

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4294 OF 2018

Jasraj Lalaji Oswal ...Petitioner

R/at.C.T.S. No.981,

Bhawani Peth,

Pune 411 002.

Versus

1. Raziya Mehboob Patel ...Respondents

R/at. 1475,

Jan Mohammed Street,

Pune 411 001.

2. Mahendra Jasraj Oswal

R/at. C.T.S. No.981,

Bhawani Peth,

Pune 411 002.

Mr.Venkatesh Shastry - Advocate for the petitioner.

Mr.Siddharth R. Ronghe – Advocate for the respondent -1

CORAM: DAMA SESHADRI NAIDU, J.

JUDGMENT RESERVED ON : 18th OCTOBER 2019.

JUDGMENT PRONOUNCED ON : 18th DECEMBER, 2019

JUDGMENT (PER DAMA SESHADRI NAIDU, J) :

Heard finally at the admission stage by the parties' consent.

Facts:

2. The petitioner is the defendant and the respondents are the plaintiffs. The plaintiffs filed Civil Suit No. 9 of 2016, to have the petitioner evicted. In that suit, the petitioner, as the defendant, applied under Order 7 Rule 11 of CPC to have the plaint rejected. The petitioner has maintained that the plaint reveals no cause of action, so it should be dismissed under Order 7 Rule 11 (a) of the CPC.

3. The trial Court, through its order dated 16th September 2017, dismissed the application. Aggrieved the petitioner filed this Writ Petition.

Respondents' Objection:

4. Before the petitioner's counsel advanced his arguments the respondents' counsel has raised a preliminary objection: the Writ Petition under Article 227 is not maintainable; it ought to have been, if ever, under Section 115 of CPC.

5. The respondents' counsel has taken me through the statutory provisions and also the practice of this Court. Then, he has contended that the only recourse available for the petitioner is to invoke Section 115 of the CPC.

The Petitioner's Answer:

6. On the contrary, the petitioner's counsel has strenuously contended that this Writ Petition presents exceptional

circumstances: mixed adjudication, as he calls it. To elaborate, the learned counsel submits that the application under Exh. 27 is a composite one. Therefore, the trial Court framed three issues. Had it been an exclusive application Order 7 Rule 11, the petitioner would have had a remedy under Section 115 of CPC, but not under the circumstances this case presents.

7. The Petitioner's counsel has also submitted that the petitioner only wanted a partial rejection of the plaint; that is, the plaint rejection is confined only to *bona fide* requirements, the rest remaining untouched. According to him, viewed from any perspective, as it is composite adjudication, the recourse let open for the petitioner is to invoke the Court's supervisory jurisdiction under Order 227 of the Constitution of India.

The *Amicus Curiae*'s View:

8. Given the judicial cleavage on the issue, I requested Shri Kaustubh Dubey, the learned advocate, to assist the Court. In his submissions, Shri Dubey has brought out a new angle to the question of jurisdiction. According to him, the revision lies to the Division Bench of the Small Cause Court. To support his contention, he has drawn my attention to *Bhartiben Shah v. Smt. Gracy Thomas*¹.

9. Heard the learned counsel for the petitioner and the

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learned counsel for the respondents, besides the learned *amicus curiae*.

Discussion:

10. Peculiar as the facts may seem, the landlord first filed Civil Suit No. 319 of 2002 for eviction. He filed it on two grounds: unauthorised construction and *bona fide* requirement. The trial Court dismissed the suit. Aggrieved, the landlord filed Appeal No. 648 of 2007. In that appeal, the landlord applied for amendment and secured it. It seems, in the light of the amendment and other factors, the appellate Court set aside the trial Court's judgement and remanded the matter.

11. Instead of pursuing the remanded suit, the landlord withdrew it. Then, he filed a fresh suit: Civil Suit No. 9 of 2006. The landlord claims that the previous suit does not deter him because he pleaded in the present suit a different cause of action. In the second suit, the defendant applied under order 7, Rule 11 of CPC, requiring the trial Court to dismiss the suit, as the tenant puts it, for lack of cause of action. The trial Court refused.

12. Had the tenant's application been allowed, that would have resulted in the summary dismissal of the suit, requiring the landlord to file an appeal. But the tenant's application was dismissed, so it was his turn to assail the order, for the suit survived the scare of summary dismissal. Thus, he has filed the revision before this Court. Now, it was the landlord's turn to object; he, as

the Respondent in the revision, objected to its maintainability.

13. To be explicit, the tenant has filed the revision under Article 227 of the Constitution of India; the landlord insists that it must have been under Section 115 of CPC. So we will not go into the merits of the matter; first we decide the forum that can adjudicate or the provision that applies. And, then, if necessary, we will consider the correctness of the trial Court's order on the merits, as well.

14. A few of the indisputable facts are these: (1) the dispute relates to tenancy; (2) the landlord has taken out the proceedings under the Maharashtra Rent Control Act; (3) the case stands before a Small Cause Court.

15. The landlord's counsel has submitted that a revision under Article 227 of the Constitution is eminently maintainable. According to him, the revision can be either under Article 227 of the Constitution or Section 115 of CPC. To support his contention's, he has relied on *Gajanan v. Mohd. Jamil Mohd. Amad*², a Division Bench decision of this Court. There is, indeed, much judicial cleavage on this issue. In this context, we should be examining *Bhartiben Shah*, a Full Bench decision the learned amicus curia has cited.

16. On the other hand, the Respondent's counsel has cited numerous previous practices on the parties' withdrawing the

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(2017 (1) Mh. LJ 660)

revision petitions under Article 227 of the Constitution and filing them afresh as, or converting them into, revisions under Section 115 of CPC.

(a) *Gajanan's* Inapplicability:

17. First, I will address the Division Bench judgement in *Gajanan*. There, the adjudication took place under the Provincial Small Cause Courts Act. The Court passed an order under Section 26A of that Act. Then a question arose whether the aggrieved party should file the revision under Article 227 of the Constitution or under Section 115 of CPC. There was Judicial disagreement: two coequal benches (single judges) took opposite views. So the matter was referred to a Division Bench. Resolving the dispute, in a detailed judgement, the Division Bench (per Gavai J, as his Lordship then was) has held that “party aggrieved by an order passed under Section 26A of the Act can challenge same either by invoking remedy by filing Writ Petition under article 227 of Constitution or are preferring the revision application under Section 115 of CPC.”

18. In fact, the distinguishing factor in *Gajanan* is that the Division Bench, on reference, has exclusively dealt with the Provincial Small Cause Courts Act; there was no occasion for it to consider the Maharashtra Rent Control Act. Besides, as the learned Division Bench has decided a pure question of law; it has not referred to the factual settings of the case. So we cannot ascertain

whether the dispute concerned rent regime. For these reasons, *Gajanan* does not address the dispute before us.

19. Now, we will consider the other options. At the outset, apparently it is the Small Cause Court that has entertained the suit. Then, one may justifiably think that the Small Cause Court Act governs the proceedings, procedurally. That accepted, *Gajanan* may bind us. But here, the Court has not acted under the Small Cause Courts Act; instead, it has acted under the Rent Control Act. Plainly put, the Small Cause Court shed its tag as the Small Cause Court and started adjudicating as a rent controller. So what governs the *lis* is the Maharashtra Rent Control Act.

(b) the Provincial Small Cause Courts Act, 1887 & Maharashtra Rent Control Act, 1999:

20. Yet we need to appreciate the Maharashtra Rent Control Act in the backdrop of the Provincial Small Cause Courts Act, 1887 (“PSCC Act”). Section 15 of the PSCC Act, under Chapter III, deals with the jurisdictional aspects. It bars the Court of Small Causes from cognizance of the suits specified in the Second Schedule to the Act. Besides that, subject to the exceptions specified in that schedule and any other extant enactment, the Small Cause Court will entertain all suits of a civil nature if the value of the value of the suit does not exceed one thousand rupees. Section 16 of the same Act confers exclusive jurisdiction on the Courts of Small Causes over the cases cognizable by those courts.

21. Items (7) and (8) of the Second Schedule to the Act relate to “rent”. The Small Cause Court can entertain suits “the assessment, enhancement, abatement, or apportionment of the rent of immovable property, and for “the recovery of rent, other than house-rent, unless the Judge of the Court of Small Causes has been expressly invested by the State Government with authority to exercise jurisdiction with respect thereto. First, the jurisdiction extends over “rent”, but not “house-rent”. Second, we see no notification under this Act from the State Government enlarging the Small Cause Court’s jurisdiction in this sphere.

22. That said, it is not unusual for the Legislature to designate courts created under one enactment to discharge functions under another. Then, so long as it adjudicates the cases under the other enactment, it ceases to be a special Court under the Act it actually owes its existence to. For example, a Family Court, created under the Family Courts Act, may adjudicate under another Special Enactment: The SC & ST (Prevention of Atrocities) Act, 1989. Here, the Small Cause Court has been acting as a Rent Controller. So, now, we should be examining the Maharashtra Rent Control Act (“the Rent Control Act”).

23. Under Chapter VII, which deals with the “provisions regarding jurisdiction of courts, suits, appeal, practice, and procedure,” the Rent Control Act, decides the jurisdictional aspects. Section 33 of the Rent Control Act declares thus:

33. (1) Notwithstanding anything contained in, any law for the time being in force, but subject to the provisions of Chapter VIII, and *notwithstanding that by reason of the amount of the claim or for any other reason*, the suit or proceeding *would not, but for this provision*, be within its jurisdictions,-

(a) in Brihan Mumbai, the Court of Small Causes, Mumbai,

(b) in any area for which a Court of Small Causes is established under the Provincial Small Causes Courts Act, 1887, such court, and

...

(italics supplied)

24. Seen from the above, Section 33 of the Rent Control Act confers jurisdiction on the Small Cause Court, which otherwise does not have any. The Small Cause Court has pecuniary jurisdictional limits, but the Rent Control Act lifts not only them but all other constraints: “notwithstanding that by reason of the amount of the claim or for any other reason.” Section 33 also emphasises that the proceedings before the Small Cause Court would not have been maintainable but for this provision: “the suit or proceeding would not, but for this provision, be within its jurisdictions.”

(c) How far the CPC applies?

25. Under the Provincial Small Causes Courts Act, 1872, Section 17 mandates that the procedure prescribed in the Code of Civil Procedure shall, save in so far as is otherwise provided by that

Code or by this Act, be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits.

26. On the contrary, the Rent Control Act has no reference to the CPC on the procedural front. Section 37 of the Act declares that “the Courts specified in sections 33 and 34 shall follow the prescribed procedure in trying and hearing suits, proceedings, applications and appeals and in executing orders made by them.” Undoubtedly, the expression “prescribed” refers to the delegated legislation: the very Statute and the Rules under it.

(d) Procedurally Which Act Applies: CPC, the Provisional Small Causes Courts Act, or the Maharashtra Rent Control Act?

27. We have already seen above that the trial Court may have been a Small Cause Court, but it is functioning under a different enactment and adjudicating something which, otherwise, stands prohibited under the Provincial Small Causes Court Act. So it is not—and cannot be—a Small Cause Court when it is dealing with the problems under the Maharashtra Rent Control Act.

28. Maharashtra Rent Control Act has, unlike the Provincial Small Causes Court Act, not adopted the procedure under the CPC. Instead, through Section 37, it follows the “prescribed procedure.” Sections 33 to 38, under Chapter VII, deal with the procedure. We have already discussed Section 33. Now, let us focus on Section 34. It deals with “appeals” and “revisions”, too,

though the title of the Section only speaks of “appeal.” In fact, as to interpreting this provision, our task has become easier. We need not reinvent the wheel, so to say. A Full Bench of this Court, in an erudite judgment, has the definitive word on that: *Bhartiben Shah*.

29. Exhaustive and erudite as *Bhartiben Shah* is, we necessarily delve deep into it and, so, quote profusely, too. But, before doing that, let us quote, to the extent relevant, Section 34, the pivotal provision for our discussion. For sub-section (1) deals with appeals and sub-section (2) with revisions.

34. Appeal. (1) Notwithstanding anything contained in any law for the time being in force, an appeal shall lie

(a) in Brihan Mumbai. from a decree or order made by the Court of Small Causes. Mumbai, exercising jurisdiction under section 33, to a bench of two Judges of the said Court which shall not include the Judge who made such decree or order;

(b) elsewhere, from a decree or order made by a Judge of the Court of Small Causes established under the Provincial Small Causes Courts Act, 1887, or by the Court of the Civil Judge deemed to be the Court of Small Causes under clause (c) of sub-section (2) of section 33 or by a Civil Judge exercising such jurisdiction, to the District Court:

Provided that no such appeal shall lie from -

(a) a decree or order made in any suit or proceeding in respect of which no appeal lies under the Code of Civil Procedure, 1908;

(b) a decree or order made in any suit or proceeding (other than a suit or proceeding relating to possession) in which the plaintiff seeks to recover rent in respect of any premises and the amount or value of the subject matter of which does not exceed -

(i) where such suit or proceeding is instituted in Brihan Mumbai Rs.10,000; and

(ii) where such suit or proceeding is instituted elsewhere, the amount upto which the Judge or Court specified in clause (b) is invested with jurisdiction of a Court of Small Causes, under any law for the time being in force;

(c) an order made upon an application for fixing the standard rent or for determining the permitted increases in respect of any premises except in a suit or proceeding in which an appeal lies;

(d) an order made upon an application by a tenant for a direction to restore any essential supply or service in respect of the premises let to him.

(2) Every appeal under sub-section (1) shall be made within thirty days from the date of the decree or order, as the case may be:

Provided that, in computing the period of limitation prescribed by this sub-section the provisions contained in sections 4, 5 and 12 of the Limitation Act, 1963 shall, so far as may be, apply.

(3) No further appeal shall lie against any decision in appeal under sub-section (1) .

(4) Where no appeal lies under this section from a decree or order in any suit or proceeding in Brihan Mumbai, the bench of two Judges specified in clause (a) of subsection (1) and elsewhere, the District Court, may, for the purpose of satisfying itself that the decree or order made was according to law, call for the case in which such decree or order was made and the bench or court aforesaid or the District Judge or the District Judge or any Judge to whom the case may be referred by the District Judge, shall pass such order with respect thereto as it or he thinks fit.

(italics supplied)

(e) Bhartiben Shah:

30. *Bhartiben Shah* has these questions before it: (1) What is the scope and ambit of the power of revision under section 34(4) of the Maharashtra Rent Control Act, 1999? (2) Does a revision lie under section 34(4) of the Act against “a procedural order” under the CPC, in a suit under the Maharashtra Rent Control Act? Factually, the Small Causes Court, Bombay, rejected the plaintiff’s application to amend the plaint for bringing on record an additional defendant. Aggrieved, the plaintiff filed a revision before the High Court under Article 227 of the Constitution of India. But the defendant opposed it because the plaintiff had an efficacious alternative remedy under Section 34(4) of the Rent Control Act.

31. Faced with resistance, the plaintiff has contended that under section 34(4) of the Rent control Act a revision lies to an

Appellate Bench of the Court of Small Causes only against an order passed under the Rent Control Act; the revisional jurisdiction under Section 34 (4) does not extend to a procedural order under CPC.

32. In another writ petition under Article 227 of the Constitution the challenge was against the Small Cause Court' order under Order 18, Rule 16 CPC: ordering defendant to lead evidence first.

33. Interpreting the expression "order" in Section 34(4) of the Rent Act, *Bhartiben Shah* has classified "orders" into three categories:

- (i) appealable orders as provided in Sec. 34(1) of the New Rent Act;
- (ii) Revisable orders which affect substantive rights and liabilities of parties;
- (iii) orders which are neither appealable nor revisable, i.e. orders which are procedural in nature and do not affect rights and liabilities of the parties.

34. In the context of the above classification, *Bhartiben Shah* has elaborated on "orders affecting substantive rights" of the parties and "orders procedural in nature", which do not affect the parties' rights. Then, *Bhartiben Shah* has adopted a purposive interpretation of the provisions in the Rent Act. It has gathered the legislative intent from Section 38 of the Rent Act. This provision

exhorts the courts “to endeavour” for disposing of the cases” “as far as may be practicable”, within twelve months from the date the summons is served. And the appeal in six months.

35. In this context, *Bhartiben Shah* has noted the legislative anxiety for expeditious hearing and disposal of a suit. According to it, Section 38 indicates that the Legislature has not favoured providing a very wide net of revisable orders, “which the wide language of Section 34(4) may otherwise suggest.”

36. Then, *Bhartiben Shah* posed unto itself this question: Which rights and liabilities of “the parties are to be affected by revisable orders?” It has found three logical answers: (i) rights and liabilities only under the Rent Act; (ii) rights and liabilities under any law including any statute, general law, and even procedural law; (iii) rights and liabilities under the Rent Act and any other substantive law, but not under any procedural law.

37. After quoting a catena of Supreme Court cases, *Bhartiben Shah* has observed that, going by wide language, if the word “order” is interpreted liberally to include procedural orders, which do not decide the parties’ rights and liabilities, such wide interpretation results in delay and expense, causing immense hardship to one party, or the other, or both. The proceedings, then, become interminable. So it has held that revisions under the Rent Acts would be maintainable only against those orders that affect the substantive rights or liabilities of parties, that is, the rights or

liabilities under the Rent Act or any other substantive law, but not under a procedural law.

38. Most important, *Bhartiben Shah* has quoted with the approval the observations of a learned Single Judge in *Hemchand v. Subhkaram*³. This case deals with the Old Rent Act: the Bombay Rent Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Section 28 is the provision, and it is *in para materia* with Section 34 of the New Act we are now dealing with. *Hemchand* declares that the Bombay Small Causes Court exercising jurisdiction under Section 28 [Section 33 of the New Act] is a Special Court set up under that section and appealability is attached to its decree or order under Section 29 [Section 34 of the New Act]. In this context, *Hemchand* has observed:

“But once the Special Court entertains and tries a suit or proceeding which falls within its exclusive jurisdiction, *all orders made by it in the said suit or proceeding* or in relation thereto, *are made by it as Special Court*, that is, a court exercising jurisdiction under Section [33] and not only such of them as actually relate to the recovery of rent or possession. Appeal provided under Section [34] of the Act is not confined only to the final decree or order or to an order, which relates to recovery of rent or possession *but it lies against all orders except those which are excluded under the proviso to the section.*”

(italics supplied)

39. In tune with the above proposition, *Hemchand* has held

that the suit subject stands covered by the Rent Act, and the plaintiff secured an *ex parte* decree. “Hence, the appeal against that *ex parte* decree or an appeal against an order rejecting the application for setting aside an *ex parte* decree was certainly maintainable under Section [34(1)]” of the Act.

40. On this point, *Natvarlal v. Khodaji*⁴, is more emphatic. It has held that once the Special Court entertained and tried a suit which fell within its exclusive jurisdiction, all consequential and incidental orders made by such a Court in such a suit or proceeding must be regarded as made by the Special Court exercising jurisdiction under section 28 [Section 33 of the New Act] of the Rent Act and an appeal provided under section 29 [Section 34 of the New Act] of the Act lies against all orders made in such proceedings except those which are excluded under the proviso to section 29 of the Rent Act [Section 34 of the New Act.]

41. In *Pacific Engineering Co. Pvt. Ltd. v. East India Hotels Ltd.*⁵, a learned Single Judge has held that an order on an application under Order 23 Rule 1 of the CPC to withdraw a suit unconditionally affects the substantive rights of the aggrieved party. An order rejecting such application “bears an imprint of the provisions of the Bombay Rent Act and Bombay Rent Control

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(1967) 8 Gul. L.R. 772

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2004 (4) All MR 330,

Rules.” On that ground, revision before the appellate Bench of Small Causes Court was held to be maintainable. As a result, it dismissed the revision filed under the CPC, for the party has an alternative remedy under Section 34 (4) of the New Act.

42. In fact, *Bhartiben Shah* has summarized the precedential proposition of *Hemchand* and *Natvarlal* and held that the Small Causes Court is a Special Court exercising powers under the Code of Civil Procedure and that interlocutory and other orders which the Special Court may pass in entertaining, trying and deciding the matters within its exclusive jurisdiction, which are appealable under the provisions of the Code of Civil Procedure, are appealable under Section 34 of the Rent Act.

43. Finally, after an exhaustive analysis of the case law and the statutory provisions, *Bhartiben Shah* has held:

[F]or an order to be revisable under section 34(4) of the Maharashtra Rent Control Act, the order must affect the very existence of the suit or the foundation of the party's case and not merely a procedural order, (not affecting the substantive rights of parties), which 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.”

44. In the light of the above principle, we may now consider the case holding ratio of *Aspi R. Setha v. Sunermal M. Bafna*⁶. It is somewhat analogous on facts.

45. In a pending suit for possession under the Bombay Rent Act, the petitioner took out a notice for a declaration that the suit had abated because of the death of the sole defendant and prayed for stay of further proceeding. The Small Causes Court dismissed the said interim notice and hence the petitioner preferred civil revision application under Section 115 of the CPC.

46. In the revision, the learned Single Judge has observed that had the application been allowed, the suit would have been dismissed as having been abated, and that order would have been final—materially affecting the rights of the parties. So *Aspi R. Setha* has reasoned that such an order on application for declaring the suit as abated affects cannot be considered as mere procedural order. Hence, the revision application under Section 29(3) under the Bombay Rent Act would be maintainable before the appellate Bench of the Small Causes.

47. In fact, *Bhartiben Shah* has noticed that many revisions were filed Articles 227 of the Constitution, challenging interlocutory orders passed by the trial Courts. According to it, very often preliminary objection is raised about the maintainability of the revision under Article 227, in the face of Section 34 (4) of the Rent Act. *Bhartiben Shah* has bemoaned that substantial judicial time and energy are lost in deciding whether the alternative remedy of revision under the Rent Act is

Judgment, dated 19 December 2003, in Civil Revision
Application No. 489 of 2003

available before the appellate Bench of the Small Causes Court or before the District Judge.

48. First, *Bhartiben Shah* has held that the power of superintendence conferred on the High Court under Article 227 of the Constitution should be exercised most sparingly. It should be used only to keep subordinate courts and inferior tribunals within the bounds of their authority and “not for correcting errors of fact or of law.”

49. Second, *Bhartiben Shah* has acknowledged that an order to be revisable need not necessarily be an order for possession or fixation or recovery of rent. But the order sought to be revised must directly affect the substantive rights and liabilities of parties under the Maharashtra Rent Control Act or any other substantive law, but not merely rights under a procedural law like the Code of Civil Procedure or the Evidence Act.

50. Finally, *Bhartiben Shah* has held that for an order to be revisable under section 34(4) of the Maharashtra Rent Control 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 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.

51. Illustratively, *Bhartiben Shah* has enumerated the revisable orders under Section 34 (4) of the Rent Act:

(i) an order refusing leave to amend the plaint or written statement, where the proposed amendment is for assertion of rights or liabilities under the Rent Act or any other substantive law;

(ii) an order rejecting an application for restoration of the suit under Order 9 Rule 4 of the CPC;

(iii) an order allowing or rejecting an application for a declaration that the suit has abated;

(iv) an order refusing to extend the time for filing a written statement;

(v) an order for deleting an issue pertaining to rights or liabilities under the Rent Act, or any other substantive law This list is illustrative and not exhaustive.

52. *Bhartiben Shah* has, equally illustratively, listed out the instances not attracting revisional jurisdiction:

(i) an order granting leave to amend plaint or written statement;

(ii) an order granting extension of time to file written statement;

(iii) an order raising additional issue;

(iv) an order made for production of documents or discovery or inspection;

(v) an order directing a plaintiff/defendant to furnish better and further particulars;

(vi) an order issuing or refusing to issue a commission for examination of witnesses;

(vii) an order issuing or refusing to issue summons for additional witness or document;

(viii) an order condoning delay in filing documents, after the first date of hearing;

(ix) an order of costs to one of the parties for its default;

(x) an order granting or refusing an adjournment;

(xi) an order allowing an application for restoration of the suit under Order 9 Rule 4 of CPC.

53. Let us remember that *Bhartiben Shah* has approved *Hemchand's* dictum that interlocutory and other orders which the Special Court can pass in entertaining, trying, and deciding matters within its exclusive jurisdiction “which are appealable [or revisable] under the provisions of the Code of Civil Procedure will be appealable [or revisable] under Section 29 of the Rent Act [or Section 34 of the New Act].”

54. Let us also remember that *Bhartiben Shah* has approved *Aspi R. Setha v. Sunermal M. Bafna*. In the context of abatement, the Court has observed that had the application been allowed, the suit would have been dismissed as having been abated. And that order would have materially affected the parties' rights.

55. Here, too, as is the case with *Aspi R. Setha*, had the defendant's application been allowed, it would have resulted in the rejection of the plaint and the dismissal of the suit. Thus, it would have affected the parties' rights. So, we cannot say an application under Order 7, Rule 11 of CPC, even if dismissed, is a mere procedural step. The application decided either way, it substantially affects the parties' rights one way or the other. So it is eminently revisable. And that revision must be under Section 34 (4) of the Maharashtra Rent Control Act, 1999.

56. As a result, I hold that the revision is maintainable neither under Article 227 of the Constitution of India nor under Section 115 of the CPC; it is only under Section 34 (4) of the Maharashtra Rent Control Act, 1999.

57. Before, parting with the matter, I place on record a word of appreciation for the excellent assistance Shri Kaustubh Dubey, the learned *amicus curiae*, has extended to the Court.

Result:

58. I hold that the Writ Petition No.4294 of 2018 is not maintainable under Article 227 of the Constitution of India to challenge an order under Order 7, Rule 11 of CPC. The application allowed, the appeal lies under Section 34 (1) of the Maharashtra Rent Control Act; the application dismissed, a revision lies under Section 34 (4) of the same Act. And in both the instances, the forum must be the Appellant Bench of the Small

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Causes Court or the District Court, as the case may be.

59. So, for want of jurisdiction as held in *Bhartiben Shah*, I direct the registry to return the Writ Petition to the petitioner. The Court returns the Writ Petition, instead of dismissing it, for the Court does not want to dismiss a case on which it professes to have no jurisdiction. I reckon the theory of self-imposed restriction does not apply vis-à-vis Article 227, as it does with Article 226 of the Constitution of India.

60. If the petitioner represents this revision under Section 34 (4) of the Maharashtra Rent Control Act, the appellate Bench of the Small Causes Court, Pune, will entertain it on the merits, without reference to any delay, laches, or limitation.

No order on costs.

[DAMA SESHADRI NAIDU, J.]

L.S.Panjwani, P.S.