

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE SIDE JURISDICTION**  
**WRIT PETITION NO.329 OF 2019**

|                                    |   |             |
|------------------------------------|---|-------------|
| Rajaram Yashwant Tawde and others. | ] | Petitioners |
| Vs.                                |   |             |
| Ajay Kumar Singh @ Janardan Singh  | ] | Respondent  |

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Mr. R.A. Shaikh a/w Sharif S. Khan, for Petitioners.  
Ms. Nilam Pawar a/w S.B. Amin and S.S. Amin, for Respondent.

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**CORAM : R.G. KETKAR, J.**

**DATE : 11TH JANUARY, 2019.**

**P.C.**

Not on board. At the request of Mr. Shaikh, taken up in the production board.

2. Heard Mr. Shaikh, learned Counsel for the petitioners and Ms. Pawar, learned Counsel for the respondent at length.

3. This Petition takes exception to the order dated 12<sup>th</sup> December, 2018 passed by the learned Judge, Court Room No.33 of the Court of Small Causes at Mumbai (Bandra Branch) below Exhibit 132 in R.A.D. Suit No.629 of 2015. By that order, the learned trial Judge rejected the application made by the petitioners for setting aside “No Cross Order” dated 4<sup>th</sup> September, 2018 passed against P.W.1 Ajay Kumar Singh @ Janardan Singh (respondent herein) and for recalling P.W.1 for cross-examination by defendant No.1 in accordance with law.

4. Ms. Pawar raised preliminary objection on the ground that the order impugned in the present Petition affects substantive rights of the petitioners. She relied on Full Bench decision of this Court in **Bharatiben Shah Vs. Gracy Thomas, 2013 (2) ALL MR 9**. She further submitted that this Court need not invoke powers under Article 227 of the Constitution of India, when the petitioners have an equally efficacious, alternate statutory remedy of filing revision application under section 34 (4) of the Maharashtra Rent Control Act, 1999 (for short 'Act').

5. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, the application Exhibit 132 was filed by the petitioners for setting aside “No Cross Order” passed against P.W.1 Ajay Kumar Singh @ Janardan Singh and for recalling him for further cross-examination by the defendant No.1.

6. In the case of **Bharatiben** (supra), Full Bench of this Court has considered scope of revision under section 34 (4) of the Act and has observed that an order to be revisable under section 34(4) of the Act, the order must affect the very existence of the suit or the foundation of the party's case in their pleadings and not merely a procedural order, not affecting the substantive rights of the parties, though such procedural order may ultimately affect the strength or weakness of the case of the aggrieved litigant which is to be finally determined at the trial while passing the decree in the suit or final order in the proceeding. Applying the tests laid down by the Full Bench of this Court in **Bharatiben's** case (supra) to the fact of the present case, I am satisfied that “No Cross Order” affects substantive rights of the petitioners herein and, therefore, the impugned order is revisable under section 34 (4) of the Act.

7. In view thereof, the petitioners are at liberty to file revision application before the Appellate Bench of the Court of Small Causes at Mumbai under section 34 (4) of the Act. The Appellate Court will decide the revision application on its own merits and in accordance with law and shall not dismiss the same on the ground that the order impugned is a procedural order. Subject to this, the Petition fails and the same is dismissed with no order as to costs.

8. All the parties to act upon the authenticated copy of this order.

**[R.G. KETKAR, J.]**