

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.212 OF 2012

Ms. Lily Gomes.]
The beneficiary of a Will of late Mr.H.F.Gomes.] ... Petitioner

Versus

Mrs. Theresa wd/o. Michel Patel and Ors.] ... Respondents

Mr. Vishal Kanade a/w Mr. Bankim Gangan i/b Mr. A. D. Kango for
Petitioner.

CORAM :- M. S. SONAK, J.
DATE :- AUGUST 03, 2015

P. C. :-

1. By orders dated 09/01/2012 and 01/04/2013, notices were issued to the Respondents making it clear that this matter would be disposed of finally at the stage of admission.

2. Mr. Vishal Kanade, learned Counsel for Petitioner, states that service has been completed upon the Respondents and necessary Affidavit of service has also been filed. Accordingly, Rule. Rule is made returnable forthwith in view of the earlier orders dated 09/01/2012 and 01/04/2013.

3. The challenge in this petition is to the order dated 20/08/2011, by which the Revisional Court has interfered with order dated 13/08/2010 made by the Trial Court marking and exhibiting certain documents in the course of trial. This Court, in the case of ***Bhartiben Shah Vs. Smt. Gracy Thomas and others***¹, has held that only such order, which directly affect the substantive rights and liabilities of the parties under the Maharashtra Rent Control Act, 1999 or any other substantive liability, but not merely right under procedural law like the CPC or the Evidence Act, are revisable under Section 34 (4) of the Maharashtra Rent Control Act, 1999. In para 86, there are some instances of revisable orders and in para 87, there are some orders which would not be revisable. One or the orders which is not revisable would be an order made for production of documents or for discovery or inspection.

4. In the present case, the order dated 13/08/2010, may not be an order for production of documents or for discovery or inspection. However, at least *prima facie*, it does appear that the order dated 13/08/2010 was only a procedural order. This is because the marking/exhibition of document no.1 was permitted subject to further cross-examination and after keeping open the objection to the exhibition to be decided at the stage of final hearing. Similarly, in respect of document nos.8 to 15 and 19, i.e. the photographs and the C.D., their exhibition was permitted upon taking view that witnesses have sufficiently proved the photographs and the C.D.

¹ Writ Petition No.9562 of 2010, decided on 21/01/2013

5. At least *prima facie*, therefore, the revision was not at all maintainable before the revisional authority, under Section 34 (4) of the Maharashtra Rent Control Act, 1999. However, even if the revision was held to be maintainable, there was really no justification for interfering with the order dated 13/08/2010.

6. The order dated 13/08/2010 has merely permitted the marking/exhibition of certain documents in the course of the trial. The objections were kept open. In any case, it is settled position in law that mere exhibition or marking of the document is not akin to the proof of its contents. That apart, even if the contents of the document are proved, what is the weightage to be attached to such evidence, is also a matter which will have to be decided by the Court at the stage of final hearing. For all these reasons, there was really no justification to interfere with the order dated 13/08/2010. At the highest, liberty could have always been granted to the Respondents to challenge the said order along with any adverse final order that may be made in the suit and in the substantive appeal which, the Respondents may choose to institute.

7. For all the aforesaid reasons, the impugned order dated 20/08/2011 is set aside. However, it is made clear that in case R.A.E. & R. Suit No.865 of 1994 is decided against the Respondents and the Respondents choose to institute the substantive appeal against the same, then the Respondents shall be at liberty to challenge the order dated 13/08/2010 as per principles set out in Section 105 of the CPC.

In case of any such challenge, the appellate authority to entertain the same uninfluenced by any observations made in this order.

8. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

9. Further, considering that the suit is of the year 1994, the hearing therein is expedited.

(M. S. SONAK, J.)