

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10585 OF 2017

M/s.Training & Advance Studies
In Management and Communications Ltd. ..Petitioner
V/s.
Mr.Giri Dua & Ors. ..Respondents

Ms.Krishma Shah for the Petitioner.

Mr.Pravartak Pathak for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 06th OCTOBER 2017

ORAL JUDGMENT :

1. Heard Ms.Krishma Shah for the petitioner and Mr.Pravartak Pathak for the respondents.

2. Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3. The challenge in this petition is to the order dated 29.11.2016 made by the Adhoc District Judge-1, Pune refusing to exercise revisional jurisdiction under Section 34(4) of the Maharashtra Rent Control Act, 1999 on the ground that the order dated 30.04.2016 made by the Trial Court in exercise of powers

under Order 15-A of C.P.C. is purely procedural order and therefore, not revisable.

4. No doubt, in paragraph 8 of the impugned order, Revisional Authority, has also, briefly adverted to the merits and held that even on merits there is no case made out for the exercise of revisional iurisdiction.

5. The order dated 30.04.2016 made by the Trial Court in exercise of powers under Order 15-A of the C.P.C. cannot, be regarded as purely procedural order and therefore, not revisable under Section 34(4) of the Maharashtra Rent Control Act, 1999. Such view, is in fact, contrary to the decision of the learned Single Judge of this Court Dr.D.Y. Chandrachud, J, (as His Lordship then he was) in ***Colaba Central Co-operative Consumer Wholesale and Retail Stores Ltd. V/s. Kusumben Kantilal Shah & Ors.***¹

6. In paragraph No.7 of the said decision, this is what is held :-

“7. Sub-rule (1) of Order 15-A as amended applied to suit by a lessor against a lessee or a licensor

¹ 2003-4-All MR-34)

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 licence 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 received. 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 provision, 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) 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 affect 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 subsection (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.”

(emphasis supplied)

7. Mr.Pathak, however points out that in paragraph No.8

of the impugned order, the Revisional Authority has also adverted to the merits of the matter. Though, this submission, to certain extent is correct, it does appear that the Revisional Authority was convinced that the order impugned before it was not revisable, and therefore, has, adverted to the merits of the matter only briefly. In such circumstances, it will not be safe, to hold that the half hearted discussion in paragraph 8 of the impugned order, constitutes the decision on merits. Ms.Shah, is right in her submission that the petitioner was entitled to consideration of its Revision Petition, on the basis that such Revision Application was indeed maintainable and required consideration in terms of the parameters of Section 34(4) of the Maharashtra Rent Control Act, 1999.

8. For the aforesaid reasons, the impugned order dated 29.11.2016 made by the Revisional Authority is set aside. The Civil Revision Application No.33 of 2016 is restored to the file of Revisional Authority, who is directed to dispose of the same in accordance with law and on its own merits, uninfluenced by any observations in the impugned order dated 29.11.2016, which in any case, is now set aside.

9. However, it is made clear that till date, the order dated

30.04.2016 which is impugned in the Revision Application before the Revisional Authority is not stayed. This means that the petitioner has to comply with said order without prejudice to its rights and contentions in the Revision Application which is now restored before the Revisional Authority. On the ground of pendency of the Revision Application, it is impermissible for the petitioner to avoid compliances. If compliances is avoided, it shall be open to the Trial Court to take such steps as are permissible under the law. Further, the pendency of the Revision Application before the Revisional Authority should not be construed as impediment in the Trial Court to proceed with the main suit on merits.

10. With the aforesaid observations, the Rule is made absolute. There shall be no order as to costs.

11. Parties to appear before the Revisional Authority on 13th October 2017 and file authenticated copy of this order. The Revisional Authority to endeavor to dispose of the Revision Application as expeditiously as possible and in any case within a period of four months from the date of the parties filing authenticated copy of this order.

(M. S. SONAK, J.)