

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6215 OF 2014

Kirti Sohan Modi .. Petitioner
vs.
M/s. Creation .. Respondent

Mr. M.B. Singh a/w. Ms Pooja Jalan i/b. MBS & Co. for the Petitioner.
Mr. Vatsal Shah i/b Mr. Sanjay Manek for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 14 JULY 2015.

P.C. :-

1] This petition challenges the order dated 3 May 2014 made by the Court of Small Causes at Mumbai holding that it has jurisdiction to try the suit instituted by the respondent.

2] Mr. Shah, learned counsel for the respondent, in the present case, has raised a preliminary objection that this petition be not entertained in view of availability of alternate and efficacious remedy by way of a revision petition under Section 42 (4) of the Presidency Small Causes Courts Act, 1882 (said Act). In this regard, learned counsel has placed reliance upon the decision of the Full Bench of this Court in case of *Bhartiben Shah vs. Smt. Gracy Thomas and ors.*¹.

1 Writ Petition No. 9562 of 2010 decided on 21 January 2013

3] The Full Bench decision is in the context of Section 34 (4) of the Maharashtra Rent Control Act, 1999, which is *pari materia* to the provisions of Section 42 (4) of the said Act. As such, there can be no difficulty in accepting and applying the principles laid down by the Full Bench of this Court whilst interpreting the provisions contained in Section 34(4) of the Maharashtra Rent Control Act, 1999, for the purposes of construing the provisions contained in Section 42(4) of the said Act.

4] The Full Bench of this Court in case of ***Bhartiben Shah*** (*supra*), at paragraphs 84 and 85 observed thus:

84. *In the result, therefore, our answer to question No.2 referred for our consideration is as under:-*

A revision application under Section 34(4) of the Maharashtra Rent Control Act, 1999 is not maintainable in respect of a procedural order passed under the Code of Civil Procedure in a suit arising out of Maharashtra Rent Control Act, if such order does not affect the rights of parties under the Maharashtra Rent Control Act or any other substantive law. While an order to be revisable need not necessarily be an order for possession or fixation or recovery of rent, nevertheless, the order sought to be revised must directly affect the substantive rights and liabilities of parties under the Maharashtra Rent Control Act or any other substantive law, but not merely rights under a procedural law like the Code of Civil Procedure or the Evidence Act.

85. *For an order to be revisable under section 34(4) of the Maharashtra Rent Control Act, the order must affect the very existence of the suit or the foundation of the party's case in their pleadings and not merely a procedural order, not*

affecting the substantive rights of parties, though such procedural order may ultimately affect the strength or weakness of the case of the aggrieved litigant which is to be finally determined at the trial while passing the decree in the suit or final order in the proceeding.

5] In the present case, Mr. Shah is right in his contention that the impugned order cannot be regarded as merely affecting some procedural right. Rather, the impugned order does affect the substantive rights and liabilities of the parties. If the impugned order is upset by the Revisional Court, then the suit itself may not proceed before the Court of Small Causes at Mumbai. Accordingly, the impugned order is revisable under Section 42(4) of the said Act.

6] In light of the aforesaid, there is no necessity to entertain the present petition. The petitioner is, however, granted liberty to institute revision proceedings under Section 42(2) of the said Act before the Division Bench of the Small Causes Court at Mumbai. If such Revision Petition is instituted within a period of four weeks from today, then the Division Bench to consider the same on its own merits and in accordance with law, without advert to the issue of limitation. This is because, the petitioner has been *bona fide* pursuing her remedies against the impugned order by way of institution of present petition.

7] It is clarified that this Court has not adverted to the merits and de-merits of the impugned order. Accordingly, all contentions of all parties in this regard are kept open to be decided by the Revisional Court, in case petitioner institutes a Revision Petition within a period of four weeks from today.

8] With the aforesaid observations, this petition is disposed of. There shall be, however, no order as to costs.

9] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

dinesh