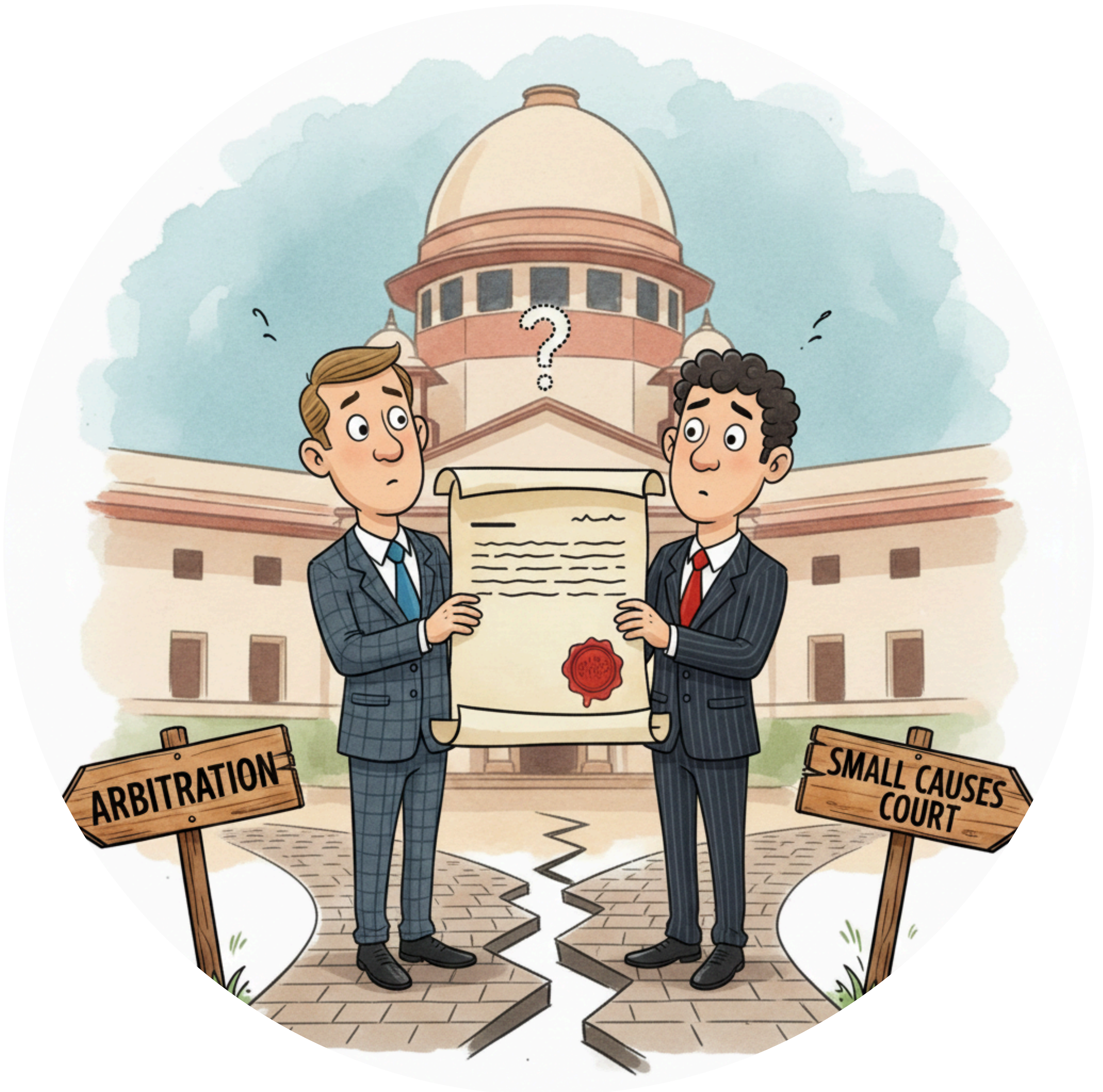


ARBITRATION CLAUSE VS. SMALL CAUSES COURT: WHICH WAY TO GO?



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Disputes between landlords and tenants are among the most frequently litigated matters. Claims for unpaid licence fees, recovery of charges for the unexpired lock-in period, refund of security deposits, and recovery of possession of premises routinely find their way to courts.

A recurring question in such disputes is whether parties can invoke arbitration even though a special statute, such as the Presidency Small Cause Courts Act, 1882 (“PSCC Act”), confers exclusive jurisdiction on the Small Causes Court in Greater Mumbai to adjudicate such matters.

The answer to this question cannot be figured out only through the statutory provisions but the contractual intent of the parties and their subsequent conduct also assume significance in determining the appropriate forum for dispute resolution.

This issue once again came before the Supreme Court in *Motilal Oswal Financial Services Limited v. Santosh Cordeiro & Anr*[2], where Parties spent five years in just contesting whether the matter should be heard by the Small Causes Court or by an arbitrator.

The judgment provides clarity on the role of arbitration clauses in leave and licence agreements and explains the limited scope of judicial scrutiny under Section 11 of the Arbitration and Conciliation Act, 1996 (“A&C Act”), even where a party (which had willingly included an arbitration clause in the Agreement) resists arbitration by invoking Section 41 of the PSCC Act.

Background of the Dispute

The dispute arose out of a Leave and Licence Agreement in respect of premises situated at Malad, Mumbai. The agreement contained an arbitration clause governing disputes between the parties. During the COVID-19 pandemic, the licensee (Appellant) claimed to have vacated the premises and sought refund of the security deposit. The licensors (Respondents), on the other hand, raised claims towards licence fees payable for the balance lock-in period under the agreement.

[1]The article reflects the general work of the author on the date of publication and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

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

Upon invocation of the arbitration clause by the licensors, the licensee objected to the arbitral proceedings, contending that disputes between licensor and licensee relating to licence fees fall exclusively within the jurisdiction of the Small Causes Court under Section 41 of the PSCC Act. Rejecting the objection, the Bombay High Court appointed an arbitrator under Section 11 of the A&C Act. This order was unsuccessfully challenged before the Supreme Court by the licensee (Appellant).

Scope of Section 11 of the A&C Act and Section 41 of the PSCC Act:

Section 11 of the A&C Act deals with the appointment of arbitrators. It empowers the High Court or the Supreme Court, as the case may be, to appoint an arbitrator when parties fail to do so in accordance with their agreement. At this stage, the Court is required to ascertain only whether an arbitration clause/agreement exists between the parties. Issues relating to the validity of claims, arbitrability of disputes, or statutory jurisdiction are not to be conclusively decided at this stage.

On the other hand, Section 41 of the PSCC Act confers exclusive jurisdiction on the Small Causes Court in Greater Mumbai to entertain suits and proceedings between licensor and licensee or landlord and tenant relating to:

- recovery of possession of immovable property, and
- recovery of licence fee or rent.

The provision is intended to ensure that disputes concerning occupation of immovable property and related monetary claims are adjudicated by a specific forum.

The issues between these two provisions often arises when a leave and licence agreement contains an arbitration clause, but one party contends that the dispute falls exclusively within the jurisdiction of the Small Causes Court under Section 41 of the PSCC Act. The present judgment addresses this conflict by clarifying how these provisions are to be harmonised at the referral stage.

Arguments of Parties

The licensee (Appellant) contended that:

- mere presence of an arbitration clause could not override a special statutory provision conferring exclusive jurisdiction on a designated court. Accordingly, the appellant submitted that the arbitration clause was unenforceable and that an arbitrator ought not to have appointed an arbitrator under Section 11 of the A&C Act.
- In view of the Supreme Court's decisions in *Natraj Studios Pvt. Ltd. v. Navrang Studios & Anr.* and *Central Warehousing Corporation v. Fortpoint Automotive Pvt. Ltd.*, to submit that disputes between licensors and licensees fall within the exclusive jurisdiction of the Small Causes Court under the PSCC Act, and that permitting arbitration in such matters would defeat the legislative intent underlying the statute.

The Licensors (Respondents) argued that:

- objections under Section 41 of the PSCC Act raise issues of arbitrability and jurisdiction, which are matters to be decided by the arbitral tribunal under Section 16 of the A&C Act.
- the dispute in the present case primarily related to monetary claims and refund of security deposit, and not recovery of possession, and therefore could not be used to defeat arbitration at the threshold.

Analysis by the Supreme Court:

The Supreme Court examined the scope of judicial enquiry permissible under Section 11 of the A&C Act and held that:

1. at the referral stage, the court's role is limited to a prima facie examination of the existence of an arbitration agreement. A detailed examination of jurisdictional objections or statutory exclusions lies outside the limited mandate of Section 11 of the A&C Act.
2. that objections based on Section 41 of the PSCC Act raise questions of arbitrability and jurisdiction, which fall within the domain of the arbitral tribunal under Section 16 of the A&C Act. Such objections cannot be used to stop the appointment of an arbitrator at the threshold.
3. section 11(6-A) of the A&C Act, though omitted by the 2019 Amendment, continues to remain in force until notified. Consequently, at the referral stage, the court's jurisdiction is strictly confined to examining the existence of an arbitration agreement, and not its validity or enforceability.
4. distinguishing the Full Bench decision of the Bombay High Court in *Central Warehousing Corporation v. Fortpoint Automotive Pvt. Ltd.*, the Supreme Court noted that in that case, the dispute directly involved possession of immovable property. In contrast, the present case primarily concerned monetary claims and refund of security deposit, with possession having already been handed over. The Court clarified that Section 41 is a jurisdiction conferring provision and does not, by its own force, extinguish or render non-existent an arbitration agreement.
5. relying on *Vidya Drolia v. Durga Trading Corporation*, the Supreme Court reiterated that arbitration is excluded only where a statute creates special rights and obligations and mandates exclusive adjudication by a specific forum. The mere existence of a special court does not automatically render disputes non-arbitrable.

Accordingly, the Supreme Court upheld the Bombay High Court's order appointing the arbitrator and dismissed the appeal, while preserving the parties' right to raise all jurisdictional objections before the arbitral tribunal.



Key Takeaway:

An important aspect highlighted by the facts of the present case is the significance of the contractual intent of the parties and their subsequent conduct. The parties had intentionally incorporated an arbitration clause in the leave and licence agreement, thereby clearly expressing their intention to resolve disputes through arbitration.

Equally relevant is the conduct of the licensee, who admittedly handed over possession of the premises. Once possession stood surrendered, the dispute no longer related to recovery of possession which is core area over which the Small Causes Court exercises exclusive jurisdiction under Section 41 of the PSCC Act.

In such circumstances, invoking the jurisdiction of the Small Causes Court after a considerable lapse of time, despite having acted upon the contract and surrendered possession, weakens the foundation of an objection under Section 41 of the PSCC Act. The conduct of the parties, therefore, becomes a relevant factor in assessing whether the statutory forum was genuinely attracted or whether the objection was raised only to delay the arbitral process.

This approach aligns with the Supreme Court's reasoning that Section 41 of the PSCC Act is a jurisdictional provision and does not automatically stop arbitration, particularly where Parties have willingly incorporated the clause in the Agreement and where possession is no longer in dispute and the claims are purely contractual.

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