

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4671 OF 2014

Valimahomed Haji Allarakhia
Sonawalla Wakf & Ors. .. Petitioners
vs.
Zainal Abidin Afzal Dewji & Anr. .. Respondents

Mr. Piyush Raheja i/b. Mr. Yogesh Adhia for Petitioners.
Mr. Navroz Seervai – Senior Advocate with Mr. M. Padgaonkar, Ms
Ranjana Parikh, Mr. F. Pavri, Ms A. Cama i/b. Mulla & Mulla &
C.B.C for Respondents.

CORAM : M. S. SONAK, J.
DATE : 20 AUGUST 2015

P.C. :-

1] This petition challenges order dated 4 December 2013 made below Exhibit '44', by which the Small Causes Court has declined the petitioners (original defendants) leave to amend the written statement.

2] The Full Bench of this Court in the case of *Bhartiben Shah vs. Smt. Gracy Thomas & Ors.*¹ has held that an order refusing leave to amend the plaint or written statement, where the proposed amendment is for the assertion of rights or the law under the Rent Act or any other substantive law is revisable under Section 34(4) of the Maharashtra Rent Control Act, 1999. In paragraphs 82 and 83, the Full Bench has observed thus:

“82. We have also noticed in a large number of cases that in writ petitions under Articles 227 of the Constitution challenging interlocutory orders passed by the trial Court,

1 2013 (2) Mh. L.J. 25

preliminary objection is very often raised about maintainability of alternative remedy of revision under Section 29(3) of the Bombay Rent Act, 1947 or under Section 34(4) of the Maharashtra Rent Control Act, 1999 and substantial judicial time and energy are required to be invested in deciding the question whether the alternate remedy of revision under the [Rent Act](#) is available before the appellate Bench of the Small Causes Court (or before the District Judge as the case may be). While it is certainly open to the learned single Judge of this Court hearing writ petitions under Articles 226/227 of the Constitution to decline to entertain a writ petition on the ground of availability of equally efficacious alternate remedy of revision under the [Rent Act](#), there may be a large number of writ petitions, where the High Court may consider it appropriate to refuse to entertain the writ petitions, on the ground that the impugned order is a mere procedural order, which does not cause any miscarriage of justice, without going into the question whether the substantive rights of the parties under the [Rent Act](#) are affected or not. It is well settled that the power of superintendence conferred by [Article 227](#) of the Constitution should be exercised most sparingly only to keep subordinate courts and inferior tribunals within the bounds of their authority and not for correcting errors of fact or of law. A petition under [Article 227](#), therefore, cannot be treated as an appeal or revision in the nature of extension of provision conferring such right.

83. The superior Court, whether exercising writ jurisdiction or revisional jurisdiction has always the discretion to decline to exercise such jurisdiction in appropriate cases on the ground that it will be open to the aggrieved party to make a grievance against the impugned order in the appeal against the final judgment, which may be passed by the trial Court."

3] In fact in paragraph 86 of the aforesaid decision, an order refusing leave to amend the plaint or written statement, where the proposed amendment is for assertion of rights or liabilities under the Rent Act or any other substantive law is stated as an instance of revisable order under Section 34(4) of the Maharashtra Rent Control Act, 1999.

4] In view of the aforesaid, there is no necessity to entertain the disputes in the present petition. This petition is accordingly disposed of. However, considering the circumstance that the petitioners have been pursuing their remedy as against the impugned order before this Court, it is only appropriate that the petitioners are granted liberty to institute a revision petition under Section 34(4) of the Maharashtra Rent Control Act, 1999 before the Revisional Authority. Accordingly such liberty is granted. In case, the petitioners institute such revision petition within two weeks from today, then the Revisional Authority is directed to consider and decide the same on its own merits and in accordance with law but without adverting to the issue of limitation. In fact, Mr. Seervai, the learned Senior Advocate appearing for the respondents has fairly stated that they will not raise the issue of limitation, if any, in case the revision petition is instituted within two weeks from today.

5] With the aforesaid observations, this petition is disposed of. Liberty is granted in the aforesaid terms.

6] All concerned to act on basis of authenticated copy of this order.