

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

WRIT PETITION NO.2067 OF 2017

Bata (India) Ltd.

... Petitioner

Vs

M/s. Mahendra Builders & Anr.

... Respondents

...

Mr. Shyam Dewani a/w Nivedita Kundaj a/w Chirag Chanani i/b. Dewani
& Associates for the Petitioners.

Mr. P. S. Dani, Senior Advocate i/b. Vidya Khatu for the Respondent No.1.

CORAM : M. S. SONAK, J.
DATE :12th OCTOBER, 2017

P.C. :

1. Not on board. Upon mentioning taking on production Board.

2. Heard the learned counsel for the parties.

3. Mr. Dani, the learned senior Advocate, who appears for respondent Nos. 1 and 2, relying upon the full bench decision in ***Bhartiben Shah V/s. Gracy Thomas & Ors.***¹ submits that the order impugned in this petition is revisable under Section 344 of the Maharashtra Rent Control Act, 1999 and therefore, this petition may not be entertained on the ground of availability of alternate efficacious remedy.

1- 2013 (2) MLJ 25

4. The petitioner, in this petition, impugns order dated 25.08.2016, by which, the petitioner has been declined leave to amend its written statement.

5. The full bench of this Court, in *Bhartiben Shah* (supra) after analyzing the scope the provision of Section 34 (4) of the Maharashtra Rent Control Act, 1999 has held that an order refusing leave to amend the plaint or a written statement, where the proposed amendment is for assertion of rights under the Rent Act or any other substantive law is revisable, since, such an order, cannot be regarded as merely procedural in nature.

6. In terms of the ruling of the full bench, therefore, the petitioner has alternate efficacious remedy of instituting a Revision under Section 34 (4) of the Maharashtra Rent Control Act, 1999 to impugned the Trial Court's order dated 25.08.2016 by which, leave to amend the written statement came to be denied.

7. Mr. Dewani, the learned counsel for the petitioner states that revision petition will be instituted within a period of four weeks from today. If such revision petition is indeed instituted within a

period of four weeks from today, the same to be decided on merits without advertng to the issue on limitation. Mr. Dani, the learned senior Advocate, states that if revision petition is indeed instituted within four weeks, then no issue of limitation will be raised.

8. Accordingly, this petition is not entertained. However, the petitioner is granted liberty to avail alternate remedy under Section 34 (4) of the Maharashtra Rent Control Act, 1999 in the aforesaid terms.

9. It is clarified that this Court has not examined the merits of the matter and therefore, all contentions of all parties are left open for determination by the Revisional Authority.

10. All concerned to act on an authenticated copy of this order.

(M. S. SONAK, J.)