

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL NO. 358 OF 2012
IN
WRIT PETITION NO. 5228 OF 2011(D)

Nirmal Ujwal Credit Co-operative Society
Limited, Nagpur (Multi-State)
193, Nandanwan Main Road, Nagpur.
Through its President/Secretary. **APPELLANT**

..V E R S U S..

1. Narendra Mohanlal Choudhary,
Aged about 47 years, Occupation- Business,
R/o. Telangkhedi Layout,
Ramnagar, Nagpur and having place
of business at 17 Yashwant Stadium,
Dhantoli, Nagpur.
2. Hon'ble District Judge,
Nagpur. **RESPONDENTS**

Shri Yash Maheshwari, Advocate with Shri S.V.Bhutada, Advocate for
appellant.
Shri M. R. Johrapurkar, Advocate for respondent no.1.
Ms N. P. Mehta, Assistant Government Pleader for respondent no. 2.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

ARGUMENTS WERE HEARD ON : 05/07/2022

JUDGMENT IS PRONOUNCED ON : 12/08/2022

JUDGMENT (Per A.S.CHANDURKAR, J.)

This Letters Patent Appeal under Clause 15 of the Letters Patent raises an interesting question as to whether a revision application under Section 34(4) of the Maharashtra Rent Control Act, 1999 would be maintainable against an order passed on an application moved under Section 29(2) of that Act?

2. The appellant-landlord is the owner of the premises that is occupied by the respondent No.1-tenant. The respondent No.1 initiated proceedings under Section 29(2) of the Maharashtra Rent Control Act, 1999 (for short, the Act of 1999) praying that the action of the appellant of withholding electricity supply to the lift and the premises let out to the tenant was unjust and without any sufficient cause. After considering the reply filed by the landlord, the learned Judge of the Small Causes Court on 25.04.2011 upheld the objection raised by the landlord to the maintainability of the said application for want of statutory notice under the provisions of the Multi-State Co-operative Societies Act, 2002 and proceeded to dismiss the same. Being aggrieved, the tenant filed a revision application under Section 34(4) of the Act of 1999 for challenging the order passed by the Small Causes Court on 25.04.2011. In those proceedings the landlord filed an application for

dismissal of the revision application on the ground that the revision application was not maintainable under Section 34(4) of the Act of 1999. The Revisional Court on 21.05.2011 held that the revision application was maintainable and thus turned down the objection as raised by the landlord to the maintainability of the proceedings. The landlord being aggrieved by the aforesaid order filed Writ Petition No. 2794 of 2011 challenging that order. Since the learned Single Judge found that the objection as raised by the landlord to the maintainability of the revision application had been decided without considering the material on record, that order was set aside on 11.07.2011. The revision application was directed to be re-considered afresh. Pursuant thereto the revisional Court on 17.08.2011 held that the revision application was maintainable and rejected the landlord's objection to the maintainability of the same. Being aggrieved the landlord challenged that order in Writ Petition No.5228 of 2011. The learned Single Judge by his order dated 27.04.2012 held that the remedy of revision against an order passed on an application under Section 29(2) of the Act of 1999 could not be taken away by interpreting the provisions of Section 34(4) of the Act of 1999 on that basis. It was held that an order on an application under Section 29(2) accepting or rejecting the same would be a proceeding within the meaning of Section 34(4) of the Act of 1999 and hence the remedy of revision would be

available to the aggrieved party. The writ petition was thus dismissed. It is against this adjudication that the landlord has come up in appeal.

3. Shri Yash Maheshwari, learned counsel for the landlord submitted that the right of invoking the remedy of revision was not an inherent right. Such right ought to be specifically conferred by statute. Inviting attention to various provisions of the Act of 1999 and especially Sections 8, 9, 18, 19, 22 and 24, he submitted that the word “application” had been used in contradistinction to the words “suit” and “proceedings”. It was his submission that by independently using the expression “application” and by not interchanging it with the words “suit” and “proceedings”, the intention of the Legislature was clear that an application under the Act of 1999 ought to be distinctly treated and had its own identity distinct from any “suit” or “proceedings”. Section 29(2) of the Act of 1999 empowered a tenant in occupation of premises to make an application to the Court for a direction to restore electricity supply or service. Adjudication of such application by the Court was contemplated. Under Section 34(1) no appeal was provided against an order made on an application by a tenant for a direction to restore any essential supply or service in respect of a premises let to a tenant. The remedy of revision under Section 34(4) was available only when there was no appeal provided under Section 34 from a decree or order in any suit or

proceedings. He submitted that since an “application” was required to be made by the tenant under Section 29(2) as distinguished from any “suit” or “proceeding”, the remedy of filing a revision application against an order made on an “application” by a tenant under Section 29(2) of the Act of 1999 was not available. According to him, a revision would be maintainable only from a decree or order against which no appeal was provided, subject to such decree or order being passed in any “suit” or “proceeding”. Since an order passed under Section 29 of the Act of 1999 was on an “application”, it was clear that Section 34(4) did not provide for any revisional remedy. The interpretation put by the learned Single Judge despite noticing absence of the word “application” in sub-section (4) of Section 34 was against settled principles of interpretation of a statute. The expression “proceeding” could not have been construed by referring to its dictionary meaning especially when that expression was used alongwith the expressions “application” and “suit”. In support of his aforesaid submissions, the learned counsel relied upon the following decisions:

- (A) Kailash Nath Agarwal vs. Pradeshhiya Indust. and Investment Corporation of U.P. AIR 2003 SC 1886
- (B) Satheedevi vs. Prasanna and anr. AIR 2010 SC 2777.
- (C) P.L.Kantha Rao and ors. vs. State of A.P. and ors. AIR 1995 SC 807

- (D) Babu Lal vs. M/s. Hazari Lal Kishori Lal and ors.
AIR 1982 SCC 818.
- (E) Rampratap Jaidayal vs. Dominion of India
AIR 1953 Bom 170
- (F) Deputy Chief Controller of Imports and Exports, New Delhi vs.
K.T.Kosalram and ors. AIR 1971 SC 1283
- (G) Gramophone Company of India Ltd. vs. Birendra Bahadur Pandey
and ors. AIR 1984 SC 667.
- (H) Ram Chandra Aggarwal and anr. vs. The State of U.P. and anr.
AIR 1966 SC 1888.
- (I) Oriental Bank of Commerce and anr. vs. R.K.Uppal
(2011) 8 SCC 695.
- (J) Rami Manprasad Gordhandas and ors. vs. Gopichand Shersing
Gupta and ors. (1973) 4 SCC 89.
- (K) B. Premanand and ors vs. Mohan Koikal and ors.
AIR 2011 SC 1925
- (L) Shiv Shakti Co-op. Housing Society, Nagpur vs.
Swaraj Developers and ors. (2003) 6 SCC 659.
- (M) Jasraj Lalaji Oswal vs. Raziya Mehboob Patel and anr.
2020(5) Mh. L. J.681.

It was thus submitted that the impugned judgment was liable to be set aside.

4. Shri M. R. Johrapurkar, learned counsel for the tenant supported the judgment of the learned Single Judge. According to him merely because the word “application” was used in Section 29(2) of the Act of 1999 it could

not be said that the order passed on such application was not revisable. As per the provisions of Section 29(3) an enquiry was required to be made on the application filed by the tenant. It would therefore indicate that an order passed on an application made under Section 29(2) of the Act of 1999 would be an order in a proceeding. Thus as no appeal was provided under Section 34(1) of the Act of 1999, a revision application under Section 34(4) was maintainable. The learned counsel sought to place reliance upon the decisions in *Ram Chandra Aggarwal and anr. vs. The State of U. P. and anr.* [**AIR 1966 SC 1888**], *Babu Lal vs. M/s. Hazari Lal Kishori Lal and ors.* [**AIR 1982 SC 818**] and the judgment of the Full Bench of this Court in *Bhartiben Shah and anr. vs. Gracy Thomas and ors.* [**2013(2) Mh.L.J. 25**] to support his contentions. It was thus submitted that there was no merit in the challenge raised by the landlord and the Letters Patent Appeal was liable to be dismissed.

5. We have heard the learned counsel for the parties at length and with their assistance we have also perused the documents on record. After giving due consideration to the rival submissions, we find that a revision application under Section 34(4) of the Act of 1999 would be maintainable against an order passed on an application moved under Section 29(2) of that Act since such order would directly affect the substantive rights and liabilities

of parties under the Act of 1999.

6. The facts lie in a narrow compass. Suffice it to mention that the tenant had moved an application under Section 29(2) of the Act of 1999 on 05.04.2011. In that application it was prayed that the landlord be directed to restore the electricity supply to the tenanted premises as the act of withholding the electricity supply to the lift and the premises let out was unjust and without any sufficient cause. After the initial round of litigation the trial Court on 25.04.2011 dismissed that application. In the revision application preferred by the tenant an objection to the maintainability of the revision application under Section 34(4) of the Act of 1999 was raised by the landlord. The Revisional Court did not uphold that objection and the writ petition preferred by the landlord challenging that order has been rejected by recording a finding that the revision application was maintainable.

7. Since the learned counsel for the landlord sought to support the objection as raised to the maintainability of the revision application by seeking to emphasise upon the use of the words “application”, “suit” and “proceedings” in various provisions of the Act of 1999, it would be necessary to make a brief reference to the same.

Under Section 8(1) an application can be made to the Court for fixation of standard rent. At the same time in any suit or proceedings a request for fixation of standard rent can also be made. Under Section 8(6) such application could be made jointly by all or any of the tenants interested in respect of the premises situated in the same building. Reference to the word “application” can also be found in Section 9 of the Act of 1999. While Section 15(2) refers to a suit for recovery of possession, Section 18(1) refers to an application that can be made by the original tenant for recovery of possession pursuant to the landlord not occupying the premises for which a decree for eviction has been passed under Section 16(1)(g) of the Act of 1999. A similar application has been contemplated under Section 19(1). Reference to making of an application can also be found in Sections 22 and 24 of the Act of 1999.

8. Since the provisions of Section 29 of the Act of 1999 have been invoked by the tenant, reference to the same is necessary. Under Section 29(1) a landlord is restrained, in the absence of any just or sufficient cause from cutting of or withholding any essential supply or service enjoyed by the tenant in respect of the premises let to him. Section 29(2) of the Act of 1999 reads as under:

“29 (2) A tenant in occupation of the premises may, if the landlord has contravened the provisions of sub-section (1), make an application to the Court for a direction to restore such supply or service”.

Under Section 29(3) the Court is empowered to make an interim order directing restoration of the essential supply or service during pendency of an enquiry. The Court can under Section 29(4) direct restoration of such supply or service to the tenant and failure of the landlord to restore the same renders the landlord liable to pay fine. Contravention of Section 29(1) renders the landlord, on conviction, to be punishable with imprisonment upto three months or with fine upto one thousand rupees or both. An application under Section 29 can be made jointly by all or any of the tenants of the premises situated in the same building. Under Section 29(7) a tenant can also apply to the concerned authority for permission or for supply of an essential service and the authority need not insist for production of No Objection Certificate from the landlord.

From the aforesaid, it is clear that the provisions of Section 29 are in the nature of a code in itself in the matter of any essential supply or service. The same includes supply of water, electricity, lights in passages and stair-cases, lifts and conservancy or sanitary service. The provisions recognise the right of a tenant to enjoy essential supply and service of the aforesaid amenities which are basic in nature which a tenant is entitled to enjoy in

respect of the premises let to him. Remedy has also been provided to a tenant whenever such essential supply or service enjoyed by him is cut off or withheld.

9. Section 34 of the Act of 1999 which provides remedy of appeal insofar as it is relevant reads as under :

“34. Appeal.

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

(a)

(b)

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”.

Section 34(4) which provides for remedy of revision reads as under:

“34 (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 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”.

The aforesaid provision indicates the contingency wherein the remedy of appeal has been made available as well as the contingency where no appeal would be maintainable. For the present purpose, proviso (d) to Section 34 (1) indicates that no appeal would lie from an order made upon an “application” by a tenant for a direction to restore any essential supply or service in respect of premises let to him. In cases where no appeal lies under Section 34 (1), power has been given in the City of Brihan Mumbai to the Bench of two Judges and elsewhere to the District Court to exercise revisional power by calling for the case in which a decree or order is made for being examined as to whether it was in accordance with law.

10. The provisions of Section 34 of the Act of 1999 are in pari materia with the provisions of Section 29 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. A somewhat similar question as regards

maintainability of a revision under Section 29(3) of that Act was considered in *Dhausubi Mohamed Pasha Saheb Vs. Smt. Shahjahan Mustaqe Dhole [1980 Bom.C.R.759]*. Section 29 (3) of the Act of 1947 reads as under :

“Section 29 (3) Where no appeal lies under this section from a decree or order in any suit or proceeding in Greater Bombay and Bench of two Judges specified in clause (a) of sub-section (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 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].”

The learned Single Judge in the aforesaid judgment observed as under :

“12. With this background, I may now refer to the proviso to sub-section (1) of Section 29 of the Bombay Rent Act. Clauses (A) and (B) of sub-section (1) of Section 29 have provided right of appeal against decree and orders of the Rent Act Court. However, in respect of some matters which may otherwise fall in sub-section (1) of Section 29, the Legislature has denied the right of appeal by its amendment in 1953 when the proviso was added. However, while adding this proviso, the Legislature also added sub-section (3) to the same section. The real meaning and implication of the proviso could be understood if only the proviso is read alongwith sub-section (3). So read, it would appear that clauses (I) to (IV) of the proviso describe the matters in respect of which there shall be no right of appeal even though otherwise those matter could have been covered by sub-section (1). In other words, the right of appeal now is confined to all matters which would fall under section 29(1) minus those which might be covered by clauses (I) to (IV) of the proviso to that sub-section. What would happen to these matters which are so carved out by the Legislature. Is there

no remedy except the general remedy of power of superintendence. The Legislature has provided some remedy in respect of these matters which are contained in the added sub-section (3) of Section 29. That sub-section, therefore open with the clause “where no appeal lies under this section from a decree or order in any suit or proceedings”. Having described those matters which fall under the proviso as matters against which no appeal lies, the forum is then described to which a revision application may lie. The powers of revision are vested in a Division Bench of the Court of Small Causes in Bombay and in the District Judge else where for the purpose of satisfying itself that the decree or order made was according to law and after calling for the record and examining the same pass such order with respect thereto as it or he thinks fit. The right of revision contemplated by section (3) of Section 29 is thus confined to those matters which fall under the proviso to sub-section (1) of the same section.”

It has thus been held that the right of revision contemplated by Section 29(3) is available with regard to matters which fall under the proviso to sub-section (1) of Section 29 of the Act of 1947. This vital aspect will have to be borne in mind in the present context.

11. The provisions of Section 34 of the Act of 1999 have been considered by the Full Bench of this Court in *Bhartiben Shah* (supra) on a reference made to it. Question No.2 as referred to the Full Bench reads as under:

“Whether a revision application under Section 34(4) of the Maharashtra Rent Control Act, 1999 would be maintainable

in respect of a procedural order passed under the Code of Civil Procedure in a suit arising out of the Maharashtra Rent Control Act ?”

The Full Bench after considering various earlier decisions observed in paragraphs 63 and 64 as under :

“63. We agree that Section 29(3) of the Old Rent Act and Section 34(4) of the New Rent Act are not restricted only to orders for possession or rent, but at the same time it does not mean that all non-appealable orders of the Special Court under the Rent Act are revisable. It is true that orders may not be orders for possession or fixation or recovery of rent, but the orders must directly affect the substantive rights of the parties under the Rent Act or some other substantive law and not merely affect the rights of the parties under a procedural law like CPC or Evidence Act. Looking to the language of Section 29(3) of the Old Rent Act and Section 34(4) of the New Rent Act ("that the decree or order was made according to law"), we see no justification for restricting revisions to orders affecting substantive rights only under the Rent Act.

64. As already indicated earlier, the rationale for narrowly reading the word "order" in the provision conferring right of appeal (to avoid harassment of parties on account of delay and endless expenses) would also apply for narrowly interpreting the word "order" in Section 34(4) of the New Rent Act and Section 29(3) of the Old Rent Act as well and that was the rationale which commended to the Division Bench in Sukhdev Prasad Raghubir's case in the year 1983 and that is the interpretation which has held the field, in so far as the State of Maharashtra is concerned, for the last 35 years. If any other view is taken, purposeful object of speedy trial, as mandated by Section 38 of the Maharashtra Rent Control Act, would be completely defeated.”

Thereafter in paragraphs 67 and 68, it was held as under :

“67. 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 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.

68. This, discussion, therefore, brings home the point that in each case the Court has to be careful while applying the settled legal principles on the question of maintainability of revision application under Section 29 (3) of the Bombay Rent Act and/or under Section 34(4) of the Maharashtra Rent Control Act.”

From the aforesaid it is clear that for a revision application under Section 34(4) of the Act of 1999 to be maintainable it must be shown that the order which is sought to be revised should affect the rights of parties under the Act of 1999 or any other substantive law. The order sought to be revised must directly affect the substantive rights and liabilities of parties under the Act of 1999 or any other substantive law but those rights must not merely be rights under any procedural law. The aforesaid law as laid down by the Full Bench would have material bearing on the present adjudication since the landlord seeks to contend that an order passed on an application made under Section 29(2) is not revisable since no appeal therefrom has been provided under Section 34(1) proviso (d) and that the remedy of revision is available

only in case where a “decree” or “order” has been made in cases where no appeal lies under Section 34 of the Act of 1999.

12. As found earlier, the provisions of Section 29 are in the nature of a code in itself recognising the rights of a tenant to enjoy supply of essential service such as water, electricity, conservancy or sanitary service. The said provision recognises the substantive right that can be enjoyed by a tenant and the landlord is restrained from cutting off or withholding such essential service without any just or sufficient cause. The fact that contravention of subsection (1) of Section 29 renders the landlord liable for punishment with imprisonment on conviction or with fine or with both indicates the nature of the right of a tenant which is recognised by the Act of 1999. The Court can also by an interim order direct restoration of the essential supply or service during pendency of the enquiry to be undertaken under Section 29. It can thus be said that the right conferred on a tenant to enjoy essential supply or service with regard to the premises let to him is a substantive right under the Act of 1999 and it is the liability of the landlord to ensure that the tenant enjoys the same in a manner that would not prevent him from enjoying the premises let to him. This substantive right has been recognised by the Full Bench as conferring a right of revision to a party affected. Adjudication of an “application” under Section 29(2) of the Act of 1999 cannot be said to be

adjudication of a procedural right for being not revisable. We thus find that in view of the law as laid down by the Full Bench since adjudication of an “application” under Section 29(2) would result in determination of a substantive right of the tenant/landlord, such order made on an application would be revisable under Section 34(4) of the Act of 1999.

13. The contention raised on behalf of the landlord that since the expression “decree or order” in any “suit or proceedings” has been used in Section 34(4) and there being no reference to an order on an “application” made by a tenant for restoration of any essential supply or service has been consciously excluded, a revision application would not be maintainable cannot be accepted. Accepting such contention would result in curtailing the remedy of revision that has been conferred by Section 34(4) of the Act of 1999 and would impinge upon the right of the tenant to seek such remedy after adjudication of an application made under Section 29(2) of the Act of 1999. Use of the expression “application” in some provisions of the Act of 1999 in contradistinction with the words “suit” and “proceedings” would not make much difference while considering the availability of remedy of revision under Section 34(4). What is relevant is that an order is liable to be passed in any “suit”, “proceedings” or on an “application”. Merely because the expression “application” instead of the expression “proceedings” has been employed in

Section 29, the same would not make much difference in this context. An application filed under Section 29(2) leads to an enquiry under Section 29(4) which is in fact part of “proceedings” under Section 29 of the Act of 1999. The expression “proceedings” have not been defined in the Act of 1999 and as held in *Ram Chandra Aggarwal and another*(supra), the term “proceedings” indicates something in which business is conducted according to a prescribed mode and it includes within it all matters coming up for judicial adjudication. It also means a course of action for enforcing a legal right as held in *P.L.Kantha Rao and others* (supra).

What is relevant is the substance and not the form. When the right of revision is recognised whenever substantive rights of a party are determined by a decree or order in any suit or proceeding but no appeal therefrom is provided, such decree or order passed on an application in any suit or proceeding would definitely be revisable. An order passed on an application under Section 29 has not been made appealable but if such order affects any substantive right of the tenant or the liability of the landlord, the same would definitely be revisable under Section 34(4) of the Act of 1999 as the revisional Court is empowered to satisfy itself as to whether such “decree or order” in any “suit or proceeding” where no appeal lies under Section 34 of the Act of 1999 has been made in accordance with law or not. The test to be

employed is whether the substantive rights or liabilities are affected, be it an order made on an “application” in any “suit or in any proceeding”. The intention of the Legislature in providing the remedy of revision in cases where no appeal lies under Section 34(1) is made explicitly clear and that intention cannot be defeated through the interpretative process canvassed ably on behalf of the landlord.

14. The learned counsel for the landlord referred to various decisions to buttress his contention that the remedy of revision was not available against an order passed on an application under Section 29 of the Act of 1999 since there is no right in a litigant to invoke revisional remedy unless the same has been specifically conferred by statute. Reliance is also placed on decisions indicating the manner in which such provisions have to be interpreted have also been relied upon. There can be no quarrel with the ratio of the decisions as relied. Suffice it to observe that the provisions of the Act of 1999 as a whole and especially Sections 29 and 34 would have to be kept in mind. We are however bound by the decision of the Full Bench in *Bhartiben Shah* (supra) which has recognised the remedy of revision being available whenever a substantive right and/or liability of a party is affected under the Act of 1999. In the absence of remedy of appeal, a revision application has been held to be maintainable. We thus find that an order passed on an application under Section 29(2) of the Act of 1999

being not appealable under Section 34(1) proviso (d), it would be revisable under Section 34 (4) of the Act of 1999 since such order is not procedural in nature but it affects the substantive right of a party. The question as framed is answered accordingly.

Though the learned counsel for the landlord was critical of the approach adopted by the learned Single Judge while relying upon the dictionary meaning of the expression “proceeding”, we do not find that such approach is flawed in any manner. After considering the intention of the Legislature in the backdrop of the expression “proceedings”, the availability of the remedy of revision under Section 34(4) of the Act of 1999 against an order passed on an application filed under Section 29(2) of the Act of 1999 was recognised. We do not find any reason to take a different view of the matter.

15. For aforesaid reasons, there is no merit in the challenge raised to the impugned judgment. The Letters Patent Appeal is therefore dismissed leaving the parties to bear their own costs.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

Andurkar..