreen (East),  
Mumbai-400 033.

..Respondents

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Shri S.U.Kamdar, Sr.Counsel with Ms. Pooja Patil and Ms. Suvindhe Shah  
i/b. S.I.Shah & Co. for Petitioners.

Mr. Umesh Shetty with Ms.Sharila D’Souza, Mr.Roshan D’Souza and  
Mitesh Naik i/b M/s. Umesh Shetty & Co. for Respondents.

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**CORAM : SWATANTER KUMAR, C.J. WITH  
A.M.KHANWILKAR, AND  
R.P.SONDURBALDOTA, JJ.**

**JUDGMENT RESERVED ON : 7<sup>th</sup> DECEMBER, 2009.  
JUDGMENT PRONOUNCED ON : 16<sup>th</sup> DECEMBER, 2009.**

**JUDGMENT (PER KHANWILKAR, J.) :**

1. The question as referred by the Learned Single Judge of this Court for consideration of the larger Bench, is as follows:-

“Whether in view of the provision of Section 5 of the Arbitration and Conciliation Act, 1996, if any Agreement between Licensor and Licensee contains a clause for arbitration, the jurisdiction of the Small Causes Court under the Presidency Small Cause Courts Act, 1882 would be ousted?”

2. The background in which the matter has been placed before us to examine the above question can be briefly mentioned as follows:-

The Petitioners are lessees in respect of godown premises admeasuring 18,850 sq. meters being Shed TW-1 at Cotton Green Depot. The Mumbai Port Trust is the owner thereof who vide letter dated 26<sup>th</sup> February, 1975 gave the said premises on lease to the Petitioners. Sometime on or around 19<sup>th</sup> September 2002, the Respondents approached the Petitioners for storage facilities. By a Memorandum of Agreement dated 19<sup>th</sup> September 2002, the storage facility space was provided to the Respondents in an area of 2,411 sq.meters which was subsequently increased to 2,627 sq.meters on terms and conditions stated in the

Agreement dated 19<sup>th</sup> September 2002. It is common ground that Clause 14 of the said Agreement dated 19<sup>th</sup> September 2002 is an arbitration agreement. There is no dispute before us on this fact.

3. Be that as it may, it is the case of the Petitioners that as per the Agreement dated 19<sup>th</sup> September 2002, a mere warehousing facility was extended by the Petitioners to the Respondents in the normal course of business. The Agreement clearly provides that the possession of the premises were to always remain with the Petitioners and the Respondents were given only access thereof. Clause 7 of the Agreement records that the Respondents were aware about the arrangement by and between the Petitioners and Mumbai Port Trust and that they (Respondents) will be bound by the said terms and conditions. The Agreement also provides that the Petitioners are entitled to enhance the charges, as and when the Mumbai Port Trust claims repossession of the said premises and further the Respondents will vacate and hand over the possession thereof to the Petitioners for the purpose of handing over it to the Mumbai Port Trust. It is the case of the Petitioners that the Respondents in breach of the terms and conditions of the said Agreement, unauthorisedly encroached upon an area outside the godown premises and started using the same for washing their

vehicles. Resultantly, the owners-Mumbai Port Trust-issued show-cause notice to the Petitioners on 24<sup>th</sup> December 2005 calling upon the Petitioners as to why the Lease Deed should not be terminated for various breaches including unlawful encroachment caused by the Respondents. The owner-Mumbai Port Trust threatened the Petitioners to initiate proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and later on enhanced the rent and made a demand for increase in the rate with retrospective effect from the Petitioners in the sum of Rs. 70,94,21,581.51 and also claimed damages and interest on the basis of unauthorised encroachment of the premises. On receipt of the said communication dated 30<sup>th</sup> April 2007 from the owners, the Petitioners called upon the Respondents to pay the entire arrears of storage charges including revision of rent by Mumbai Port Trust as well as make payment of damages for unauthorised occupation and encroachment on the part of the storage facilities. Besides, the Petitioners terminated the storage warehousing facilities of the Respondents and called upon them to remove themselves from the said storage facilities by removing their cars therefrom. In response to the said notice, the Respondents issued a letter dated 1<sup>st</sup> September 2008, inter alia invoking the Arbitration Clause as contained in Clause 14 of the said Agreement and called upon the Petitioners to refer the

disputes and differences between them to arbitration under the terms of the said Agreement. At the same time, the Respondents proceeded to file a suit before the Small Causes Court at Mumbai by invoking Section 41 of the Presidency Small Cause Courts Act, 1882 (hereinafter referred to as 'the Act of 1882') for declaration that the Agreement dated 19<sup>th</sup> September 2002 executed between the Petitioners and Respondents was valid and subsisting and also for further declaration that the notices issued by the Petitioners dated 20<sup>th</sup> August 2008 and 26<sup>th</sup> August 2008 terminating the Agreement dated 19<sup>th</sup> September 2002 were illegal, bad in law, null and void. According to the Petitioners, however, they had already appointed sole Arbitrator to adjudicate the dispute between the Petitioners and the Respondents, but the Respondents failed to appear before the Arbitrator for hearing of the matter. In the abovesaid suit, the Respondents took out notice dated 15<sup>th</sup> September, 2008 praying for interim-relief restraining the Petitioners from taking any action in pursuance of the termination notices. The Petitioners filed reply affidavit on 20<sup>th</sup> September, 2008 and raised preliminary objection regarding jurisdiction of the Small Causes Court to try the said under Section 41 of the Act of 1882 on the ground that the same was barred in view of the provisions of Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996') and the

Court is obliged to refer the parties to arbitration for resolution of their disputes and differences. Consequent to the preliminary objection raised by the Petitioners, the Small Causes Court framed preliminary issue regarding jurisdiction of the Court under Section 9A of the Code of Civil Procedure, 1908. Besides, the Small Causes Court granted ad-interim relief to the Respondents. It is unnecessary to advert to the other proceedings arising out of the interim order passed by the Small Causes Court. Suffice it to mention that the preliminary issue was eventually answered by the Small Causes Court on 25<sup>th</sup> February 2009 against the Petitioners. In the said Judgment, the Small Causes Court found that it had exclusive jurisdiction to try disputes between the Licensor and Licensee by virtue of Section 41 (1) of the Act of 1882 and the suit so instituted by the Respondents was not barred by the provisions of Act of 1996. According to the Petitioners, against this decision, the Petitioners could have resorted to remedy of appeal before the Appellate Bench of the Small Causes Court, however, having regard to the fact that the question answered by the Trial Court was purely question of law and there were direct decisions of this Court on the point, no fruitful purpose would be served by invoking remedy of appeal. In other words, the remedy of appeal was not an efficacious remedy in the fact situation of the present case. For that reason, the

Petitioners approached this Court by way of present Writ Petition under Article 227 of the Constitution of India.

4. While hearing the said Writ Petition on 9<sup>th</sup> July 2009, the learned Single Judge noticed the argument canvassed on behalf of the Petitioners and was persuaded to refer the matter to a larger Bench. The principal argument of the Petitioners as noticed by the learned Single Judge is that, neither the earlier decision of this Court in **Siemens Ltd. vs. Captech Online Pvt. Ltd. in Arbitration Petition No. 99/2004 dated 28<sup>th</sup> August 2005** and another decision of the Single Judge in the case of **ING Vyasa Bank Ltd. vs. Modern Indian reported in 2008 (2) MLJ 635** as well as the decision of the Division Bench in the case of **Carona Limited. vs. Sumangal Holdings reported in 2007 (4) BCR 265**, which have taken the view that the provisions of Section 41 of the Act of 1882 would prevail over the Arbitration and Conciliation Act, had occasion to consider the efficacy of Section 5 of the Act of 1996. According to the Petitioners, Section 5 of the Act of 1996 begins with a non-obstante clause indicating that no Judicial Authority shall intervene except where so provided in Part-I of the Act of 1996 - which presupposes that the Act of 1996 would prevail over the Act of 1882. The learned Single Judge has also noted the argument

that Section 2(3) of the Act of 1996 which is also contained in Part-I stipulates that that part does not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration. Having noticed the arguments and above referred Judgments of this Court which essentially are founded on the exposition of the Apex Court in **Natraj Studio Pvt. Ltd. vs. Navrang Studio & Anr. reported in 1981 (1) SCC 523** - which decision was based on the provisions of the Arbitration Act, 1940 which did not contain the provision similar to Section 5 of the Act of 1996, thought it appropriate to refer the matter to Larger Bench for an authoritative pronouncement on the question. Accordingly, the matter has been placed before us to examine the question formulated by the Learned Single Judge reproduced in Paragraph 1 above.

5. We have had the benefit of erudite submissions made by Mr. Kamdar, learned Senior Counsel for the Petitioners and Mr. Umesh Shetty, learned Advocate for the Respondents. According to the Petitioners, Section 41(1) of the Act of 1882, as is applicable at present, does not contain non-obstante clause with respect to any other law for the time being in force. The non-obstante clause is limited to anything contained elsewhere in the Act of 1882 alone. Further, Section 41 is a provision intended only to

consolidate suits irrespective of its valuation before the Small Causes Court as is observed in the case of **P.A. Narayanan vs. Dr. S. Shankar & Anr. reported in AIR 1981 Bom. 339**. It is argued that when Section 41 of Act of 1882 was introduced in 1976 and amended in 1984, at the relevant time, the Act of 1996 had not come into force but the law was governed by the provisions of Arbitration Act, 1940. Insofar as Arbitration Act, 1940 is concerned, it does not contain provision similar to Section 5 of the Act of 1996. Instead, the regime which was followed pre 1996 was that the suits were permitted to be filed in the Civil Court even if there was an Arbitration Agreement. In such suits, the party could file application for stay by invoking Section 34 of the Act of 1940 and only if such stay was to be granted, the Arbitrator could proceed with the Arbitration proceedings and get jurisdiction to decide the dispute referred to him. Under the Act of 1940, there was limited bar specified in Section 32 of the Act which provided that the validity of the Arbitration Agreement or validity of an award cannot be challenged by a suit nor can any Arbitration Agreement or award be enforced, set aside, amended, modified or in any way affected, except as provided under that Act. However, the regime under the Act of 1996 has brought about a sea change. The new enactment introduces non-obstante clause to exclude the jurisdiction of Courts by virtue of

Section 5 of Act of 1996, which provides that notwithstanding anything contained in any other law for the time being in force, for any matter governed by Part-I of the said Act, no Judicial Authority shall intervene except as provided in the said Part of the said Act. It is argued that this provision is a conscious departure by the Legislature from the bar contained in the old Act. The bar stipulated in the Act of 1996 is very wide and even filing of the suit, if the subject matter is governed by Part-I of the Act of 1996, is ousted. To buttress the argument regarding sweep of Section 5, reliance is placed on the decision of the Apex Court in the case of **Union of India vs. Popular Construction-2001 (8) SCC 470; Empire Jute Company Ltd. & Ors. vs. Jute Corporation of India Ltd. & Anr.-2007 (14) SCC page-680; CDC Financial Services (Mauritius) Limited vs. BPL Communication Limited-2003 (12) SCC 140; Hindustan Corporation Ltd. vs. Pinkcity Midway Petroleums-2003 (6) SCC 503** and decision of Learned Single Judge of this Court in **Girish Manubhai Parekh vs. Continental Steel Corporation & Ors.- 2009 (2) BCR 846**. It is next contended by the Petitioners that the decisions which have considered the question, were in the context of provisions of Act of 1940, would be of no avail. For, the provisions introduced in the enactment of 1996 is of wide import and it has been consistently held that

the jurisdiction of Courts is ousted once there is an Arbitration Agreement between the parties and such Arbitration Agreement by virtue of Section 7 of the Act of 1996 is governed by Part-I of that Act. Moreover, the decisions would be of no avail as the same have had no occasion to consider the efficacy of Section 5 of the Act of 1996. The decision such as **Natraj Studio vs. Navrang Studio-(1981) 1 SCC 523, Mansukhlal Dhanraj Jain vs. Eknath Vithal Ogale-(1995) 2 SCC 665** which were the basis for answering the controversy by the learned Single Judge as well as Division Bench, therefore, would be of no avail. Besides, the non-obstante clause in Section 41(1) as it appears at present, is very limited and does not cover all laws unlike the non-obstante clause in Section-5 of the Act of 1996. It is further argued that the non-obstante clause of 1996 being a later Statute, the same would prevail. Reliance is placed on the decision of the Apex Court in **Maruti Udyog Ltd. vs. Ram Lal & Others reported in 2005 (2) SCC 638** to buttress this proposition. It is also argued that the Act of 1996 is a special statute which has come into force subsequently. Therefore, the legislature is deemed to be aware of the earlier non-obstante clause for which reason also the later non-obstante clause ought to prevail. Reliance is placed on **Maharashtra Tubes Ltd. vs. State Industrial & Investment Corporation of Maharashtra Limited reported in 1993 (2)**

**SCC 144; A.P. State Finance & Corporation vs. Official Liquidator reported in AIR 2000 SC 2642.** It is argued that the provisions of Section 41 of the Act of 1882 is the State (Maharashtra) amendment; whereas enactment of Act of 1996 being a Central Statute, even if there was any conflict between the two Statutes, the Central enactment must prevail over the State enactment. Reliance is placed on the exposition in the case of **G. Shreedharmurthy vs. Hindustan Petroleum Corporation Ltd. reported in 1995 (6) SCC 605.** Reliance is also placed on the exposition in the case of **Indore Municipality vs. Ratnaprabha reported in AIR 1977 SC 308; Indian Oil Corporation vs. Municipal Corporation of Madhya Pradesh reported in AIR 1995 SC 1480.** According to the Petitioners Section 5 of the Act of 1996 must prevail over the provisions of Section 41 of the Act of 1882. Learned Counsel for the Petitioners has also distinguished the decisions of our High Court in **Siemens Ltd. vs. ING Vyasa Bank Ltd. (supra)** as well as **Carona Ltd. (supra)** on the above argument. Instead, reliance is placed on the exposition of another Division Bench of this Court in the case of **Vijaya Bank vs. Maker Services Private Limited reported in 2001 (3) BCR 652,** which has held that the dispute covered between the Licensor and Licensee for recovery of possession after expiry of licence will not fall within the provisions of

Section 41 of the Act of 1882. It is also argued that Section 2(3) of the Act of 1996 which is now been relied upon by the Respondents, is an argument which is advanced for the first time before this Court. Moreover, Section 2(3) requires that the Law must provide that the specified dispute cannot be referred to arbitration. According to the Petitioners, the provisions of Act of 1882 nowhere provides for such restriction or bar of jurisdiction of arbitrator, unless it was to be so understood by virtue of interpretation of non-obstante clause under Section 41 of that Act. Moreover, Section 2(3) does not control the provisions of Section 5 of the Act of 1996 which stands on its own force and would override the provisions of Section 41 of the Act of 1882. It was submitted that where the decision of the arbitration in dispute between the private parties were to be in personem and if there is existing Arbitration Agreement then as per the mandate of Act of 1996, the dispute between the parties is required to be referred to the Arbitrator. It would be a different matter if the decision on the dispute to be given by the Arbitrator would have the effect of decision in rem. It is conceded by the Petitioners that only such disputes in which the decision is in rem have been excluded from the regime of arbitration. To wit, only if the criminal offence is required to be prosecuted in Court of law, that matter cannot be taken before the Arbitrator as held in

**S.N. Palanitkar vs. State of Bihar- AIR 2001 SC 2960.** Similarly, a probate proceedings under Succession Act cannot be subject matter of arbitration as held in **Chiranjilal Shrilal vs. Goenka vs. Jagjit Singh & Ors.-1993 (2) SCC 507.** Similarly, a winding up proceedings cannot be subject matter of arbitration because, winding up proceedings are in rem as held in **Haryana Industries Ltd. vs. Sterlite Industries (India) Limited-1999 (5) SCC-688.** Even the matrimonial disputes cannot be subject matter of arbitration as held in the case of **V.V. Pushpakaran vs. P.K. Sarojini-1992 (Kerala) 9.** It was argued that such analogy cannot be applied in a case of dispute between a Licensor and Licensee, which is governed by the contractual Agreement between the parties. The decision of Arbitrator would bind only the parties to the arbitration action. It is submitted that the effect of Section 5 of the Act of 1996 would, therefore, clearly override the provisions of Section 41 of the Act of 1882. It is argued that the theory of public policy is relevant only in relation to disputes between landlord and tenant. Insofar as the disputes between the Licensor and Licensee are concerned, there is no statutory protection to the Licensee as in the case of tenants. Moreover, principle of public policy cannot be invoked to construe the provision such as Section 41 of the Act of 1882 or Section 5 of the Act of 1996. The enactment must provide that the

jurisdiction of the Arbitrator is barred by law which is in force at the relevant time. It was also argued that the legislative change may also be taken into account while construing the rigours of the provisions in question. In that, the Maharashtra Rent Control Act, 1999, which has been introduced in 1999, takes out the exclusive jurisdiction of the Small Causes Court in relation to Licensor-Licensee, inasmuch as, Section 24 gives option to the Licensor to invoke the said provision for recovery of possession and compensation. This indicates that the public policy has also undergone change with regard to the exclusivity of jurisdiction of the Small Causes Court to adjudicate disputes between Licensor and Licensee. It is contended that by virtue of Article 254 of the Constitution of India, all laws which are existing and inconsistent with the Act of 1996, the same would stand superseded. There is direct conflict between Section 41 of the Act of 1882 and Section 5 of the Act of 1996. Therefore, Section 5 of the Act of 1996 would prevail. The fact that the amendment to Section 41 of Act of 1882 has been brought into force after receiving assent of the President of India, that would make no difference. Firstly, because the Act of 1996 had not come into being at the relevant time. Moreover, for the State enactment to prevail, it was imperative to invite the attention of the President to the inconsistency before obtaining his assent. Only in that

case, the State legislation which has received assent of the President would be of some consequence.

6. Per contra, the learned Counsel for the Respondents submits that the plain language of Section 41 leaves no manner of doubt that exclusive jurisdiction is conferred upon the Small Causes Court in the matter of suits and proceedings between Licensors and Licensees relating to recovery of possession of any immovable property situated in Greater Mumbai or relating to recovery of licence fees or charges thereof, irrespective of the value of the subject matter of the said suit or proceedings. It is a special law conferring exclusive jurisdiction to entertain and decide the specified suits and proceedings between Licensors and licensees. The learned Counsel has invited our attention to the legislative history of Section 41 of the Act of 1882. The said provision has been introduced in Part VII of the said Act and later on amended to further the cause of general public. According to him, public policy also requires that the parties cannot be permitted to contract out of the legislative mandate, which requires specified kind of disputes to be settled by the Special Courts constituted under the said Act of 1882. The learned Counsel has placed strong reliance on the decision of the Apex Court in the case of **Natraj Studio Pvt.Ltd. (supra)** as well as

**Mansukhlal Dhanraj Jain's case (supra)** and contends that neither the amendment of 1984 in the Act of 1882 nor the enactment of Act of 1996 would affect the interpretation expounded by the Apex Court in respect of Section 41 of the Act of 1882. Going by the plain language of Section 41 of the Act of 1882, it is noticed that the same confers exclusive jurisdiction on the Small Causes Court. With reference to the dictum of the Apex Court in **Natraj Studio Pvt.Ltd. (supra)**, which is in the context of Section 28 of the Bombay Rent Act, it is contended that the said provision is *pari materia* with the provisions of Section 41(1) of the Act of 1882. For that reason, on parity of reasoning, even the disputes between the Licensors and Licensees, the exclusive jurisdiction would be of the Small Causes Court by virtue of Section 41 of the Act of 1882. That jurisdiction is, in no way, impacted by the existence of Arbitration Agreement. Section 5 of the Act of 1996 cannot control the exclusive jurisdiction of the Small Causes Court to entertain and decide specified disputes between Licensors and Licensees. In his submission, the interpretation of Section 41 has found favour even with the Apex Court which is, in no way, diluted by the enactment of Section 5 of the Act of 1996. Learned Counsel has placed reliance on the decisions of our High Court in the cases of **Carona Limited (supra)**, **Siemens Ltd. (supra)** and **ING Vyasa Bank Ltd. (supra)** to buttress his submission that

the Small Causes Court will have exclusive jurisdiction by virtue of Section 41 of the Act. The principle expounded in the above said decisions is that the Legislature has created special forum for adjudication of disputes between the Licensors and Licensees in relation to recovery of possession and licence fees. Further, the amendment of Section 41 of the Act does not obliterate the exclusive jurisdiction of the Small Causes Court. Even in case of existence of Arbitration Agreement, the Arbitration would be barred by virtue of exclusive jurisdiction conferred upon the Court of Small Causes by Section 41 of the Act of 1882. The scheme of Section 41 is that only the Small Causes Court can entertain and decide suits or proceedings for recovery or possession of any immovable property or of licence fee or charges or rent thereof, unless the same was covered by the provisions of enactments referred to in sub-section (2) of Section 41. Besides mentioning the specific Acts, sub-section (2) also refers to “or any other law for the time being in force”, which exception would not encompass the Act of 1996, being a general law on arbitration and not specific to disputes between Licensors and Licensees for recovery of possession of immovable property or licence fees or charges or rent thereof. According to the Respondents, even by virtue of Section 2(3) under Part-I Chapter I of the Act of 1996, the exclusive jurisdiction of the Small Causes Court by virtue

of Section 41 of the Act of 1882 would prevail, notwithstanding the existence of an Arbitration Agreement between the Licensor and Licensee. Such Agreement would not, in any manner, affect the jurisdiction of the Small Causes Court nor the provisions of Section 5 under Chapter I of the Act of 1996 would take the matter any further. According to the learned Counsel for the Respondents, on conjoint reading of Section 2(3) and Section 5 of the Act of 1996, it is clear that any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration, such law is saved and not affected by the non-obstante clause in Section 5 of the Act of 1996. Whereas, in the suits and proceedings between Licensors and Licensees covered by Section 41(1) of the Act of 1882, in law, the Small Causes Court alone has exclusive jurisdiction. Therefore, Part-I of the Act of 1996 including Section 5 thereof does not and cannot affect or take away the exclusive jurisdiction of the Small Causes Court in respect of specified suits and proceedings between Licensors and Licensees, notwithstanding the existence of any Arbitration Agreement between them. It is thus argued that the jurisdiction of the Small Causes Court under Section 41 of the Act of 1882 cannot be ousted inspite of an Arbitration Agreement between the Licensor and the Licensee and even by virtue of Section 5 of the Act of 1996. It is submitted that Section 5 of the Act of

1996 cannot control Section 41 of the Act of 1882. More over, Section 5 of the Act of 1996 does not in any way change the effect of Section 41 of the Act of 1882. On the other hand, the fact that Section 41 of the Act of 1882 envisages that all issues between the Licensors and Licensees should go to the Special Court namely, the Small Causes Court, by necessary implication, the arbitration mechanism is excluded. Our attention is invited to Entry No.7 and Entry No.13 of List III of Schedule VII of the Constitution of India. The enactment such as Arbitration Act would be ascribable to Entry No.7, whereas, the suits and proceedings between the Licensors and Licensees are referable to Entry No.13 of the said List III. It is submitted that Section 41 operates in different field. It is a special enactment conferring exclusive jurisdiction in the Special Court to entertain, try and decide specified disputes between Licensors and Licensees. Such provision cannot be affected by the special provisions of Arbitration Act which is general in nature concerning resolution of disputes. It is submitted that the fact that the Arbitration Law is a general law, is evidenced from the statement of objects and reasons while introducing the Arbitration and Conciliation Bill, 1995. The power of judicial intervention is limited to arbitration proceedings commenced on the basis of Arbitration Agreement. That cannot affect the special and exclusive jurisdiction of the

Small Causes Courts under Section 41 of the Act of 1882. According to the learned Counsel, the observation of another Division Bench of this Court in **Vijaya Bank (supra)**, in particular, in Para 36, is very wide and in fact, *per incuriam*. According to the learned Counsel, there is no conflict between Section 41 and Section 5. Section 41 was introduced in 1976 after the President had given assent to the State amendment. However, even if there was any conflict, it would be conflict between the State enactment which had received assent of the President and the Central enactment, in which case, the State enactment would prevail. Reliance is placed on the decision in the case of **Vijay Kumar Sharma & Ors. vs. State of Karnataka & Ors. reported in (1990) 2 SCC 562** as also **Sanwarmal Kejriwal vs. Vishwa Coopertive Housing Society Ltd. & Ors. reported in (1990) 2 SCC 288**. Learned Counsel has distinguished the decisions pressed into service by the Petitioners. According to him, the observation of the Division Bench in the case of **P.A.Narayanan (supra)** is no more a good law, considering the dictum of the Apex court in the case of **Sanwarmal Kejriwal (supra) (Paras 21 and 22 thereof)**. He submits that the Division Bench was persuaded to take the view without inviting the statement of objects and reasons for the amendment to Section 41 of the Act. According to the learned Counsel, the view taken by the two learned

Single Judges of this Court and also of the Division Bench, needs to be upheld. As it has been rightly noticed that deletion of the non-obstante clause by way of amendment would make no difference as the same was done only with a view to remove certain inconsistency in Section 41 of the Act. In substance, it is submitted that the object of Arbitration law is to govern the procedure before the Arbitrator. It cannot affect the exclusive jurisdiction of the Small Causes Court which has been conferred by Section 41 of the Act of 1882. There is no conflict between the two provisions and each operate in separate field. Therefore, the question under reference should be answered against the Petitioners.

7. The principal question which we have to answer is: whether Section 5 of the Act of 1996 would oust the jurisdiction of the Small Causes Court- which is bestowed on it by virtue of Section 41 of the Act of 1882 to try all suits and proceedings between a Licensor and Licensee, or a landlord and tenant, relating to recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of the licence fee or charges or rent. We would, therefore, straightaway refer to Section 5 of the Act of 1996. The same reads thus:

**“5.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.**”  
(emphasis supplied)

8. Going by the plain language of this provision, it is obvious that “all matters” governed by Part-I of this Act (which deals with domestic arbitrations) will have to proceed as per the regime provided in Part-I of the Act. Further, no Judicial Authority can intervene in those matters except where so provided by Part-I of the Act of 1996. The provision has very wide import, as it opens with non-obstante clause. The sweep of non-obstante clause operates notwithstanding anything contained in any other law for the time being in force. In the case of **Union of India (supra)**, the Apex Court has restated the position that one of the main objects of the Act of 1996 was the need “to minimise the supervisory role of Courts in the arbitral process”. The Apex Court had occasion to examine even the purport of Section 5 of this Act in series of Judgments which have been pressed into service before us. (*See* **Empire Jute Company Ltd. (supra)**; **CDC Financial Services (Mauritius) Ltd. (supra)**; **Hindustan Corporation Ltd. (supra)**). It has been consistently held that Section 5 takes away the jurisdiction of the Court when there exists an arbitration agreement and that provision must be given effect to. Further, the Courts

are restrained from interfering with arbitration except in the manner provided in the Act of 1996. The Judicial Authority before which an action is brought in a matter which is the subject of an Arbitration Agreement is obliged to refer such parties to arbitration. The Arbitral Tribunal has been empowered by virtue of Section 16 of the Act of 1996 to rule on its own jurisdiction including on any objection with respect to the existence or validity of arbitration agreement.

9. The crucial aspect that needs to be examined is: whether Section 5 of the Act of 1996 can be read in isolation? In our opinion, on the plain language of Section 5, it will have to be juxtaposed with Section 2(3) of the Act of 1996 which provision also falls in Part-I of that Act. The latter amplifies the scope of the Act of 1996. Section 2(3) of the Act reads thus:

**“2.(3) This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.”**  
(emphasis supplied)

This provision plainly means that Part-I of the Act shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to Arbitration. To put it differently, if any law which is for the time being in force were to provide-either expressly or by

necessary implication-that the specified disputes may not be submitted to arbitration, in that case, inspite of the non-obstante provision in Section 5 of the Act, that law has been saved by virtue of Section 2(3) of the Act of 1996. To that extent, the bar against the Judicial Authority in terms of Section 5 of the Act of 1996, to try matters specified by such law would stand lifted. To examine the question under reference, the crucial question is: whether the provisions of Section 41 of the Act of 1882, is a law for the time being in force by virtue of which the disputes specified therein may not be submitted to arbitration.

10. Before we advert to Section 41 of the Act of 1882, it would be apposite to analyse the broad contours of the said Act. It is a Central Act to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency towns. The preamble of the Act mentions that it is expedient to consolidate and amend the law relating to Courts of Small Causes established in the towns of Calcutta, Madras and Bombay. Chapter I of the Act deals with preliminary matters. Section 1 gives short title and commencement of the Act. Section 4 stipulates that the Small Causes Courts means the Court of Small Causes constituted under this Act in the towns of Calcutta, Madras or Bombay as the case may be and the

expression Registrar includes a Deputy Registrar. Chapter II makes elaborate provision regarding the constitution and Officers of the Court. Chapter III deals with the law administered by the Courts so constituted. Section 16 which is part of Chapter III provides that all questions, other than questions relating to procedural practice, which arise in suits or other proceedings under this Act in the Small Causes Courts shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction. Chapter IV is somewhat relevant to consider the controversy on hand. It deals with jurisdiction in respect of suits. Section 17 deals with local limits of jurisdiction of court. Section 18 stipulates that subject to the exceptions in Section 19, the Small Cause Court shall have jurisdiction to try all types of suits of a civil nature where the amount or value of the subject matter does not exceed 25,000/- rupees and the three other conditions specified in clauses (a), (b) and (c) thereof. Thus, this provision vests jurisdiction in the Small Cause Court to try all suits of a civil nature which do not exceed the pecuniary claim of Rs.25,000/- and fulfill the three other conditions specified therein. Section 18 has been made subject to Section 19. Section 19 provides for types of cases in respect of which the Small Cause Court shall have no jurisdiction. Since Section 18 and Section 19 deal with the

jurisdiction of the Small Cause Court, the said Sections as presently apply,  
read thus:

**“18. Suits in which Court has jurisdiction.**—Subject to the exceptions in Section 19, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

when the amount or value of the subject-matter does not exceed two thousand rupees: and

(a) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or

(b) all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or carry on business of personally work for gain, within such local limits; or

(c) any of the defendants at the time of the institution of the suit, actually and voluntarily resides, or carries on business or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution:

<sup>1</sup>[Provided that where the cause of action has arisen wholly within the local limits aforesaid, and the Court refuses to give leave for the institution of the suit, it shall record in writing its reasons for such refusal.]

*Explanation I.*—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

*Explanation II.*—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

*Explanation III.*—A Corporation or Company shall be deemed to carry on business at its sole or principal office in <sup>2</sup>[India], or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

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Prior to amendment by 2 A.L.O., 1956, Section 18 read as:

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**18. Suits in which Court has jurisdiction.**—Subject to the exceptions in Section 19, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

when the amount or value of the subject-matter does not exceed two thousand rupees: and

(a) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or

(b) all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or carry on business of personally work for gain, within such local limits; or

(c) any of the defendants at the time of the institution of the suit, actually and voluntarily resides, or carries on business or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution:

[Provided that where the cause of action has arisen wholly within the local limits aforesaid, and the Court refuses to give leave for the institution of the suit, it shall record in writing its reasons for such refusal.]

*Explanation I.*—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

*Explanation II.*—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

*Explanation III.*—A Corporation or Company shall be deemed to carry on business at its sole or principal office in <sup>4</sup>[a Part A State or a Part C State], or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

**[18-A. Plaintiff may abandon suit against defendant resident out of jurisdiction.**—The Small Cause Court may allow a plaintiff at or before the first hearing of a suit in which a joint and several liability is alleged on a cause of action arising either wholly or in part within the local limits of the jurisdiction of the Court to abandon the suit as against any defendant who does not reside or carry on business or personally work for gain within such local limits, to sue for a decree against such defendants only as do so reside, carry on business or personally work for gain.]”

**“19. Suits in which Court has no jurisdiction.**—The Small Cause Court shall have no jurisdiction in—

- (a) suits concerning the assessment or collection of the revenue;
- (b) suits concerning any act done by or by order of the Central Government, <sup>2</sup>[\* \* \*] or the State Government;
- (c) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer;
- (d) suits for the recovery of immovable property;
- (e) suits for the partition of immovable property;
- (f) suits for the foreclosure or redemption of a mortgage or immovable property;
- (g) suits for the determination of any other right to or interest in immovable property;
- (h) suits for the specific performance or rescission of contracts;
- (i) suits to obtain an injunction;
- (j) suits for the cancellation or rectification of instruments;
- (k) suits to enforce a trust;
- (l) suits for a general average loss and suits on policies of insurance on sea-going vessels;
- (m) suits for compensation in respect of collisions on the high seas;
- (n) suits for compensation for the infringement of a patent, copyright or trade-mark;
- (o) suits for a dissolution of partnership or for an account of partnership-transactions;
- (p) suits for an account of property and its due administration under the decree of the Court;

- (q) suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage;
- (r) suits for the restitution of conjugal rights, <sup>3</sup>[\* \* \*] or for a divorce;
- (s) suits for declaratory decrees;
- (t) suits for possession of a hereditary office;
- (u) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States;
- (v) suits on any judgment of a High Court;
- (w) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.”

Amongst others, Clause (d) of Section 19 refers to suits for recovery of immovable property. Clause (g) of the same provision stipulates that suit for the determination of any other right to or interest in immovable property. By virtue of these clauses, it is expressly made clear that the Small Causes Court can have no jurisdiction to consider the relief of recovery of immovable property or for determination of any other right to or interest in immovable property. Clause (h) of Section 19 provides that the Small Causes Court shall have no jurisdiction in respect of suits for the specific performance or recession of contracts. Clause (f) deals with suits to obtain an injunction in relation to which Small Causes Court cannot exercise jurisdiction. Another relevant clause in Section 19 relevant for our purpose is clause (w), which provides that the Small Cause Court shall have no

jurisdiction in relation to suits, the cognizance whereof by the Small Cause Court is barred by any law for the time being in force. Obviously, if this were the only provision in the Act of 1882, the question under reference could have been straightaway answered, keeping in mind the non-obstante clause in Section 5 of the Act of 1996. The other provisions in Chapter IV pertain to return of plaint and investing power in the Court to try suits beyond pecuniary limits of jurisdiction by consent of the parties to the suit. Section 21 deals with suits by and against Officers of Court and Section 22 deals with costs when Plaintiff sues in High Court or Bombay City Civil Court in other cases cognizable by Small Causes Court. Chapter V deals with procedure of trial of suits. It may not be necessary to elaborate the provisions under Chapter V of the Act. Chapter VI deals with new trials and appeals. Chapter VII of the Act provides for recovery of possession of immovable property and certain licence fees and rent. Section 41 in this Chapter departs from the scheme of Section 18 read with Section 19 of the Act and invests exclusive jurisdiction in the Small Cause Court to entertain and try all suits and proceedings between a licensor and licensee or a landlord and tenant relating to recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of licence fee or charges or rent therefor, irrespective of the value of the subject matter

of such suits or proceedings. The other provisions covered by Chapter VIII to XIII may not be of much relevance to answer the controversy.

11. We shall now examine the sweep of Section 41 of the Act, which is a provision regarding suits or proceedings between licensors and licensee or landlords and tenants for recovery of possession of immovable property or licence fees or rent, except to those to which other Acts apply, to lie in Small Causes Court. Before we advert to Section 41 as is presently applicable, we would refer to the legislative history in relation to the said provision. Section 41 of the Act of 1882 as originally enacted found place in Chapter VII of the Act, read thus:

**“CHAPTER VII  
RECOVERY OF POSSESSION OF IMMOVABLE PROPERTY**

**S.41. Summons against person occupying property without leave.-** When any person has had possession of any immovable property situate within the local limits of the Small Cause Court’s jurisdiction and of which the annual value at a rack-rent does not exceed two thousand rupees, as the tenant, or by permission, or another person, or of some person through whom such other person claims,

and such tenancy or permission has determined or been withdrawn,

and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show

cause, on a day therein appointed, why he should not be compelled to deliver up the property.”

12. The State Legislature in view of the experience about the multiplicity of proceedings required to be resorted to by the licensor for recovery of possession of premises and licence fees, decided to amend the said provision. The intent behind the Maharashtra Amendment to Section 41 can be discerned from the statement of objects and reasons while introducing the amendment which culminated with the Maharashtra Amending Act XIX of 1976. The same reads thus:

“STATEMENT OF OBJECTS AND REASONS

At present, in Greater Bombay, all suits and proceedings between a landlord and tenant relating to recovery of possession of premises or rent, irrespective of the value of the subject-matter, lie in the Court of Small Causes, Bombay, under section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Under that section, suits and proceedings for the recovery of the licence fee between a licensor and licensee as defined in that Act also lie in the Court of Small Causes, irrespective of the value of the subject-matter. Under Chapter VII of the Presidency Small Cause Courts Act, 1882, an application can be made by a licensor for recovery of possession of premises, of which the annual value at a rack rent does not exceed three thousand rupees. If the rack rent exceeds three thousand rupees, the licensor has to take proceedings in the City Civil Court where the rack rent does not exceed twenty-five thousand rupees and for higher rents in the High court. Similarly, for recovery of licence fees to which the provisions of the Bombay Rent Control Act do not apply, the licensor has to seek his remedy in the Small Cause Court, the City Civil Court or the High court, as the case may be, according to the value of the subject-matter. Under the existing law, the licensor has to go to different Courts for recovery of possession of premises and licence fees and if the plea of tenancy is raised by the defendant and succeeds, the matter has again to go to the Small Cause Court. Similarly, where proceedings on the basis of tenancy are started in the Small Cause

Court and subsequently the plea of licence is taken and succeeds, the plaint is returned and has to be re-presented to the City Civil Court or the High Court, as the case may be, depending on the valuation. Thus there is unnecessary delay, expense and hardship caused to the suitors by going from one Court to another to have the issue of jurisdiction decided. Moreover, Chapter VII of the Presidency Small Cause Courts Act envisages applications which culminate in orders and are always susceptible of being challenged by separate suits on title where the relationship is admittedly not between a landlord and tenant.

2. In order to avoid multiplicity of proceedings in different Courts and consequent waste of public time and money and unnecessary delay, hardship and expense to the suitors, and to have uniformity of procedure, it is considered expedient to make the required supplementary provisions in the Presidency Small Cause Courts Act, 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 licence fee, irrespective of the value of the subject-matter, should go to and be disposed of by the Small Cause Court, either under that Act or the Rent Control Act.

3. The Bill is intended to achieve these objects.

Nagpur, dated the 24<sup>th</sup> November 1975.      A.R.ANTULAY,  
Minister for Law and Judiciary.

Nagpur, dated the 24<sup>th</sup> November 1975.      D.M.ANEY,  
Secretary,  
Maharashtra Legislative Council.”  
(emphasis supplied)

13. The amended Section 41 was introduced by Maharashtra Act XIX of 1976 which came into effect after the same was assented to by the President of India on 29<sup>th</sup> April 1976. The said amended Section 41, reads thus:

**“S. 41. Suits or proceedings between licensors and licensees or landlords and tenants for recovery of possession of immovable property and licence 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 or in any other law for the time being in force, 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 any 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 or charges or 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 Bombay Housing Board Act, 1948 or any other law for the time being in force applies.”

14. The State Legislature after having gained satisfactory result on account of consolidation of all suits and proceedings between a landlord and tenant or a licensor and licensee for recovery of possession of the premises or recovery of the rent of licence fee, irrespective of the value of the subject matter, to be tried and entertained by the Court of Small Causes, decided to apply similar regime outside the area of Greater Bombay by amending Provincial Small Cause Court Act, 1887. Accordingly, amendment was moved on 1<sup>st</sup> March 1984 by the Ministry of Law and Judiciary of the State of Maharashtra in that behalf. Besides proposing to amend the Provincial Small Cause Courts Act, 1887, an amendment was suggested in respect of Section 41 of the Act of 1882 on the ground that there was a minor inconsistency in sub-sections (1) and (2) of Section 41 of

the Act of 1882 and it was, therefore, proposed to amend Section 41 of the Act to remove the inconsistency. The said proposal was accepted by the State Legislature as a result of which, amendment was effected not only in sub-section (1) but also sub-section (2) of Section 41 of the Act of 1882 by Maharashtra Act XXIV of 1984. After that amendment, **Section 41, as is presently applicable**, would read thus:

“**S.41.** (1) Notwithstanding anything contained elsewhere in this Act but subject to the provisions of sub-section (2), the Court of Small Causes 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 or charges or 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.”

As aforesaid, by virtue of Section 18 read with Section 19 of the Act of 1882, the Small Causes Court could not have entertained any suit for the recovery of immovable property or a suit for the determination of any other right to or interest in immovable property. However, Section 41 is a departure from that rule. It invests exclusive jurisdiction in the Court of Small Causes 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.

15. Section 41(1) of the Act as it stood prior to amendment of 1984, fell for consideration of the Apex Court in the case of **Mansukhlal Dhanraj Jain's case (supra)**. The Apex Court observed that a mere look at the said provision made it clear that because of the non-obstante clause contained in the section, even if a suit may otherwise lie before any other court, if such a suit falls within the sweep of Section 41(1) it can be entertained only by the Court of Small Causes. It further observed that for applicability of Section 41(1) of the Small Cause Courts Act, the following conditions must be satisfied before taking the view that jurisdiction of regular competent civil court like City Civil Court is ousted:

- (i) It must be a suit or proceeding between the licensee and licensor; or
- (ii) between a landlord and a tenant;
- (iii) such suit or proceeding must relate to the recovery of possession of any property situated in Greater Bombay; or
- (iv) relating to the recovery of the licence fee or charges or rent thereof.

The fact that Section 41(1) as it stood prior to 1984 was a non-obstante clause is no more res integra in view of this decision.

16. The question is: whether the position has undergone any change after the amendment of 1984, insofar as sub-section (1) of Section 41 is concerned? By Maharashtra Act 24 of 1984, the words “ or in any other law for the time being in force” occurring in sub-section (1) of Section 41 came to be deleted. We have already re-produced the provision which is applicable after the amendment of 1984 and is presently in force. At the first look, it may appear that the non-obstante clause has now been limited only to the provisions contained elsewhere in the same Act. Former provision, which was a non-obstante clause, covered matters in relation to any other law for the time being in force. In other words, it would appear that after the amendment of 1984, Section 41 does not contain a non-obstante clause to override the provisions of any other law for the time being in force. However, this is not an accurate statement. For, sub-section opens with notwithstanding anything contained elsewhere in this Act. That would take within its fold all the provisions of the Act of 1882

including Section 18 and Section 19 thereof and in particular, Section 19(w), which deal with the jurisdiction of the Small Causes Court to entertain and try suits of a civil nature. In other words, even the stipulation provided in Section 19(w) in relation to suits, the cognizance whereof by the Small Causes Court is barred by law for the time being in force, is covered by the non-obstante clause in Section 41(1) of the Act. That would mean that even if there was to be any other law for the time being in force which created bar on the Small Causes Court to take cognizance of the specified suits, the same will be governed by operation of Section 41(1) of the Act of 1882 as it presently applies. The concomitant of this interpretation is that, even if the jurisdiction of the Small Causes Court is barred by any other law for the time being in force in relation to the matters specified in sub-section (1) of Section 41, the Court of Small Causes would still have the exclusive jurisdiction to entertain and try the suits and proceedings between the licensor and licensee, or a landlord and tenant, relating to recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of licence fee or charges or rent therefor, irrespective of the value of the subject matter of such suits or proceedings.

17. Section 41 of the Act of 1882, however, provides for exceptions as specified in sub-section (2) thereof. It is noticed that although sub-section (1) opens with non-obstante clause, it makes it clear that the same is subject to the provisions of sub-section (2). Therefore, it carves out exception to the rule contained in sub-section (1). Sub-section (2), as is presently applicable, provides that nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property or licence fee or charges or rent thereof, to which the provisions of 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. The sweep of sub-section (2) would apply to suits or proceedings for the recovery of immovable property or of licence fee or charges or rent thereof, but the quintessence to attract sub-section (2) is that the immovable property should be governed by the provisions of the Specified Acts. The difficulty, however, arises on account of the generic expression used in sub-section (2) to the effect “ or any other law for the time being in force”. We shall deal with this aspect a little later.

18. Notably, there is marked difference between the expression used in sub-section (1) of Section 41 and sub-section (2) thereof. In sub-section (1) while describing the suits and proceedings between the licensor and licensee or the landlord and tenant, it is provided that it should be “relating to the recovery of possession of any immovable property” or “relating to the recovery of licence fee thereof” etc. On the other hand, in sub-section (2) the category of cases which are carved out are “for the recovery of possession of any immovable property or licence fee” etc. The distinction between expression “relating to recovery of possession” and “for recovery of possession” has been noticed in **Manshukhlal Dhanraj Jain’s case (supra)** by the Apex Court. The Apex Court in Paragraph-14 has observed thus:

“However, on the clear language of Section, in our view, it cannot be said that these suits are not relating to the possession of the immovable property. It is pertinent to note that Section 41(1) does not employ the words “suits and proceedings for recovery of possession of immovable property. There is a good deal of difference between the words “relating to the recovery of possession” on the one hand and the terminology “for recovery of possession of any immovable property”. The words “relating to” are of wide import and can take in their sweep any suit in which grievance is made that the defendant is threatening to illegally recover the possession from plaintiff-licensee. Suits for protecting such possession of immovable property against the alleged illegal attempts on the part of the defendants to forcibly recover possession from the plaintiff, can clearly get covered by the wide sweep of the words “relating to recovery of possession” as employed by Section 41(1).”

19. Suffice it to observe that a suit or proceeding for recovery of possession or for licence fee referred to in sub-section (2) of Section 41 would obviously be filed by a licensor or a landlord in respect of immovable property governed by the specified enactments; whereas the suit covered by sub-section (1) of Section 41 can be filed by any licensor or a landlord in respect of immovable property governed by laws other than the ones referred to in sub-section(2) and also by the tenant or licensee of such premises who has been threatened of alleged illegal dis-possession from the premises by the landlord or licensor. Thus, the latter suits referable to sub-section (1) fall within the exclusive jurisdiction of the Small Causes Court. For, sub-section (2) would be attracted only if immovable property is governed by the provisions of the specified Acts such as the Bombay Rent Act, the Bombay Government Premises Eviction Act, the Bombay Municipal Corporation Act, the Maharashtra Housing and Area Development Act.

20. Reverting to sub-section (2) of Section 41, it also refers to “any other law for the time being in force”. That is a very wide expression. To give proper meaning to this expression in the context of excepted category of cases covered therein, it will have to be construed to mean that that

law must provide mechanism for recovery of possession of specified immovable property or licence fee thereof which the landlord or licensor can invoke. For, in the case of the Bombay Rent Act of 1947, Section 28 which is *pari materia* with Section 41, as has been held by the Apex Court. It deals with the suits or proceedings between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of Part II of that Act apply or between a licensor and a licensee relating to the recovery of licence fee or charge and decide any application made under that Act and to deal with any claim or question arising out of that Act or any of its provision. It provides that no other Court shall have jurisdiction to try and entertain any such proceedings or application to deal with such claim or question. What is significant to notice is that all the laws specified in sub-section (2) of Section 41, are essentially laws made by the State Legislature. Indubitably, the Act of 1882 is a Central enactment. Section 41 is a State amendment which has been brought into force after receiving the assent of the President of India. Since the contemporary State Legislations such as Bombay Rent Act of 1947 was in force and dealt with the similar matters, it became necessary to exempt the matters covered by that Act from the application of Section 41(1) of the Act of 1882. Similarly, the provisions of Bombay

Government Premises Eviction Act can be invoked in respect of premises covered by the said enactment against the occupant in his capacity as licensee, tenant or otherwise as the case may be, for recovery of possession of immovable property in his possession or of licence fee thereof. The said enactment provides mechanism therefor. Even in respect of Bombay Municipal Corporation Act and the Maharashtra Housing and Area Development Act, the claim of possession of any immovable property or of licence fee thereof would be by the special landlord/licensor against the occupant who may be in possession of such premises as tenant or licensee or even as trespasser. It is for that reason, the summary action provided for recovery of possession of immovable property governed by the stated Acts have been exempted from the sweep of Section 41(1) of the Act. The expression used by the State Legislature “or any other law for the time being in force” is, therefore, intended to cover all such enactments – be it State or Central Legislations - where the landlord or licensor under the concerned enactment is competent to proceed against the occupant of the premises governed by the respective Acts for recovery of possession and licence fee thereof. Obviously, the Legislative intent behind using expression “or any other law for the time being in force” is to encompass all such enactments which provide for

remedy for the recovery of possession of specified immovable property governed by that Act or licence fee thereof and not to cover the general enactments such as the Act of 1996.

21. Further, the term 'law for the time being in force' would apply not only to the prevailing laws, but also to laws on stated matter to be made in future. The State legislature, instead of naming different legislations in sub-section (2) - which may be State enactments or also Central enactments, has thought it appropriate to name only few Acts and then used the expression 'or any other law for the time being in force' so as to make it comprehensive enough to include any other prevailing laws or laws to be made in future, which may provide for mechanism for recovery of possession of specified immovable property governed by that Act or licence fee thereof. To wit, the recent legislation introduced by the State legislature, the Maharashtra Rent Control Act, 1999 is one such example. Even though this legislation (Rent Act of 1999) has not been specifically mentioned in sub-section (2), on account of the expansive expression "or any other law for the time being in force", it would take within its ambit even the subsequent legislation enacted on the subject. Section 33 of the Maharashtra Rent Control Act, 1999 is similar provision to one provided in

Section 28 of the Rent Act of 1947. There is, however, slight departure in the scheme of the two provisions. In Section 28 of the Act of 1947, reference is not only made to a suit or proceedings between “landlord and tenant” but also between the “licensor and licensee”, whereas in Section 33 of the Rent Act of 1999, reference is made only to suit or proceedings between a “landlord and a tenant” in relation to which the Rent Court will have exclusive jurisdiction. This departure will have to be presumed to be a conscious one. For, insofar as the right of a licensor to recover possession of immovable property or of licence fee thereof, the same is now governed by the regime of Section 24 of the Rent Act of 1999. Section 24 opens with a non-obstante clause. It provides that notwithstanding anything contained in this Act (Act of 1999), a licensee in possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence and on the failure of the licensee to so deliver the possession of licensed premises, the landlord shall be entitled to recover possession of such premises from the licensee, on the expiry of the period of licence, by making an application to the Competent Authority. Indeed, this provision applies only to premises given on licence “for residence” and where the licence term has expired. Therefore, on proper

construction of Section 41 of the Act of 1882, it would follow that the exclusive jurisdiction invested in the Rent Court or for that matter the Competent Authority by virtue of Section 33 and 24 respectively in relation to suits and proceedings governed by those provisions have been exempted from the application of Section 41(1) of the Act of 1882. To put it differently, this generic expression “or any other law for the time being in force” will have to be understood to mean that all such laws which are for the time being in force, which provide for the mechanism for recovery of possession of specified immovable property (governed by such legislation) or licence fee thereof, the same have been exempted from the application of Section 41(1) of the Act and to that extent the Small Causes Court will have no jurisdiction. Indubitably, the Act of 1996, although a special law governing arbitration proceedings, in that sense, is a general one and not specific to matters provided in Section 41 of the Act of 1882. The said Act of 1996 does not deal with any immovable property or provide mechanism for recovery of possession thereof from the tenant/licensee. A priori, it necessarily follows that the Act of 1996 is not covered within the ambit of expression “any other law for the time being in force” as appearing in Section 41(2) of the Act of 1882.

22. Although several decisions have been cited across the bar, no direct judgment has been pressed into service which would assist us in relation to the above exposition. Be that as it may, the Supreme Court in **Mansukhlal Dhanraj Jain (supra)** has observed that when Section 41(1) of the Act of 1882 is juxtaposed with Section 28 of the Bombay Rent Act of 1947, it becomes clear that *pari materia* words are used about nature of suits in both these provisions for conferring exclusive jurisdiction on Small Causes Courts, namely, they alone can entertain such suits or proceedings relating to recovery of possession of premises. The Apex Court also noticed that Section 41 of the Small Causes Court deal with suits between the licensee and licensor while Section 28 of the Bombay Rent Act of 1947 deal with suits between landlord and tenant. It went on to observe that even so the nature of such suits as contemplated by both these sections is the same namely it should be relating to the recovery of possession of premises. The Court has placed reliance on its earlier decision in **Natraj Studio Pvt. Ltd. (supra)** which had occasion to examine the question regarding validity of Arbitration Agreement contained in the Leave and Licence Agreement. In that case a Leave and Licence Agreement was executed between the parties which 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 Section 15 A of the Bombay Rent Act, 1947 was inserted by an amendment. The effect of Section 15 A was that any person who was in occupation of any premises on February 1, 1973 as a licensee was deemed to have become, on that date, for the purpose of the Act, a tenant of the landlord, in respect of premises or part thereof in his occupation. Relying on this legislative change, the Appellant before the Supreme Court filed a declaratory suit praying for a declaration that plaintiff was a monthly tenant of the premises in question and for fixation of the standard rent and other reliefs. Pending the said suit, the Appellant filed application under Section 33 of the Arbitration Act of 1940 in the Bombay High Court for a declaration that the arbitration clause in the Leave and Licence Agreement was invalid and inoperative. That application was dismissed on the ground that the Court had no jurisdiction to determine the alleged rights, if any of the Appellant is a tenant. The Respondent, on the other hand, filed application under Section 8 of the Arbitration Act of 1940, praying that the 2<sup>nd</sup> Respondent be appointed as the sole Arbitrator to decide the dispute and differences between the parties under the Leave and Licence Agreement dated March 28, 1970. That application was

allowed and the 2<sup>nd</sup> Respondent was appointed as the sole Arbitrator. At the same time, against the decision of the learned Single Judge on application under Section 33 of the Arbitration Act, 1940, the Appellant had carried the matter in appeal which also was dismissed. The order passed by the Learned Single Judge came to be confirmed. The Appeal was dismissed on the ground that it was not maintainable under Section 39 of the Arbitration Act of 1940. Accordingly, the order of the learned Single Judge passed on application under Section 33 of the Arbitration Act, 1940 as also on the appeal against that decision, both were carried in appeal before the Apex Court. Looking at Section 28 of the Bombay Rent Act, 1947, the Court examined as to whether the Court of Small Causes alone has or has not exclusive jurisdiction to resolve the dispute between the parties. In Paragraph 16 of the said decision the Court observed thus:

**“16.** 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. Section 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.”

It will be useful to refer to the dictum in Paragraph 17, wherein, the Court observed thus:-

“17. 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 Rents Act cannot be recognised by a court of law.”

In Paragraph 18, the Court observed thus:-

“18. 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 of 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 plaintiff 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 straight away 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.”

The Court after considering its earlier decisions, in Paragraph 24 observed thus:-

“24. In the light of the foregoing discussion and the authority of the precedents, we hold that both by reason of Section 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. Dalichand Jugraj Jain*<sup>6</sup>, 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. 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 Section 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.”

The Court then examined the argument of the Respondent that Section 40 of the Arbitration Act, 1940 prevented the Small Causes Court

from exercising any jurisdiction over arbitration proceedings and further that the question in issue in the Court of Small Causes and before the Arbitrator were not identical. In Paragraph 27 of the same decision, the Court rejected the said argument with the following observations:-

“27. 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 Section 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 proceeding under Section 34 of the Act as it was precluded from exercising any jurisdiction over arbitration proceedings under Section 40. There is <sup>537</sup> no substance in this argument. Section 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 Section 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 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 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*<sup>9</sup> and *Basanti Cotton Mills v. Dhingra Brothers*<sup>10</sup>. 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.”

23. The principle stated in this decision has been applied in **Mansukhlal Dhanraj Jain’s case (supra)**. Besides the above case, the exposition in

other decisions referred to in the Judgment have been examined and the Apex Court proceeded to conclude in **Mansukhlal Jain's case (supra)**, in Paragraph 24 on the following lines:-

**“24. ....** They are suits clearly based on the allegation that the plaintiffs are licensees on monetary considerations and they apprehend to be dispossessed, not in accordance with law, at the hands of the defendant-licensors. Such suits as we have discussed earlier, clearly attract the applicability of Section 41 of the Small Cause Courts Act as both the conditions for its applicability, namely, that they are suits between licensees and licensors and they relate to recovery of possession of immovable properties situated in Greater Bombay are complied with. Consequently the conclusion is inevitable that the aforesaid suits as filed by the appellants were not cognizable by the City Civil Court, Bombay and they could be entertained only by the Small Cause Court, Bombay, and fall within the exclusive jurisdiction of the latter Court.” (emphasis supplied)

24. The exposition in this Judgment would bind this Court to the extent of interpretation of Section 41(1) of the Act as it obtained at the relevant time prior to 1984. We have already noticed that after the amendment of 1984 the substance of the non-obstante clause in Section 41 has remained the same. What has happened by the amendment of 1984 is only to remove the inconsistency in Section 41 of the Act, as the State legislature thought that it was unnecessary to retain the expression “or any other law for the time being in force” in Section 41(1) of the Act of 1882. We, however, find that the Division Bench of our Court in the case of **Vijaya**

**Bank (supra)** opined that the effect of the language used in Section 41 is entirely different from the language used in Section 28 of the Rent Act. The said Division Bench has further opined that insofar as the dispute governed by the Act of 1882, it is essentially a commercial transaction entered by the parties with open eyes and made their bargains. In such a case, there is no situation similar to one of an oppressed tenant being protected against the avarice of the rapacious landlord. With due respect to the view expressed by the Division Bench in the above case, in the first place, on the finding recorded in Paragraph 37 of the same Judgment it was wholly unnecessary for the said Division Bench to examine the ground raised by the Appellant. In Paragraph 37, the Court observed thus:-

“37. In any event, the real dispute between the parties, which the arbitrator had to arbitrate upon, was not whether the respondent was entitled to licence compensation. This is obvious from the fact that the stand of both the parties before the arbitrator was that the licence had come to an end on 31-3-1998. Both the parties, however, differed on the consequence of what should transpire after 31-3-1998 on account of the conduct of the parties. In our judgment, therefore, this was not a dispute which would fall within the province of section 41 of the Presidency Small Causes Act, 1882. This was very much a dispute within the province of the Civil Court which the parties were entitled to submit to Arbitration, which they did.” (emphasis supplied)

25. On this finding, no further enquiry was necessary. In any case, we are not in agreement with, if we may say so, obiter of the Division Bench in paragraph 36 of the said decision. In Paragraph 38, the Division Bench has went on to observe that the deletion of the expression or any other law

for the time being in force in sub-Section (1) by Maharashtra Act 24 of 1984 has brought about a sea change and makes a world of difference. We are afraid, this is a very wide statement made without analysing the legislative intent behind the said amendment. Suffice it to observe that this Court would be bound by the opinion of the Apex Court in the case of **Mansukhlal Dhanraj Jain's case (supra)** which in turn relies on the exposition of its earlier decision in **Natraj Studio's case (supra)**. Applying the legal position expounded in these decisions, it would appear that the purpose of amendment of Section 41 of the Act of 1882 was to create a special Court and invest exclusive jurisdiction in the said Court in relation to matters specified in sub-Section (1) thereof. The consequence of such provision was to impliedly bar the jurisdiction of other Courts to entertain and try suits involving specified disputes between licensor and licensee or a landlord and tenant but also by necessary implication exclude such matters to be submitted to arbitration.

26. We have no hesitation in taking the view that Section 41(1) is a non-obstante clause, by virtue of which, exclusive jurisdiction is vested in the Court of Small Causes to entertain and try all suits and proceedings referred to therein. Sub-section (2) thereof provides for exception to the said Rule.

The Act of 1996 is not covered within the excepted enactments referred to in Section 41(2) of the Act of 1882. The question is: whether Section 41 of the Act of 1882 is a law for the time being in force by virtue of which specified disputes may not be submitted to arbitration. Looking at the provision in place, it is obvious that it does not expressly provide for exclusion of arbitration. But since it is a non-obstante provision; and as the disputes covered by Section 41(1) of the Act are required to be entertained and tried exclusively by the Court of Small Causes and none else, by necessary implication, it is a provision by virtue of which disputes referred to therein cannot be submitted to arbitration. The Apex Court in the case of **Natraj Studio Pvt.Ltd. (supra)** has directly answered this question. Indeed, that decision is rendered in connection with the provisions of Section 28 of the Bombay Rent Act of 1947. Nevertheless, in view of the exposition of the Apex Court in **Mansukhlal Dhanraj Jain's case (supra)**, the provisions of Section 28 are *pari materia* to Section 41(1) of the Act. So understood, the exposition in the case of **Natraj Studio Pvt.Ltd. (supra)** would apply *proprio vigore* to the interpretation of Section 41(1) of the Act.

27. To get over this, the argument canvassed before us is that Section 41 is differently worded and in any case, the said enactment has no causal

connection with public policy. In that, the relationship of licensor and licensee is not a situation of an oppressed tenant being protected against the avarice of the rapacious landlord. This submission is on the lines of the observations made by the Division Bench of our High Court in **Vijaya Bank's case (supra)** in Para 36 thereof. We have already dealt with this aspect and observed that the dictum found in the said decision of the Division Bench - that the language used in Section 41 is entirely different from the language used in Section 28 of the Rent Act, is inconsistent with the exposition of the Apex Court in the case of **Mansukhlal Dhanraj Jain's case (supra)**, which is directly on the point. This decision of the Apex Court was not brought to the notice of the Division Bench, as is evident from the reported Judgment. Insofar as the consideration of public policy, even if we may approve the observation of the Division Bench, that insofar as tenants being protected by the Rent Act would stand on a different footing than the licensee who will have no such protection; but keeping in mind the exposition of the Apex Court in **Mansukhlal Dhanraj Jain's case (supra)** about the intent of this provision to invest exclusive jurisdiction in the Court of Small Causes by virtue of Section 41 of the Act of 1882, such argument cannot be countenanced. Indeed, the Apex Court, while considering **Mansukhlal Dhanraj Jain's case (supra)** has not

specifically dealt with the aspect of public policy. Nevertheless, since the said decision follows the view taken in the earlier decision in **Natraj Studio Pvt.Ltd. (supra)** in toto and then proceeds to hold that the Court of Small Causes has exclusive jurisdiction to entertain and try suits contemplated by Section 41(1), it is not open to this Court to assume that in **Mansukhlal Dhanraj Jain's case (supra)**, the Apex Court was oblivious of the aspect of public policy behind such special law. Significantly, Section 41(1) not only deals with matters between licensor and licensee, but also between landlord and tenant. Indeed, it does not take within its fold, matters between landlord and tenant whose disputes would be governed by the provisions of Bombay Rent Act, 1947 or Maharashtra Rent Control Act, 1999 as the case may be, in respect of immovable property to which the said enactments apply. It is possible to take the view that the expression "landlord and tenant" appearing in Section 41(1) of the Act, therefore, would be one ascribable to such relationship on account of provisions of Transfer of Property Act or any other law on that subject, which is, however, not excepted by virtue of sub-section (2) of Section 41 of the Act.

28. A priori, Section 41(1) of the Act of 1882 is a law for the time being in force by virtue of which the category of disputes referred to therein may

not be submitted to arbitration, by necessary implication. The Single Judge of this Court following the exposition in the cases of **Mansukhlal Dhanraj Jain(supra)** and **Natraj Studio Pvt.Ltd.(supra)**, in the case of **Siemens Ltd. (supra)** decided on 22<sup>nd</sup> August 2005, in Arbitration Petition No.99 of 2009, held that the Small Causes Court has exclusive jurisdiction to try and decide cases covered by Section 41(1) of the Act of 1882. Further, such cases cannot be referred to arbitration. That decision has been quoted with approval by the Division Bench of our High Court in **Carona Limited (supra)** and which in turn has been followed by the learned Single Judge in the case of **ING Vyasa Bank Ltd. (supra)**. Indeed, the argument now raised is that in none of these decisions the efficacy of Section 5 of the Act of 1996 has been examined at all. In our view, for the reasons mentioned hitherto, the exclusive jurisdiction of the Small Causes Court under Section 41 of the Act of 1882 is in no way affected inspite of Section 5 of the Act of 1996. For, the provisions of Section 41(1) are saved by virtue of Section 2(3) of the Act of 1996, inspite of the non-obstante clause in the form of Section 5 of the Act of 1996.

29. According to the Counsel for the Petitioners, it would be a case of two non-obstante clauses existing at the same time, in which case, the latter

non-obstante clause in the form of Section 5 of 1996 ought to prevail. To buttress this submission, reliance is placed on the decision of the Apex Court in **Maruti Udyog Ltd. (supra)**. That was a case of two Central enactments having non-obstante clauses. That is not the case on hand. In the present case, the two legislations operate in different fields. Insofar as Act of 1882 is concerned, it is a special law investing exclusive jurisdiction in the Court of Small Causes to entertain and try specified disputes to the exclusion of all other forums. It would have been a different matter if the Act of 1996 did not contain Section 2(3) of the Act. Because of the said provision, Section 41 of the Act of 1982 is saved, which by necessary implication, provides that the specified disputes referred to therein, may not be submitted to arbitration. It is, therefore, covered by Section 2(3) of the Act of 1996 by virtue of which, the mandate of Section 5 of the Act of 1996 does not come into play qua Section 41 of the Act of 1982. The situation arising out of existence of two non-obstante clauses in the Central Legislation is, therefore, of no avail. Even in the case of **Maharashtra Tubes Ltd. vs. State Industrial & Investment Corporation of Maharashtra Ltd. reported in (1993) 2 SCC 144** as well as **A.P.State Finance & Corporation vs. Official Liquidator reported in AIR 2000 SC 2642**, the position is similar. In that, two non-obstante provisions of the

Central Statute were in existence at the same time resulting in collusion interse. In the case of **G.Shridharmurthy (supra)**, the controversy was about conflict between State enactment and Central enactment. Both of which contained non-obstante clause. The Apex Court invoking the mandate of Article 254(2) of the Constitution, went on to hold that to the extent of inconsistency, the State Act would become void. In the case of **Indore Municipality (supra)**, both the enactments were State Laws which contained non-obstante clause. In that situation, the controversy was answered on the interpretation of the two provisions.

30. Suffice it to observe that the principle canvassed by the Petitioners about collusion of two non-obstante clauses proceeds on an erroneous assumption. That argument would have been available only if Section 2(3) of the Act of 1996 was not in place. The effect of that provision is to save the laws which provide that certain disputes may not be submitted to arbitration, inspite of non-obstante clause contained in Section 5.

31. To get over this position, it was argued on behalf of the Petitioners that the disputes specified by Section 41 of the Act of 1882 are essentially between parties who in turn would be inviting verdict of the Court which

would be in personem and not in rem. Relying on the exposition of the decision in the cases of **S.N.Palanitkar (supra)**, **Chiranjilal Shrilal Goenka (supra)**, **Haryana Industries Ltd. vs. Sterlite Industries (India) Ltd. reported in (1999) 5 SCC 688** and **V.V.Pushpakaran (supra)**, it was contended that if the effect of the decision was in rem, it would be a different matter and only such cases cannot be referred to arbitration. In the case of **S.N.Palanitkar (supra)**, the Court was considering relief of quashing of proceedings. As a passing remark, the Court while considering the contention has observed that merely because there is an arbitration clause in the Agreement, they cannot be extricated from the criminal action. In the case of **Chiranjilal Shrilal Goenka (supra)**, the parties by consent appointed sole Arbitrator to settle the dispute as to who would be the legal heirs of the estate of Late Chiranjilal Shrilal Goenka. The Court observed that the Succession Act is a self-contained code insofar as the question of making an application for probate, grant or refusal of probate or an appeal carried against the decision of the probate Court. Further, the grant of probate by a Court of competent jurisdiction is in the nature of proceedings in rem and conclusive and binds not only the parties before the Court but also all other persons in all proceedings arising out of will or claiming under award or the will. The Apex Court concluded that the Probate Court

alone has jurisdiction and is competent to grant probate in the manner prescribed under the Succession Act. That Court alone is competent to deal with probate proceedings and to grant or refuse probate of the annexed Will and the probate so granted is conclusive unless it is revoked. It is a Judgment in rem. The Court, therefore, proceeded to hold that consent given by the parties to appoint sole Arbitrator cannot confer jurisdiction nor shall be estoppel against the Statute. The Court also noted that the other legatees of the Will were not parties to the consent for appointing the sole arbitrator, for which reason also, the Arbitrator could not have proceeded for want of jurisdiction. In the case of **Haryana Industries Ltd. (supra)**, the Court opined that the Arbitrator, notwithstanding any agreement between the parties, would have no jurisdiction of winding up of the Company since that power is conferred on a Court by the Companies Act. In the case of **V.V.Pushpakaran (supra)**, it was a matrimonial dispute in which an Arbitration Agreement was reached. The Court opined that the Arbitrator would not get any authority to adjudicate such dispute. For, the decision in matrimonial jurisdiction is of such nature that it could be rendered only by competent Court having jurisdiction as that is a decision in rem and not in personem. That is a matter which cannot be referred to arbitration and decided by the Arbitrators. Even though we may agree with

the argument of the Petitioners that the disputes specified in Section 41 are essentially between the parties to the cause and the decision on such dispute would only be in personem and not in rem. That, however, does not mean that the Arbitrator can proceed with the matters specified in Section 41 of the Act of 1882 since that Act is a law which, by necessary implication, excludes the reference of the specified disputes to the Arbitrator, as that law invests exclusive jurisdiction in the Court of Small Causes to entertain and try such disputes.

32. According to the Petitioners, Section 41 is essentially to provide jurisdiction to the Courts of Small Causes in respect of matters specified therein, irrespective of the value of the subject matter of the immovable property. The Legislative intent was that suits which were filed in different Courts depending upon the value of the subject matter should now be filed in the Court of Small Causes. In other words, this provision was inserted only to consolidate the jurisdiction of the Courts of Small Causes in relation to the disputes between the landlord and tenant or licensor and licensee in relation to recovery of possession or recovery of licence fee or rent. To buttress this submission, reliance was placed on the decision of the Division Bench of our High Court in the case of **P.A.Narayanan (supra)**. In our

opinion, after the decision of the Apex Court in **Mansukhlal Dhanraj Jain's case (supra)** which directly interpretes Section 41(1) of the Act of 1882, it is not necessary to dilate any further. The Apex Court has authoritatively held that Section 41 is a special law to create special Courts for adjudication of disputes specified therein between licensors and licensee or landlord and tenant. It is essentially a non-obstante clause investing exclusive jurisdiction in the Courts of Small Causes. Accordingly, the dictum of this Court in **P.A.Narayanan (supra)** pressed into service is of no avail.

33. It was then contended that the purport of Section 41 of the Act of 1982 collides with the non-obstante clause in Section 5 of the Act of 1996. Further, the fact that before bringing into force this provision, assent of President has been received, would be of no avail in view of the subsequent Central Legislation in the form of Section 5 of the Act of 1996. In view of the subsequent Central Legislation, Section 41 of the Act of 1882 will have to give way and would be void because of its repugnancy. Reliance is placed on the decisions in **Kaiser-I-Hind (P) Ltd. & Anr. vs. National Textile Corporation (Maharashtra North) Ltd. - (2002) 8 SCC 182** as well as **M/s.Shyama Charan Agarwala & Sons vs. Union of India -**

**(2002) 6 SCC 201** and **M/s.Consolidated Engineering Enterprises vs. The Principal Secretary (Irrigation Department) & Ors. - (2008) 7 SCC 169**. These decisions would have been handy if we were to hold that the non-obstante clause in Act of 1996 is absolute and it purports to override provisions of any other law for the time being in force. In the earlier part, we have already noticed that Section 5 cannot be read in isolation. The purport of Section 5 of the Act of 1996 will have to be understood in the context of saving provision contained in Section 2(3) of the Act. Since Section 41 of the Act as held by us, is a law for the time being in force by virtue of which disputes specified therein by necessary implication cannot be submitted to arbitration, the same is saved inspite of the non-obstante clause in Section 5 of the Act of 1996. In the case of **Kaiser-I-Hind (supra)**, the Apex Court held that while taking assent, the repugnancy between the Maharashtra Rent Control Act with that of the provisions of Central enactment-Public Premises Act was not placed for consideration of President of India, for which reason, it cannot be assumed that the President gave assent to the State Legislation so as to make the provisions of Public Premises Act inapplicable to the premises governed by the provisions of the Rent Act. The Court found that the assent was given by the President only keeping in mind the repugnancy between the Bombay Rent Act and the

Transfer of Property Act as well as the Presidency Small Cause Court Act and no other law. In the present case, the Central enactment in the form of Act of 1996 is a subsequent legislation. Naturally, the question of reference thereto in the Act of 1882 would not find place while giving assent by the President to the enactment in the form of Section 41 of the Act of 1882. In the case of **Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust vs. State of Tamil Nadu - (1996) 3 SCC 15**, while considering the effect of Article 254 of the Constitution, in Paragraph 32, the Court expounded as follows :

“32. The fact that the State Act has received the assent of the President would be of no avail because the repugnancy is with the Central Act which was enacted by Parliament after the enactment of the State Act. In view of the proviso to sub-article (2) of Article 254 Parliament could add to, amend, vary or repeal the State Act. In exercise of this power Parliament could repeal the State Act either expressly or by implication. (See: *Zaverbhai Amaldas v. State of Bombay*<sup>5</sup>, SCR at p. 809; *Deep Chand v. State of U.P.*<sup>2</sup>, SCR at p. 51.) Although the Central Act does not expressly amend or repeal the State Act but the effect of the non obstante clause in sub-section (1) of Section 10-A which gives overriding effect to the provisions of Section 10-A over anything contained in the Indian Medical Council Act, 1956 or any other law for the time being in force, is to render inapplicable, and thereby repeal impliedly, the proviso inserted in sub-section (5) of Section 5 of the Medical University Act in the matter of establishment of a new medical college in the State of Tamil Nadu and its affiliation by the Medical University. In other words, as a result of insertion of Section 10-A in the Indian Medical Council Act, 1956 by the Central Act, with effect from 27-8-1992, the proviso to Section 5(5) of the Medical University Act has ceased to apply in the matter of establishment of a medical college in the State of Tamil Nadu and its affiliation to the Medical University and for the purpose of establishing a medical college permission of the Central Government has to be obtained in accordance with the provisions of Section 10-A. If such a permission is granted by the Central Government a further permission of the State Government under the

proviso to Section 5(5) of the Medical University Act would not be required for the purpose of obtaining affiliation of such a college to the Medical University.”  
(emphasis supplied)

34. As aforesaid, Section 41 of the Act of 1882 is a State amendment, which has come into force after receiving assent of the President. That is the law for the time being in force. By virtue of which, the disputes specified therein by necessary implication cannot be submitted to arbitration as the Courts of Small Causes have exclusive jurisdiction to try and decide the same. Such law has been saved by Section 2(3) of the Act of 1996. Since it has been specifically saved by the Act of 1996, the question of it being repugnant to Section 5 of the Act of 1996 or the effect of Section 5 of the Act of 1996 is to add to, amend, vary or repeal the State amendment, does not arise.

35. It was argued by the Counsel for the Respondents that Section 41 of the Act of 1882 operates in different field. According to the learned Counsel, the said law is enacted by virtue of power to legislate ascribable to Entry No.13 of the Concurrent list (List III of the Constitution of India). Whereas the pith and substance of the Act of 1996 is ascribable to Entry No.7 of the Concurrent list (List No.III). This submission does not commend to us. Assuming that the Arbitration Act of 1996 is ascribable to

Entry No.7, that does not mean that the power to legislate the same does not flow from any other Entry. Entry No.13 in List III on the other hand not only deals with civil procedure, including all matters including in the Code of Civil Procedure at the commencement of this Constitution, but also to limitation and arbitration. The Arbitration Act would therefore be referable also to Entry No.13 of list III. In the case of **G.C. Kanungo vs. State of Orissa - (1995) 5 SCC 96**, the Apex Court has noted that the Arbitration Act of 1996 falls under Entry No.13 of List III. Besides the said Entry, the provision such as Section 5 of the Act of 1996 or Section 41 of the Act of 1882, can be ascribed also to Entry No.46 of List III which deals with “Jurisdiction and powers of all Courts, except the Supreme Court, with respect to any of the matters in list III. Since the subject arbitration falls under Concurrent list, both the State Legislature as well as the Parliament would be competent to make law on that subject and to provide matters relating to jurisdiction and powers of all Courts in connection thereto. In our opinion, the State Legislation has enacted Section 41 of the Act of 1882, which is a special law creating special Courts to try and decide disputes specified therein and which by necessary implication excludes the reference of such disputes to arbitration. The same is saved by Section 2(3) of the Act of 1996 and is not impacted in any manner inspite of the non-obstante

clause in Section 5 of the Act of 1996.

36. Counsel for the Respondents placed reliance on the exposition of the Apex Court in the case of **Vijay Kumar Sharma (supra)**. In Paragraph 15 of the said decision the Court observed as follows:-

“15. A lot of light relevant to the aspect under consideration is available from another decision of a Constitution Bench of this Court: (*M. Karunanidhi v. Union of India*<sup>9</sup>). At p. 263 of the reports, it has been said: (SCC pp. 436-37, para 8)

“It would be seen that so far as clause (1) of Article 254 is concerned it clearly lays down that where there is a direct collision between a provision of a law made by the State and that made by <sup>576</sup>Parliament with respect of one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the State law would be void to the extent of the repugnancy. This naturally means that where both the State and Parliament occupy the field contemplated by the Concurrent List then the Act passed by Parliament being prior in point of time will prevail and consequently the State Act will have to yield to the Central Act. In fact, the scheme of the Constitution is a scientific and equitable distribution of legislative powers between Parliament and the State legislatures. First, regarding the matters contained in List I, i.e., the Union List to the Seventh Schedule, Parliament alone is empowered to legislate and the State legislatures have no authority to make any law in respect of the entries contained in List I. Secondly, so far as the Concurrent List is concerned both Parliament and the State legislatures are entitled to legislate in regard to any of the entries appearing therein, but that is subject to the condition laid down by Article 254(1) discussed above. Thirdly, so far as the matters in List II, i.e., the State List are concerned, the State legislatures alone are competent to legislate on them and only under certain conditions Parliament can do so. It is, therefore, obvious that in such matters repugnancy may result from the following circumstances:

1. Where the provisions of a Central Act and a State Act in the Concurrent List are *fully inconsistent* (emphasis added) and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.

2. Where however a law passed by the State comes into collision with a law passed by Parliament on an entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.

3. Where a law passed by the State legislature while being substantially within the scope of the entries in the State List entrenches upon any of the entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.

4. Where, however, a law made by the State legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State <sup>577</sup> only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State legislature under proviso to Article 254.”

37. There is no difficulty in broadly accepting the statement of law in the case of **Vijay Kumar Sharma (supra)**. However, as is observed earlier, the non-obstante clause in Section 5 of the Act of 1996, in that sense, is not in absolute terms. Section 2(3) of the Act of 1996 carve out those laws, which are for the time being in force, by virtue of which specified disputes may not be submitted to arbitration. Such laws have been saved on their own by virtue of this provision. Having been saved by Section 2(3), the

question of such law (Section 41 of the Act of 1882) being repugnant to Section 5 of the Act of 1996 does not arise. To be repugnant to Section 5 of the Act of 1996, the law should be such that there is no restriction of submitting of specified disputes to arbitration. But once we find that Section 41 of the Act of 1882 is a law by virtue of which dispute specified therein cannot be submitted to arbitration, the same would be saved inspite of Section 5 of the Act of 1996. To such a situation, the question of repugnancy and necessity of assent of the President of India because of the subsequent Central Legislation would not arise.

38. In the case of **Sanwormal Kejriwal (supra)**, the Court has expounded that if a law is a special law, the general provision would not affect such a law. It may be useful to refer to Paragraphs 21 and 22 of the said decision which have been pressed into service. The same read thus:-

“21. But what happens when competing provisions vesting jurisdiction under different laws open with a non-obstante clause and invest jurisdiction in different courts? The Societies Act under Section 91(1) confers jurisdiction on the Co-operative Court while Section 28 of the Rent Act confers jurisdiction on the Court of Small Causes, Bombay. This Court observed in *Deccan Merchants Co-operative Bank, Limited v. Dalichand Jugraj Jain*<sup>10</sup> 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’. This view was approved in *Bhatnagar case*<sup>1</sup> also. In *Co-operative Central Bank Ltd. v. Additional Industrial Tribunal, Andhra*

*Pradesh*<sup>11</sup> also this Court was required to harmonise the competing provisions in Section 61 of the A.P. Co-operative Societies Act, which is substantially the same as Section 91(1) of the Societies Act, and Section 10(1)(d) of the Industrial Disputes Act. This Court applying the test laid down in *Deccan Merchants Co-operative Bank case*<sup>10</sup> held that a dispute relating to the service conditions of an employee of the society would properly be governed by the Industrial Disputes Act.”

“22. It was, however, submitted by the learned counsel for the society that the earlier enactment i.e. the Rent Act must yield to the later Act, i.e. the Societies Act, if the competing provisions of the two cannot be reconciled—*lex posterior derogat priori*. But the Rent Act is a special law extending protection to tenants, just as the Industrial Disputes Act which makes provision for the benefit of the workmen. Ordinarily, therefore, a general provision, a dispute touching the business of the society, would ~~have~~<sup>306</sup> have to give way to the special provision in the Rent Act on the maxim *generalia specialibus non derogant*. That is why this Court harmonised the said provisions by holding that in matter covered by Rent Act, its provisions, rather than the provisions of the Societies Act, should apply. In the present case the appellant seeks protection of the Rent Act since he is a deemed tenant under Section 15-A read with Section 5(4-A) and 5(11)(bb) of the Rent Act. The status of a tenant is conferred on him by law as the legislature desired to extend the protection of the Rent Act to such licensees. Rights which do not flow from contracts but are conferred by law such as the Rent Act, must, we think, be determined by the machinery, if any, provided by the law conferring the right.”

39. According to the Petitioners, the decisions pressed into service by the other side would be of no avail as the same is in relation to the scheme of the provisions in the repealed Arbitration Act of 1940. Section 40 thereof, contends learned Counsel, expressly barred the jurisdiction of the Courts of Small Causes over any arbitration proceedings or any application arising thereout save on application made under Section 21. Section 21 of the said Act provided that where in any suit the parties interested agree that any

matter in difference between them in the suit shall be referred to arbitration, they may at any time before judgment is pronounced apply in writing to the Court for an order of reference. What is to be noticed is that Section 40 of the Arbitration Act 1940, referred to the bar of jurisdiction over the arbitration proceedings or over any application arising therefrom. Section 21 enabled the parties to the suit to apply for order of reference. These provisions, however, did not bar the exclusive jurisdiction of the Small Causes Court under Section 41 of the Act of 1882. In the case of **Natraj Studio (supra)**, which exposition would apply even to a case governed by Section 41 of the Act of 1882, the same being *pari materia* with Section 28 of the Rent Act of 1947, inspite of the Arbitration Agreement, the Court opined that such an agreement would be inoperative, keeping in mind the exclusivity of jurisdiction bestowed on the Small Causes Court to decide the disputes specified in Section 28 of the Rent Act which by necessary implication would mean that such disputes may not be referred to arbitration. We do not see how this situation has changed after coming into force of amended Section 41 of the Act of 1882 or the Act of 1996. The provisions of Section 5 of the Act of 1996 cannot be interpreted to mean that even the exclusive jurisdiction vested in Special Courts by virtue of Special laws such as Section 41 of the Act of 1882, will stand ousted.

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.

41. Accordingly, we answer the question referred to us in the negative. We, therefore, hold that inspite of Arbitration Agreement between the parties and non-obstante clause in Section 5 of the Act of 1996, the exclusive jurisdiction of the Small Causes Court to try and decide the dispute specified in Section 41 of the Act of 1882 is not ousted.

42. Since we have answered the question referred to us, the matter be now placed before the appropriate Bench for further hearing in accordance with law.

**CHIEF JUSTICE**

**A.M.KHANWILKAR, J.**

**R.P.SONDURBALDOTA, J.**