

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**Writ Petition No. 14448 OF 2018**

Bank Of Baroda

...Petitioner

*Versus*

Taralaxmi Kantilal Shah

...Respondent

....

Mr. V.Y. Sanglikar, Advocate for the Petitioner.

Mr. R.D. Soni i/b. Ram & Company, for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 06<sup>th</sup> MARCH, 2019

P.C.

1. Heard Mr. V.Y. Sanglikar, learned counsel for the petitioner and Mr.R.D. Soni, learned counsel for the respondent, at length.

2. This Petition takes exception to the order dated 7.8.2018 passed by the learned Judge, Court Room No.19 of the Court of Small Causes at Mumbai below Exhibit-20 in T.E. Suit No.171/209 of 2012. By that order, the learned trial Judge allowed application Exhibit-20 filed by the respondent, herein after referred to as the 'plaintiff' and directed the petitioner, hereinafter referred to as the 'defendant' to pay to the plaintiff or deposit in the Court an amount of Rs.2,76,000/- per month in respect of the suit premises from the month of September, 2015 till 13.10.2016 i.e. the date of delivery of possession, after deducting 10% TDS therefrom. The payment is to be made or deposited

within three months from the date of the order.

3. Mr. Soni raised preliminary objection about the maintainability of this Petition. He submitted that the impugned order passed by the trial Court affects the substantive rights of the petitioner. The petitioner has an equally efficacious alternate statutory remedy of filing Revision Application before the Appellate Bench of the Small Causes Court. He relied upon the Full Bench decision of this Court in **Bhartiben Shah Vs. Smt. Gracy Thomas & others, 2013(2) ALL MR 9 (Full Bench)**. As against this, Mr. Sanglikar relied upon the decision of learned Single Judge of this Court in **J.M. Constructions Vs. Rustom P. Patel and others, 2008(5) Bom. C.R. 598** to contend that the order impugned is procedural order and, therefore, revision is not maintainable.

4. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. In the case of **Bhartiben Shah** (supra), the Full Bench of this Court considered various judgments. In paragraph-1, the Full Bench extracted the questions referred for the opinion. In paragraph-84, it was observed that Revision Application under Section 34(4) of the Maharashtra Rent Control Act, 1999 (for short, 'Act') is not maintainable in respect of a procedural order passed under C.P.C. in a suit arising out of the Act if such order does not affect the rights of

parties under the Act or any other substantive law. In paragraph-85, it was observed that for 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.

5. In paragraphs-9 and 71, the Full Bench referred to the decision of **J.M. Constructions** (supra). In that case, the order passed by the Appellate Court dated 2.11.2006 in Revision Application was challenged. That Revision Application was filed by the first respondent taking exception to the order dated 9.9.2005 passed by the learned trial Judge. Interim notice was taken out by respondent No.1 praying for permission to file written statement beyond permissible period. By order dated 9.9.2005, the learned trial Judge rejected that application. The Appellate Court reversed that decision. In paragraph-14, the learned Single Judge held that the order of the trial Court dated 9.9.2005 was a procedural order against which no revision application could be maintained under Section 34 (4) of the Act.

6. In paragraph-71, the Full Bench observed that the order of the trial Court in that case was not a mere procedural order not affecting the substantive rights of the parties under the Act. Revision Application, in such a case would, therefore, be maintainable under Section 34(4) of the Act. Thus, the Full Bench did not approve the view taken by the

learned Single Judge in **J.M. Constructions** (supra).

7. In my opinion, the impugned order affects the substantive rights of the petitioner. The petitioner has an equally efficacious alternate statutory remedy of Revision before the Appellate Bench of the Small Causes Court.

8. In view thereof, Mr. Sanglikar seeks permission to withdraw this Petition with liberty to file Revision Application before the Appellate Court within two weeks from today. He assures that he will also file separate application for interim relief, if required, during this period and serve copy in advance on the other side. He further submits that the time spent by the petitioner in prosecuting the petition from 19.9.2018 till date may be excluded while considering the issue of limitation.

9. Mr. Soni states that for a period of four weeks from today, respondent will not press for implementation of the impugned order.

10. In view thereof, on the motion made by Mr. Sanglikar, the petition is allowed to be withdrawn with liberty to file Revision Application before the Appellate Court challenging the impugned order. The petitioner shall also file separate application for interim relief, if required, within two weeks from today and will press that application for interim relief within four weeks from today. If the petitioner files the Revision within two weeks from today, the time spent by the petitioner

in prosecuting this petition from 19.9.2018 till date shall be excluded while considering the issue of limitation as the petitioner was prosecuting this Petition in this Court bonafide. For a period of four weeks from today, the respondent shall not press implementation of the impugned order. The Appellate Court is requested to dispose of the Revision Application finally within four weeks from presentation of the Revision Application. Grant of liberty shall not be construed as an expression on merits either way. All contentions of the parties on merits are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)