

Mr. V. S. Gokhale for Petitioners.
Mr. Mukund Pise for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JUNE 3, 2019

Heard Mr. Gokhale, learned Counsel for the petitioners and Mr.Pise, learned Counsel for the respondent at length.

3. Mr. Pise raised preliminary objection as regards maintainability of the Writ Petition. He submitted that against the impugned order, petitioners filed Miscellaneous Civil Appeal No.231 of 2017 before the learned District Judge. By order dated 05.08.2017, the learned District Judge dismissed the appeal under order XLI, Rule 11 of C.P.C. on the ground that Miscellaneous Civil Appeal under Order XLIII of C.P.C. challenging the order on the application for amendment is not maintainable. He also relied upon Section 34 of the Maharashtra Rent Control Act, 1999 (for short 'Act') to contend that against the impugned

order, Revision is maintainable before the District Court.

4. The learned District Judge, while dismissing the appeal on 05.08.2017, held that such appeal is not maintainable as under Order XLIII of C.P.C., the order partly allowing the application for amendment is not an appealable order. In my opinion, instead of dismissing the appeal on the ground of maintainability, the learned District Judge should have permitted the defendants to convert Miscellaneous Civil Appeal into Revision and proceeded to decide the Revision Application on merits. Proviso to Section 34(1) of the Act lays down that no appeal lies from the decree or order made in any Suit or proceeding in respect of which no appeal lies under the C.P.C. As the impugned order is not appealable, under sub-section (4) of Section 34, defendants can file Revision challenging the impugned order before the learned District Judge. Instead of relegating the defendants to file Revision Application, in my opinion, the ends of justice will be served by setting aside order dated 05.08.2017 passed by the learned District Judge and permitting conversion of Miscellaneous Civil Appeal No.231 of 2017 into Revision Application under Section 34(4) of the Act. Parties shall appear before the learned District Judge on 24.06.2019 and for that purpose no fresh notice be issued to them. The defendants shall convert Miscellaneous Civil Appeal into Revision Application on 24.06.2019. The learned District Judge will decide the Revision Application on its own merits and in accordance with law. The learned District Judge shall not dismiss the Revision Application on the ground that it is barred by limitation. All contentions of the parties in the Revision Application are expressly kept open. Order accordingly. Petition is disposed of accordingly.

(R. G. KETKAR, J.)