

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10444 OF 2014
WITH
WRIT PETITION NO. 10668 OF 2014

Batliboi International Ltd. .. Petitioner
VS.
M/s. Transmarine Corporation & Ors. .. Respondents

Mr. V. A. Thorat - Senior Advocate i/b. Mr. P. J. Thorat for Petitioner
in WP 10444 of 2014.

Mr. R. M. Haridas for Petitioner in WP 10668 of 2014

Mr. G. S. Godbole i/b. Mulla & Mulla & C.B. & C. for Respondent
Nos. 1 to 5A in both petitions.

CORAM : M. S. SONAK, J.

DATE: 11 JUNE 2015

P.C. :-

1] These petitions challenge order dated 12 September 2014 made by the Small Causes Court, Mumbai, by which certain paragraphs from out of the petitioner's additional written statement have been struck off in purported exercise of powers conferred by Order 6 Rule 16 (c) of the CPC.

2] There is no dispute that the proceedings before the Small Causes Court came to be instituted under Section 41 of the Presidency Small Causes Court Act, 1882. Section 42(4) of the said Act of 1882 provides for a remedy of revision to the appellate bench of the Small Causes Court and the same reads thus :

“Where no appeal shall lie under this sub-section from a decree or order in any suit or proceeding, the bench of two Judges specified in sub-section (1) may, for the purpose of satisfying itself that the decree or order was according, to law, call for the case in which such decree or order was made and pass such order with respect thereto as it thinks fit.”

3] In the context of the provisions contained under Section 34 (4) of the Maharashtra Rent Control Act, 1999, which provisions are *pari materia* to the provisions contained in Section 42(4) of the said Act of 1882, the Full Bench of this Court in the case of *Bharatiben Shah vs. Gracy Thomas & Ors.*¹ has held as follows:

“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.

¹ 2013 (2) Mh. L. J. 25

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.*

86. *Following are instances of revisable orders.*

- (i) 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.*
 - (ii) an order rejecting an application for restoration of the suit under Order 9, Rule 4 of the Civil Procedure Code.*
 - (iii) an order allowing or rejecting an application for a declaration that the suit has abated.*
 - (iv) an order refusing to extend the time for filing a written statement.*
 - (v) an order for deleting an issue pertaining to rights or liabilities under the Rent Act, or any other substantive law.*
- This list is illustrative and not exhaustive."*

4] An order striking off any portions of pleadings in exercise of powers under Order 6 Rule 16 of the CPC is likely to have the effect of denying the parties their substantive rights and therefore, such an order cannot be regarded as merely a procedural one. The Full Bench, in the case of *Bhartiben* (supra) has held that an order

refusing leave to amend the plaint or written statement, particularly where the proposed amendment is for the assertion of rights or liabilities under the Rent Act or any other substantive law is an order revisable under Section 34 (4) of the Maharashtra Rent Control Act, 1999.

5] In the present case, certain portions of the additional written statement of the petitioner have been ordered to be struck off. Whether such striking off is justified or not, is really not the issue before this Court, at this stage. Suffice to note that an order of this nature cannot be regarded as merely procedural in nature, but the same would affect the substantive rights of the parties.

6] Accordingly, as against the impugned order, a revision would lie under the provisions of Section 42(4) of the said Act of 1882. There is accordingly, no need to entertain the present petitions. The present petitions are accordingly dismissed with liberty to the petitioner to avail the remedy under Section 42(4) of the said Act of 1882.

7] If the petitioner institutes the revision petition within a period of two weeks from today, then the revisional authority to entertain the same, without adverting to the issue of limitation.

8] It is clarified that this Court has not gone into the merits of the matters and as such all contentions of all parties with regard to the merits and demerits of the impugned order are left open for decision by the revisional authority.

9] Petitions are disposed of in the aforesaid terms.

(M. S. SONAK, J.)

Chandka