

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8969 OF 2016

Sidram Rachappa Nasle  
since deceased through L.Rs.

..Petitioners

*Versus*

Janak Kanhaiyalal Jani  
and another.

..Respondents

....

Mr.Rajesh S. Datar, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 07<sup>th</sup> OCTOBER, 2016

P.C.

1. Heard Mr.Rajesh Datar, learned Counsel for the petitioners, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the defendants, have challenged the judgment and order dated 5.7.2015 passed by the learned 3<sup>rd</sup> Joint Civil Judge, Senior Division, Solapur below Exhibit-82 in Regular Civil Suit No.744/2012 as also the judgment and order dated 29.1.2016 passed by the learned trial Judge below Exhibit-86. By order dated 5.7.2015, the learned trial Judge allowed the application made by the respondents, hereinafter referred to as the plaintiffs, under Order 15-A of Code of Civil Procedure, 1908 (for short, 'C.P.C.') and directed the

defendants to deposit Rs.2000/- per months towards the licence fee or rent from the date of institution of the suit within three months in trial Court. It was made clear that in case the defendants do not comply with this direction, their defence would be struck out. The defendants thereafter filed application Exhibit-86 under Section 114 of C.P.C. seeking review of the order dated 5.7.2015. By order dated 29.1.2016, the learned trial Judge rejected Review Application. It is against these orders, the defendants have instituted present Petition.

3. Mr. Datar submitted that the impugned orders are procedural orders and do not affect the substantive rights of the parties. He relied upon the decision of Full Bench of this Court in the case of **Bhartiben Shah v. Gracy Thomas and others 2013(2) Mh.L.J. 25** to contend that Revision Application under Section 34(4) of the Maharashtra Rent Control Act, 1999 is not maintainable in respect of a procedural order passed under C.P.C. in a suit arising out of Rent Act unless the order affects the rights of the parties under the Act or under any other substantive law.

4. It is not in dispute that the plaintiffs had filed application under Order 15-A of C.P.C. directing the defendants to pay monthly compensation or rent. In the case of **The Colaba Central Co-operative Consumer**

**Wholesale and Retail Stores Ltd. v. Smt. Kusumben Kantilal Shah & Ors., 2003(4) ALL MR 304**, the learned Single Judge of this Court has observed in paragraph-7 thus :

“7. Sub-rule (1) of Order 15-A as amended applies to a suit by a lessor against a lessee or a licensor against a licensee for eviction with or without the arrears of rent or licence fee and future mesne profits. In such a suit, the Court is empowered to direct the defendant to deposit such amount as the Court may direct on account of arrears upto the date of the Order and thereafter to continue to deposit in each succeeding month the rent or licensee fee claimed in the suit as the Court may direct. Sub-rule (1) provides that the defendant shall unless otherwise directed continue to deposit such amount till the decision of the suit. The legislature was clearly conscious of the necessity of requiring the tenant or, as the case may be, a licensee to deposit such an amount as the Court may direct towards arrears payable on account of his occupation and to protect the interest of the landlord by requiring that future deposits of the amount of rent or the licence fee must also be made. In the absence of such a provision, the landlord would have to suffer the hardship of awaiting a final decision of the suit for eviction before any amount would be recovered. This was obviated by conferring upon the Court, the power to pass an appropriate interim order. Even in the absence of such a provision, the hardship which was liable to be suffered by the landlord has been sought to be obviated by the decision of this Court in *Sangeeta Prints* (supra) by taking recourse to the provisions of Order 39, Rule 10 and section 151 of the Code. Having

regard to the salutary object underlying the provisions, the proviso to sub-rule (1) envisages certain consequence emanating from a non-compliance of the order of deposit. The proviso stipulates that in the event of a default in making deposit as decided, the Court may, subject to the provisions of sub-rule (2), strike off the defence. Undoubtedly, before striking off the defence, sub-rule (2) provides that a notice has to be issued to the defendant to show cause and the cause, if any, shown has to be considered in order to decide as to whether the defendant should be relieved of a peremptory order striking off the defence. Sub-rule (2) in turn indicates that unless the Court is of the view that there are valid circumstances as to why the defendant should be relieved of an order striking off his defence, ordinarily the defence would be liable to be struck off upon a failure of compliance with an order of deposit. In these circumstances, there can be no gainsaying the fact that an order passed under sub-rule (1) is an order of moment and is liable to seriously effect the rights of the parties. A defendant who does not comply with the order of deposit, cannot be relieved of the striking off of his defence unless he shows sufficient cause. In these circumstances, it cannot be said that an order under sub-rule (1) of Order 15-A is merely a procedural order and is not subject to a revision under sub-section (4) of section 42 of the Act. In the present case, a revision is maintainable. There is hence no necessity for this Court to go into the challenge urged on behalf of the petitioner on the merits of the order.”

5. Perusal of paragraph-7, extracted hereinabove, shows that the learned Single Judge has clearly held that

the order passed in an application made under Order 15-A substantially affects the rights of the parties. As the impugned orders substantially affect rights of the defendants, in my opinion, the defendants have an equally efficacious alternate statutory remedy by filing revision application. Mr. Datar submitted that in fact the defendants contend that even Rent Act is not applicable. In my opinion, the defendants will be at liberty to agitate such contention in the Revision Application. Hence, Petition is dismissed on the ground of maintainability reserving liberty to the defendants to file Revision Application. All contentions in that regard are expressly kept open.

(R. G. KETKAR, J.)

Deshmane (PS)