

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1735 OF 2016**

Asgarali Qutubullah Choudhary	..Petitioner
Vs.	
Zahida Zubair Merchant	..Respondent

**WITH
WRIT PETITION NO. 1736 OF 2016**

Fatima Asgarali Choudhary	..Petitioner
Vs.	
Zahida Zubair Merchant	..Respondent

Mr. Anand Charanbir Singh for the Petitioner in both the Petitions
Mr. Owen Menezes i/b Mr. S. Wasoodew for the Respondent in both the
Petitions

CORAM : R. M. SAVANT, J.
DATE : 17th FEBRUARY, 2016

P.C.

1 The Learned Counsel for the Petitioner seeks leave to amend so as to substitute Article 226 by Article 227 in the cause title. Leave granted. Amendment to be carried out forthwith.

2 The Writ Jurisdiction of this Court is invoked against two identical orders both dated 6-1-2016 passed by the Appellate Bench of the Small Causes Court by which orders the Revision Applications filed by the Petitioner in each

of the above Petitions being Revision Application No.363 of 2015 and Revision Application No.364 of 2015, came to be dismissed on the ground that they are not maintainable. Resultantly the order dated 26-11-2015 passed by the Trial Court in Exhibits 19 and 20 in R.A.E. Suit No.590/944 of 2013 and R.A.E. Suit No.589/943 of 2013, came to be confirmed. The said applications Exhibit 19 and Exhibit 20 were for appointment of an Architect to inspect the premises and to take photographs of the suit premises involved in each of the said Suits as one of the ground on which the eviction is sought of the Defendant is on the ground of additions and alterations carried out in the Suit premises by each of the Defendants.

3 The said applications were filed invoking Section 28 of the Maharashtra Rent Control Act 1999 (for short the said Act). It seems that prior to the instant applications Exhibit 19 and Exhibit 20, the Respondent original Plaintiff had filed applications Exhibit 9 and Exhibit 10 for appointment of Court Commissioner by way of an Architect to inspect the suit premises. However, the said applications were filed under Order 26 Rule 9 of the Civil Procedure Code. The said applications Exhibit 9 and Exhibit 10 were rejected by the Trial Court by order dated 21-6-2014 on the ground that it was not proper to order local investigation of the suit premises when the Suit is not ripe for hearing. The instant applications have been filed thereafter, however, as indicated above, have been filed invoking Section 28 of the said Act, under the

said provision the landlord is entitled to take inspection of the premises in question.

3 A useful reference would be made to the judgment of a Learned Single Judge of this court in the matter of **Empeegee Portfolio Services Pvt Ltd. Vs. Mrs Sharda Navinchandra Shah**¹ It has been held in the said judgment that the right given to the landlord under Section 28 to carry out inspection would be meaningless if the same was to be done without an expert and hence the word inspection cannot be interpreted in a constricted sense. As indicated above, one of the grounds on which the eviction of the Defendant is sought is on the ground of additions and alterations. It is probably to buttress the said case that the Plaintiff seeks to take inspection of the premises through an Architect so as to obtain a report and also submit photographs. The Defendant in each of the Suits in question would obviously be entitled to submit their response to the said inspection report and would also be entitled to cross-examine the Architect if evidence of the Architect is sought to be led in the Suit. Since the Appellate Bench of the Small Causes Court has refused to entertain the Revision Applications on the ground that the same are not maintainable, having regard to the nature of the order passed and also having regard to the Full Bench Judgment of this Court in the matter of **Bhartiben Shah Vs. Smt Gracy Thomas & Ors.**,² the orders under challenge is therefore

1 2009(1) ALL MR 516

2 2013(2) ALL MR 9

the order passed by the Trial Court dated 26-11-2015. For the reasons mentioned hereinabove there is no merit in the challenge to the said order dated 26-11-2015. The Writ Petitions are accordingly dismissed.

[R.M.SAVANT, J]