Sonali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.133 OF 2021

M/s. R. D. Advertisers,
Sole Proprietary concern of Bimal Viren Vora ...Applicant
Versus
Dr. Aditya Ramchandra Kamat & Anr. ...Respondents

Mr. Kunal Mehta a/w. Ms. Smruti Ranade & Ms. Shreya Bhagnani, i/b. Negandhi Shah & Himayatullah, for the Applicant.

Mr. Nitin Mulye, for the Respondents.

CORAM : MADHAV J. JAMDAR, J.
DATED : 21st FEBRUARY 2023

P.C. :

1. By way of the present Civil Revision Application, the Applicant who is the original Plaintiff, is challenging the legality and validity of the order dated 12th March 2021 passed in Revision Application No.5 of 2019 by the Division Bench of Small Causes Court. By the said order dated 12th March 2021, the said Revision Application No.5 of 2019 was allowed and order dated 20th August 2018 passed by the learned Trial Court below Exhibit-13 in L.D. Suit No.35 of 2018 was set aside. By order dated 20th August 2018 passed by the learned Judge,

Small Causes Court, Mumbai below Exhibit-13 in L.D. Suit No.35 of 2018, said application bearing Exhibit 13 was allowed and the Applicant i.e. the Plaintiff is permitted to deposit Rs.35,000/- only per month towards arrears of rent/compensation for the period from 1st March 2018 till the disposal of the suit without prejudice to the rights and contentions of the Defendants. It is further clarified that the Defendants are at liberty to withdraw the amount as and when deposited by the Plaintiff in the Court. The said order dated 20th August 2018 is set aside by the impugned order dated 12th March 2021 by observing that the Plaintiff is required to pay Rs.70,000/- per month. Thus in effect the learned Division Bench of Small Causes Court, by the impugned order directed payment of Rs.70,000/- per month without prejudice to the rights and contentions of the Applicant-Plaintiff.

2. Heard Mr. Kunal Mehta, learned counsel appearing for the Applicant and Mr. Nitin Mulye, learned counsel appearing for the Respondents.

3. Mr. Mehta, learned counsel appearing for the Applicant inter alia raised the following submissions:-

i. The Civil Revision Application filed before the Division Bench of Small Causes Court at Mumbai by the Respondents challenging order dated 20th August 2018 passed by the learned Judge, Small Causes Court, Mumbai below Exhibit-13 in L.D. Suit No.35 of 2018 was not maintainable. To substantiate the said contention, Mr. Mehta has relied on few decisions, reference whereto will be made as and when necessary.

ii. Order dated 20th August 2018 passed by the learned Trial Court is an order passed as contemplated under Order XXXIX Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as **"the C.P.C."**) and therefore, the said order does not in any manner prejudice the substantive rights of the Respondents under the Maharashtra Rent Control Act, 1999 (hereinafter referred to as **"the Rent Act"**) or any other substantive law and therefore, revision is not maintainable.

iii. In a suit between landlord and tenant, the Court can invoke its power under Order XXXIX Rule 10 to direct deposit of money in Court admittedly payable by the licensee to the licensor. In such a suit either party can invoke provisions of Order XXXIX Rule 10. Reliance is placed on the decision of this Court in **Chandrakant Shankarrao Deshmukh vs. Haribhau Tukaramji Kathane**[1].

iv. Learned Trial Court specified that the said order is passed without prejudice to the rights and contentions of the Defendants and therefore, Respondents i.e. licensors can invoke provisions of Order XVA of the C.P.C. (applicable to State of Maharashtra) and seek interim deposit of the arrears of the licence fee and therefore, the Revisional Court of Small Causes should not have interfered in the order.

v. It is the case of the Applicant that as per the agreement between the parties for the period post March-2018, the Applicant had to pay only sum of Rs.35,000/- per month and rightly the learned Trial Court has directed deposit of the said amount. He submitted that what is contemplated under Order XXXIX Rule 10 of CPC is deposit of admitted amount and therefore, the Revisional Court has committed grave illegality and irregularity in setting aside the order

1 1982 SCC Online Bom. 152:1983 Mh LJ88

and directing payment of Rs.70,000/- which is not the admitted amount.

vi. He submitted that the Revisional Court has relied upon the said leave and licence agreement executed between the parties dated 1st October 2014 which stipulates compensation at the rate of Rs.70,000/- per month. However, learned Revisional Court failed to take into consideration the oral agreement between the parties by which the said compensation had been reduced to Rs.35,000/- per month. He submitted that even the Respondents have also relied on the oral arrangement as it is the case of the Respondents that by oral arrangement, it was agreed that the said compensation would be increased from Rs.70,000/- per month to Rs.1,00,000/- per month. He submitted that in fact, by the said oral arrangement, the compensation amount has been reduced to Rs.35,000/- per month. It is the submission of learned counsel of the Applicant that in any case, the scope of Order XXXIX Rule 10 of CPC is only with respect to the admitted amount and as far as amount of Rs.35,000/- per month is concerned, the same is admitted amount and therefore, the learned Trial Court has correctly passed the order to that effect.

vii. He submitted that the learned Trial Court has specified that the said order is passed without prejudice to the rights and contentions of the Defendants and therefore, it is open for the Respondents i.e. Defendants to take out appropriate proceeding/ application.

viii. He submitted that the Division Bench of Small Causes Court erred in interfering with the order of the learned Trial Court dated 20th August 2018 and the same is in violation of the principles laid down by a Full Bench of this Court in case of **Bharatiben Shah vs. Gracy Thomas & Ors.**[2] and when the said Revision before the Division Bench of the Small Causes Court was not maintainable.

ix. He relied on Section 55(2) of the Rent Act and submitted that as the agreement is not registered, contention of the tenant about the terms and conditions subject to which premises have been given to him by the landlord on leave and licence basis shall prevail unless proved otherwise. Therefore, he submitted that contention

2 2013 2 MLJ 25(FB):2013 SCC Online Bom 98

of the Applicant that the compensation amount is reduced to Rs.35,000/- has to be accepted as it is at this stage.

4. On the other hand, Mr. Mulye, learned counsel appearing for the Respondents submitted following points:-

i. Said Revision filed before the Division Bench of Small Causes Court was filed under Section 34(4) of the Rent Act and the said Revision is maintainable in view of the law laid down by this Court in the Full Bench decision in **Bharatiben Shah** (supra). He submitted that order of the learned Trial Court is not procedural order but the same substantially affects the rights of the Respondents to get licence fee at the rate of Rs.70,000/- per month excluding Municipal and other taxes and therefore, Revision is maintainable. To substantiate the said contention, he also relied on the decision of this Court in **Colaba Central Co-operative Consumer Wholesale and Retail Stores Ltd. alias Sahakar Bhandar vs. Kusumben Kantilal Shah & Ors** [3]**.**

ii. He submitted that as there is written leave and licence agreement acted upon by the licensor and the licensee, the Applicant i.e. licensee cannot raise the contention

3 2004 1 Bom C.R. 547:2003 SCC Online Bom 875

regarding terms of the leave and licence agreement contrary thereto even if, written leave and licence agreement is unregistered. He submitted that the presumption under Section 55 (2) of the Maharashtra Rent Control Act is adequately rebutted as Applicant was paying the licence fee at the rate of Rs.70,000/- per month excluding Municipal and other taxes.

iii. He submitted that the order passed by the learned Trial Court is an order passed under Order XVA i.e. the Bombay Amendment of C.P.C. and therefore, the same is revisable under Section 34(4) of the Rent Act.

iv. He submitted that the order of the learned Trial Court is not passed under Order XXXIX Rule 10 of the C.P.C., as sought to be contended by the Applicant-Plaintiff but the same is passed under Order XVA of the C.P.C. He submitted that the licence period was over in the month of September-2017 and thereafter Respondents have addressed a letter dated 12th December 2017 to the Applicant mentioning that, if the Applicant wanted to continue with the licence then, the Applicant would have to pay Rs.1,00,000/- per month till March-2018 towards the licence fee excluding Municipal and other taxes. He therefore, submitted that the said correspondence completely falsifies the case of the Applicant that the parties agreed to reduce the licence fee from Rs.70,000/- per month to Rs.35,000/- per month.

5. Before considering the rival contentions, it is necessary to set out certain factual aspects.:-

(A) The Applicant and late mother of Respondent No.1 for the first time entered into agreement of leave and licence on 21st January 1982 to install an advertisement hoarding at Kamat Building situated at Cadell Road, Prabhadevi, Mumbai-400034 for stipulated monthly compensation. The mother of Respondent No.1 passed away in 2011 and thereafter, the leave and licence agreement was executed from time to time between Applicant and Respondent No.1. Last such agreement is dated 1st October 2014 executed between the Applicant and Respondent No.1. The period of said agreement is from 1st October 2014 to 30th September 2017 i.e. for a period of 36 months and agreed monthly compensation was Rs.70,000/- per month excluding Municipal and other local or Government taxes.

(B) The relevant terms of the said agreement of leave and licence dated 1st October 2014 are set out hereinbelow for ready reference:

> "1. **The Licensor has agreed to allow the Licencees to Install a illuminated advertisement hoarding measuring 20' X 36' on portion of compound and dead wall, facing the Building of the Oriental Bank of Commerce**. The Licencees agree to install the said hoarding on, an Iron frame facing the Oriental Bank of Commerce building, at their entire risk cost, and expenses and that the Licencees agree to indemnify the Licensor and / or the Landlords from any damage, loss or injury that may be caused or occasioned to any party / person / tenant of Kamat building and whomsoever

from the said hoarding.

2. The **said Licence granted to the Licencees to install the said advertisement hoarding will be from 01.10.2014 to 30.09.2017 for a period of 36 (Thirty Six) months** provided the Licencees comply strictly with all the terms and conditions herein contained. The Licence may be renewed for further period of total thirty six months only from the date of licence if the Licencees respects and follows all the terms and conditions.

3. It is agreed between the parties that no demise or interest in the aforesaid compound or wall of the said building by way of lease has been intended to be created by virtue of this agreement or otherwise and the said compound and wall shall be deemed to be in the occupation of the Licensor only and the Licencees shall at no time claim any right, title of whatsoever nature save and except the

limited interest created under this agreement for entering the same from time to time in connection with the said hoarding in respect of the said portion of terrace or any part thereof.

4. **The Licencees have agreed to pay the Licensor monthly compensation at the rate of Rs.70,000=00 (Rupees Seventy Thousand Only) per month from 1st October 2014 to 30th September 2017 excluding Municipal and other local or Government taxes or Service Taxes for the Licence given to them to erect or install the said mentioned hoarding as aforesaid and for the period of thirty six months. The Licencees also agree to deposit without interest a sum of Rs.1,40,000/- (Rupees One Lakh Forty Thousand Only), being the amount meant to meet the cost of any damage caused to the Property and any balance of taxes remains to be paid.**"

(**Emphasis added**)

(C) It is the claim of Respondent No.1 that by letter dated 27th October 2017, Respondent No.1 asked the Applicant to remove the said hoarding by 31st December 2017 as the said leave and licence agreement dated 1st October 2014 has come to an end by the efflux of time on 30th September 2017. The said letter dated 27th October 2017 reads as under:-

> "By Agreement dated 1st October 2014 between me as Licenssor and you i.e. Mrs. Sudha Viren Vora as Licensee; I have allowed you to put up a illuminating Advertising Hoarding of 20'x36' on the dead wall of my Kamat Building 481, Veer Savarkar Marg, Prabhadevi, Mumbai-400025, facing to Oriental Bank of Commerce. **You are aware that the Agreement has come to an end on 30.9.2017. However, at the request of Mr. Bimal Viren Vora and considering our long association I allow you to keep the same hoarding till 31st December 2017 because of festive season. You have agreed to pay same remuneration of Rs.70,000/= till December 2017**.
>
> As regards no due certificate regarding this hoarding there is no dues pending till

31.03.2017. But **as you are displaying the advertisements on this hoarding till 31st December 2017, as per the clauses 13, 14 and 15 of our Agreement you have to pay municipal taxes till 31.03.2018**. It is therefore clear that since you are displaying the advertisements for extended period upto end of December 2017, you have to pay municipal taxes and any other Government dues or any other Government dues or any other taxes. If you do not pay the same dues, I will have to deduct the same from security deposit of Rs.1,40,000/= as per the clause 18 page of the Agreement.

You have to remove the iron structure on the same dead wall of my Kamat Building by the end of December 2017 and plaster the damaged wall with water proofing as per our Agreement. I am expecting your full co-operation in the matter as in the past."

(**Emphasis added**)

(D) There is reference to letter dated 8th December 2017 of the Applicant. However, Mr. Mehta, learned counsel appearing for the Applicant states that said letter is not available and the said letter is not annexed even to the plaint.

(E)However, there is no dispute that Respondents addressed further letter dated 12th December 2017 and the same was received by the Applicant. By the said letter the Respondents contended that the request to extend the leave and licence till March-2018 would be considered if remuneration was increased to Rs.1,00,000/- per month. The relevant portion of the said letter dated 12th December 2017 reads as under:-

"Madam,

Refer my **previous letter dated 27-10-2017 regarding** the termination of the compound hoarding of 20'x36' on the dead wall of Kamat Building on above mentioned address. **But Mr. Viren Vora had visited our house on 7-12-2017 to discuss about the same and he proposed that I further extend it till March 2018. Because of our long time relation to him I may consider his request but only if you increase the remuneration to 1,00,000/- per month till March 2018**. To inform you that now finally the structural repair will begin from mid January 2018, so if the hoarding is removed in the first week of January 2018. The plastering of the dead wall would have been more easy and better. Because of this hoarding, our as well as the that of the wall of 1st and 3rd floor flats get damp during rainy season and water collects on the floor as well as ceiling plaster falls off. **So, please inform me by a letter as soon you receive this letter that either you agree to increase the remuneration or terminate the agreement. So, I can inform the License department as well as to the Assessment and Tax Collection department of M.C.G.M of S/G ward accordingly**. Further you have not paid Rs.800/- yet, as per my letter dated 30-10-2017."

(**Emphasis added**)

(F) The Applicant by letter dated 19th December 2017 responded to above referred letter dated 12th December 2017 of the Respondents. In the said letter dated 19th December 2017 of the Applicant, various issues are raised.

However, as far as the leave and licence charges are concerned, following contentions are raised:-

> "We are shocked to read the contents of your above letter. **Mr. Viren Vora visited you to discuss about the reduction in size of the hoarding & obstruction from tenants and requested you to either permit him to increase the size of the hoarding as agreed or reduce the rent to Rs.35,000/-**.
>
> **After due discussion, you had requested him to continue the rent of Rs.70,000/- (Rupees Seventy Thousand Only) per month till 31/03/2018 and thereafter reduce the same to Rs.35,000/- (Rupees Thirty Five Thousand Only) per month from 01/04/18**.
>
> Mr. Viren Vora also apprised you of the situation where the tenants of the building are harassing him and stopping the work of display and there is no support from you. Mr. Viren Vora stated that he is incurring huge lossess for the same."
>
> (**Emphasis added**)

The Applicant has very strongly relied on letter dated 19th December 2017 as along with said letter cheque of Rs.46,892/- was sent towards MCGM charges as certain excess payment was made by the Respondents to MCGM on behalf of Applicant and refund of that amount was to be received by the

Respondents. The said cheque for Rs.46,892/- was admittedly encashed on 22nd December 2017.

(G) It is the case of the Respondents that they have not received said letter dated 19th December 2017 and have only received cheque of Rs.46,892/-. To substantiate the said contention, the Respondents have relied on their letter dated 27th December 2017 and 26th February 2018. The relevant portion of said letter dated 27th December 2017 reads as under:-

"Madam,

Refer my previous letter dated 12-12-2017 regarding the extended period of the compound hoarding of 20'x36' on the dead wall of Kamat Building till 31st Dec. 2017; on above mentioned address. But again Mr. Viren Vora has requested and he proposed that I further extend it will March 2018. Because of our long time friendly relation with him, I have further considered his request along with our decided remuneration per month till March 2018. But we have to write it on our Agreement papers with signatures. To inform you once again that you have no fixed the fire extinguisher yet; if any short circuit occurs in future, you will be fully responsible for any damage to the Kamat Building and any casualty to the tenants and other people. Further you have not paid Rs.800/- yet, as per my letter dated 30-10-2017, so please pay the amount along with January 2018 remuneration."

(**Emphasis added)**

The said letter dated 27th December 2017 makes reference to letter dated 12th December 2017 and mentions nothing about reply dated 19th December 2017.

(H) Thereafter, further letter dated 26th February 2018 of the Respondents addressed to the Appellant also makes reference to previous letters dated 27th October 2017, 2nd December 2017 and 27th December 2018 and the same reads as under:-

"Madam,

Refer my previous letter dated 27-10-2017 and subsequent letters dated 12th and 27th December 2018, you must be aware that our Agreement of a Hoarding of 20'x36' on dead wall of Kamat Building will expire after 31st March 2018. As per my last week discussion with Mr. Viren and Mr. Bimal Vora; it is decided mutually that the New Agreement would be made before third week of March 2018. If

it is not made than this letter stands as the Termination letter and assumed as end of Agreement between I, Dr. Aditya Kamat as a Licensor and you, Mrs. Sudha Viren Vora as a Licensee from 1st of April 2018. And you have to remove the above mentioned hoarding within first week of April 2018 and have to repair the damaged dead wall with proper waterproof plastering. So far you have not paid the MCGB Tax from 1st April 2017 till 31st March 2018 and any other payments so far not paid, then these amounts would be deducted from the deposit of Rs.1,40,000=00. Any refund of previous Terrace Hoarding if you have to get from MCGB, and they pay till then; would also be paid.

Thanking you."

(**Emphasis added**)

6. In the above background, on 8th March 2018 the Applicant filed L.D. Suit No.35 of 2018 in the Court of Small Causes at Mumbai under Section 41 of the Presidency Small Causes Court Act, 1882. In the said suit the Applicant has sought following declaration:-

"(a) That this Hon'ble court be pleased **to declare the Plaintiffs as irrevocable licensee of the Defendants in respect of the suit premises viz. an**

> **area in the compound adjoining the wall of the suit building admeasuring 16' x 5' along with hoarding structure of and display board thereon admeasuring 20ft x 36ft** in the suit property being Kamat Building, situated at Cadell Road, Prabhadevi, Mumbai 400025;"
>
> (Emphasis added)

7. In the said suit, the learned Trial Court by order dated 17th March 2018 granted ad-interim relief in the Applicant's favour restraining the Respondents from dispossessing the Applicant without following due process of law.

8. On 7th April 2018, the Applicant filed an application bearing Exhibit-13 in said L.D. Suit No.35 of 2018 *inter alia* praying that pending the hearing and final disposal of the suit, Plaintiff be permitted to deposit an amount of Rs.35,000/- p.m. from 1st March 2018 onwards in the Court and that Defendants be allowed to withdraw the said amount as and when deposited in the Court. The present Respondents filed reply dated 27th April 2018 to said Exhibit-13 application. In the said reply, the Respondents contented that if Plaintiff's application to deposit in Court only Rs.35,000/- per month is allowed, then same would amount to violation of terms and conditions of the leave

and licence agreement and that false dispute has been created by the Plaintiff in order to file false and frivolous case. It is submitted that if Plaintiff is not ordered to deposit Rs.70,000/- per month, then grave injustice and prejudice will be caused to the Respondents.

9. By order dated 20th August 2018 passed below Exhibit-13 in L.D. Suit No.35 of 2018, the learned Trial Court permitted the Plaintiff i.e. the present Applicant to deposit Rs.35,000/- per month towards arrears of rent/compensation from the period from 1st March 2018 till the disposal of the suit without prejudice to the rights and contentions of the Defendants. It is further directed that the Defendants are at liberty to withdraw the amount as and when deposited by the Plaintiff in the Court.

10. Said order dated 20th August 2018 is challenged by filing Revision Application No.5 of 2019 by the present Respondents i.e. original Plaintiffs. The learned Division Bench of Small Causes Court, Mumbai by order dated 12th March 2021 set aside the order dated 20th August 2018 passed by the learned Trial Court below Exhibit-13 in L.D. Suit No.35 of 2018 and in effect directed payment of Rs.70,000/- per month with effect

from 1st March 2018 till the disposal of the Suit. The Applicant i.e. original Plaintiff by present Civil Revision Application is challenging the said order dated 12th March 2021 of the Revisional Court.

11. On the basis of above factual position and in the light of the submissions of both the parties, the first question which is required to be dealt with is whether the Revision filed by the Respondents before the Division Bench of the Small Causes Court, Mumbai challenging order dated 20th August 2018 passed by the learned Trial Court was maintainable or not. Mr. Mehta, learned counsel appearing for the Applicant has vehemently submitted that said Revision itself is not maintainable. It is his submission that said order dated 20th August 2018 is passed under Order XXXIX Rule 10 of C.P.C. and does not in any manner prejudice the substantive rights of the Respondents either under the Rent Control Act or any other substantive law and therefore, the Revision is not maintainable. He submitted that the contention raised that the order passed by the learned Trial Court is passed under Order XVA of C.P.C. (Bombay Amendment) is totally incorrect. It is his submission

that for application of Order XVA of C.P.C., it is for the Respondents to file independent suit and in that suit the Respondents can take a stand that instead of Rs.35,000/- per month as contended by the Applicant, higher amount is liable to be paid by the Applicant to the Respondents. He heavily relied on paragraphs 81, 84 and 85 of the decision in **Bhartiben Shah** (supra).

12. On the other hand, it is the contention of Mr. Muley, learned counsel appearing for the Respondents that order passed below Exhibit-13 in L.D. Suit No.35 of 2018 was not order passed under Order XXXIX Rule 10 of C.P.C. but under Order XVA of C.P.C. (Bombay Amendment) and hence revisable under Section 34(4) of the Maharashtra Rent Control Act, 1999. Mr. Muley, learned counsel appearing for the Respondents also relied on the decision of **Bhartiben Shah** (supra) to substantiate his contention that the Revision filed before the Division Bench of Small Causes Court, Mumbai is maintainable.

13. As both the learned counsel appearing for the Applicant and Respondents have heavily relied on the said decision in

Bhartiben Shah (supra), it is necessary to note paragraph Nos.81 to 85 of the said decision. The said paragraphs read as follows:-

> "81. Having considered the aforesaid decisions and other judgments cited at the bar, we are of the view that the **scope and ambit of the revisional power under Section 34(4) of the Maharashtra Rent Control Act and under Section 29(3) of the Bombay Rent Act, though not as narrow as the scope of the revisional power under Section 115 of the CPC, at the same time it is not so wide as to enable the revisional Court to interfere with an order of the trial Court under the Rent Act, merely on the ground that it is not according to procedural law. The expression "according to law" has to be interpreted as "in accordance with the provisions of the Bombay Rent Act or any other substantive law." Merely because the revisional Court comes to the conclusion that an impugned order is not in conformity with the procedural requirements of CPC, would not be a ground for revision. As held by the Supreme Court, phrase "according to law", refers to the decision as a whole and is not equated to errors of law or facts simplicitor, it refers to the overall decision which must be according to law**, which it would not be if there is a miscarriage of

justice due to a mistake of law. **This would mean that the revisional Court would not be justified in interfering with a decision, unless there is miscarriage of justice resulting from a mistake of law**.

82. We have also noticed in a large number of cases that in writ petitions under Articles 227 of the Constitution challenging interlocutory orders passed by the trial Court, preliminary objection is very often raised about maintainability of alternative remedy of revision under Section 29(3) of the Bombay Rent Act, 1947 or under Section 34(4) of the Maharashtra Rent Control Act, 1999 and substantial judicial time and energy are required to be invested in deciding the question whether the alternate remedy of revision under the Rent Act is available before the appellate Bench of the Small Causes Court (or before the District Judge as the case may be). While it is certainly open to the learned single Judge of this Court hearing writ petitions under Articles 226/227 of the Constitution to decline to entertain a writ petition on the ground of availability of equally efficacious alternate remedy of revision under the Rent Act, there may be a large number of writ petitions, where the High Court may consider it appropriate to refuse to entertain the writ petitions, on the ground that the

impugned order is a mere procedural order, which does not cause any miscarriage of justice, without going into the question whether the substantive rights of the parties under the Rent Act are affected or not. It is well settled that the power of superintendence conferred by Article 227 of the Constitution should be exercised most sparingly only to keep subordinate courts and inferior tribunals within the bounds of their authority and not for correcting errors of fact or of law. A petition under Article 227, therefore, cannot be treated as an appeal or revision in the nature of extension of provision conferring such right.

83. The superior Court, whether exercising writ jurisdiction or revisional jurisdiction has always the discretion to decline to exercise such jurisdiction in appropriate cases on the ground that it will be open to the aggrieved party to make a grievance against the impugned order in the appeal against the final judgment, which may be passed by the trial Court.

FINAL ANSWERS

84. **In the result, therefore, our answer to question No.2 referred for our consideration is as under:-**

A revision application under Section 34(4) of the Maharashtra Rent Control Act, 1999 is not maintainable in respect of a procedural order

passed under the Code of Civil Procedure in a suit arising out of Maharashtra Rent Control Act, if such order does not affect the rights of parties under the Maharashtra Rent Control Act or any other substantive law. While an order to be revisable need not necessarily be an order for possession or fixation or recovery of rent, nevertheless, 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.

85. **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."

(**Emphasis added**)

Thus, what is held in **Bhartiben Shah** (supra) by the Full

Bench of this Court is that Revision under Section 34(4) of the Maharashtra Rent Control Act, 1999 is not maintainable, in respect of the procedural order passed under the C.P.C. in a suit arising out of Maharashtra Rent Control Act, if such an order does not affect the rights of the parties under the Maharashtra Rent Control Act or any other substantive law. It has been held that, an order to be revisable need not necessarily be an order for possession or fixation or recovery of rent, nevertheless, 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 C.P.C. or the Evidence Act. In paragraph 85, it has been held that 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 should not merely be a procedural order, not affecting the substantive rights of parties. In paragraph 84 of the Full Bench specifically held that an order for possession or fixation or recovery of rent is revisable. In the present case, in the Revision before the learned Division Bench of the Small Causes Court at Mumbai, challenge is to the fixation of rent/compensation at the rate of Rs.35,000/- per month from the period from 1st March 2018 till the disposal of the suit. Therefore, the said order is clearly revisable under Section 34(4) of the Maharashtra Rent Control Act as held by the Full Bench and therefore, the Revision which was filed by the present Respondents before the Division Bench of the Small Causes Court at Mumbai bearing Revision Application No.5 of 2019 was maintainable.

14. As far as the merits of the case are concerned, it is the contention of the Applicant that the order of the learned Trial Court has been passed without prejudice to the rights and contentions of the Defendants and therefore, it is the submission of Mr. Mehta, learned counsel appearing for the Applicant that the Defendants can file their own proceedings and can seek appropriate relief under Order XVA of C.P.C. (Bombay Amendment). It is his submission that the learned Trial Court has passed the impugned order by exercising power under Order XXXIX Rule 10 of the C.P.C. He submitted that under Order XXXIX Rule 10 of C.P.C., it is the admitted amount

which can be directed to be deposited. He submitted that therefore, scope of Order XXXIX Rule 10 cannot go beyond the admitted amount. He submitted that the application under Order XXXIX Rule 10 of the C.P.C. can be filed even by the Defendants. However, the scope of said provision is restricted only with respect to admitted amount. He submitted that as far as the present case is concerned, the admitted amount is Rs.35,000/- per month and therefore, the learned Trial Court by exercising power under Order XXXIX Rule 10 of C.P.C. has correctly passed the order directing deposit of Rs.35,000/- per month. He submitted that the learned Trial Court therefore, has clarified that the said order is passed without prejudice to the rights and contentions of the Defendants.

15. On the other hand, it is the submission of Mr. Muley, learned counsel appearing for the Respondents that the order is passed by, exercising power under Order XVA (Bombay Amendment) of the C.P.C. The said provision contemplates determination of the amount by the Court for directing deposit. He submitted that, although Order XVA (Bombay Amendment) of the C.P.C. specifies that in any suit by a lessor against a lessee

or a licensor against a licensee for eviction with or without the arrears of rent or licence fee and future mesne profits, the Defendants can be directed to deposit the amount as determined by the Court, the said power can be exercised even in a suit filed by the lessee or licensee against the lessor or licensor. To substantiate the said contention, he has relied on the decision of this Court in **Colaba Central Co-operative Consumer Wholesale and Retail Stores Ltd. alias Sahakar Bhandar vs. Kusumben Kantilal Shah & Ors(supra)**.[4]

16. As it is the contention of Mr. Mehta, learned counsel appearing for the Applicant that the impugned order of the learned Trial Court is passed under Order XXXIX Rule 10 of C.P.C., therefore, it is necessary to see the scope of said provision. The Division Bench of this Court in the decision of **Chandrakant Shankarrao Deshmukh vs. Haribhau Tukaramji Kathane & Ors (Nagpur Bench).**[5] has discussed the scope of Order XXXIX Rule 10 of C.P.C. The relevant discussion is in paragraphs 15, 18 and 19. The Division Bench has held that Order XXXIX Rule 10 of C.P.C. by itself does not impose any

4 2004 (1) Bom. C.R. 547
5 1982 SCC Online Bom 152: 1983 Mah. LJ 88

conditions or limitations upon the exercising all the powers. It has been held that to prevent the abuse of process of the Court and in order to subserve the ends of the justice, the powers conferred upon a Court under Order XXXIX Rule 10 of C.P.C. can be invoked by any party. It has been further held that once a party accepts that he is a tenant, he impliedly admits about the ownership of the property of the landlord and that money for use and occupation thereof is due to him. The tenant may dispute the nomenclature of that due which he is liable to pay. He may dispute the quantum. But the principle of the liability is not denied. It has been held that if the principle of liability is not denied, and if only the quantum is disputed, then it is obvious that the Court has the power to decide and direct the extent of the quantum which may be ordered to be deposited. A tenant can, therefore, always be directed, subject to the other circumstances and conditions, to deposit rent due or becoming due from him to his landlord during the pendency of a suit, call it either compensation for use and occupation or rent. Thus, if this is the nature of the power under Order XXXIX Rule 10 of C.P.C. then, it cannot be said that the impugned order is only a procedural order passed under the C.P.C. In view of the jurisdiction of the Court as envisaged under Order XXXIX Rule 10 of C.P.C., it has to be held that such order affects the rights of the parties under the Maharashtra Rent Control Act or any other substantive law and therefore, the Revision filed before the Revisional Court of Small Causes at Mumbai is maintainable.

17. The above ratio of decision of this Court in the matter of **Chandrakant Shankarrao Deshmukh** (supra) discussing the scope of Order XXXIX Rule 10 of C.P.C. is also relevant for deciding another aspect which has been raised by both the parties. It is the contention of Mr. Mehta, learned counsel appearing for the Applicant that as per Order XXXIX Rule 10 of the C.P.C. it is only admitted amount which can be directed to be deposited. The said Order XXXIX Rule 10 of C.P.C. reads as under:-

> "Order XXXIX Rule 10 CPC - Deposit of money, etc., in Court
>
> **Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it**

> **belongs or is due to another party,** the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court."
>
> (Emphasis added)

In this particular case, in fact, the Applicant i.e. the Plaintiff has taken out application bearing Exhibit-13 in L.D. Suit No.35 of 2018 seeking that Plaintiff be permitted to deposit the amount at the rate of Rs.35,000/- per month from 1st March 2018 onwards in the Court and the Defendants be allowed to withdraw the said amount as and when deposited in the Court. Thus, the Applicant has admitted liability to pay as held by the Division Bench of this Court in **Chandrakant Shankarrao Deshmukh** (supra). Once the liability to pay is not denied and in fact accepted and only if the quantum is disputed then, it is obvious that, the Court has power to decide and direct the extent of the quantum which may be ordered to be deposited. It has been held that the tenant can be directed to deposit rent due or becoming due from him to his landlord during the pendency of the suit. Therefore, the submission of Mr. Mehta that only admitted amount can be directed to be deposited under the provisions of Order XXXIX Rule 10 of CPC has no substance in view of the interpretation of Order XXXIX Rule 10 of CPC as made by the Division Bench of this Court in **Chandrakant Shankarrao Deshmukh** (supra).

18. Mr. Muley, learned counsel appearing for the Respondents submitted that the application filed by the Applicant can also be treated as the application under Order XVA (Bombay Amendment). The said order XVA (Bombay Amendment) reads as under:-

> "ORDER XVA
>
> **STRIKING OFF DEFENCE IN A SUIT BY A LESSOR** *
>
> [(1) In any suit by a lessor or a licensor against a lessee or a licensee, as the case may be, for his eviction with or without the arrears of rent or licence fee and future mesne profits from him, **the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent or licence fee claimed in the suit as the Court may direct. The defendant shall, unless otherwise directed, continue to deposit such amount till the decision of the suit.**
>
> In the event of any default in making the deposits, as aforesaid, the Court may subject to the provisions of

> sub-rule (2) strike off the defence.]
>
> (2) Before passing an order for striking off the defence, the Court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.
>
> *[(3) **The amount deposited under this rule shall be paid to the plaintiff lessor or licensor or his Advcoate and the receipt of such amount shall not have the effect or prejudicing the claim of the plaintiff and it shall not also be treated as a waiver of notice of termination**.
>
> *Explanation.*— The suit for eviction shall include suit for mandatory injunction seeking removal of licensee from the premises for the purpose of this rule.]" w.e.f.1-10-1983 and * 11-1-1990)"
>
> (**Emphasis added**)

Mr. Muley submitted that the principles which are set out in the decision of **Chandrakant Shankarrao Deshmukh** (supra) as regards Order XXXIX Rule 10 of C.P.C., are squarely applicable to the provisions of Order XVA (Bombay Amendment). There is substance in the contention of Mr. Mulye, learned counsel appearing for the Respondents.

19. However, as it is the contention of Mr. Mehta, learned Counsel appearing for the Applicant/Plaintiff that the said application is filed under the provisions of Order XXXIX Rule 10 of C.P.C. and as held by the Division Bench of this Court in **Chandrakant Shankarrao Deshmukh** (supra), any party to the suit can file application under Order XXXIX Rule 10 of the C.P.C. and the scope of Order XXXIX Rule 10 is analyzed in said decision as set out in detail hereinabove, it is not necessary to consider in detail the submissions raised by Mr. Muley, although there is substance in his submission. By applying the principles of **Chandrakant Shankarrao Deshmukh** (supra), it is clear that the said application bearing Exhibit 13 was filed under Order XXXIX, Rule 10 of Code of Civil Procedure. It can also be held that said application is filed by invoking Order XXXIX Rule 10 read with Order XV A (Bombay Amendment).

20. Therefore, now the question to be decided is the quantum of the amount which can be directed to be deposited by the Applicant during the pendency of the Suit. The learned Trial Court has directed deposit of Rs.35,000/- per month. As per order dated 20th August 2018, the learned Division Bench of

Small Causes Court, Mumbai set aside order of the learned Trial Court. The learned Division Bench of Small Causes Court held that the Plaintiff is required to pay the compensation at the rate of Rs.70,000/- per month. The relevant discussion of the learned Division Bench of Small Causes Court is found in paragraph 16 of the impugned order, which reads as under:-

> "16. **Perusal of the impugned order goes to show that the Learned Trial Judge has not assigned any reason except that there will be no prejudice caused to the defendants if the plaintiff is permitted to deposit the compensation at the rate of Rs.35,000/ per month. Learned Trial Judge has failed to exercise the discretion in sound manner because it was for the plaintiff to show that the apparent state of affairs flowing from the written agreement are not the real state of affairs. In fact, the plaintiff is required to pay the compensation at the rate of Rs.70,000/ without prejudice to its contention. However, the Learned Trial Judge overlooked the express terms and conditions of the agreement reduced into writing and accepted the case of the plaintiffs about so called oral agreement to reduce the amount of compensation**. The view taken by the Learned Trial Judge is against the well-established principle of law. Therefore, the impugned order does

> not appear to be passed according to law. Hence, point No.2 is answered in the negative. Consequently, the revision application deserves to be allowed with costs. Hence, in answer to point No.3, we pass the following order."

(**Emphasis added**)

21. The factual aspects which have been set out hereinabove clearly show that agreement of leave and licence dated 1st October 2014 gives right to the Applicant to use advertisement hoarding measuring 20'x36'. The licence period is from 1st October 2014 to 30th September 2017 and the agreed licence fee is at the rate of Rs.70,000/- per month from 1st October 2014 to 30th September 2017 excluding Municipal and other local or Government or service taxes for the said licence. By letter dated 27th October 2017, Respondent No.1 asked the Applicant to remove the said hoarding by 31st December 2017 as the said leave and licence agreement dated 1st October 2014 has come to an end by the efflux of time on 30th September 2017. Thereafter, another letter dated 12th December 2017 was sent by the Respondents wherein it has been specifically mentioned that request to extend the licence period upto March-2018 would be considered only if the licence fee is increased to

Rs.1,00,000/- per month. Thereafter, further letters are sent by the Respondents dated 27th December 2017 and 27th February 2018 relying on the earlier letter dated 12th December 2017. Therefore, it is clear that it is the consistent case of the Respondents in their correspondence that the Respondents wanted that licence fee should be increased to Rs.1,00,000/- per month and in any case, from the correspondence on record, there is nothing to indicate that in writing the Respondents agreed to reduce the compensation from Rs.70,000/- per month to Rs.35,00,000/- per month. It is the contention of Applicant that the said understanding is oral understanding. To substantiate the said contention, the Applicant has very heavily relied on letter dated 19th December 2017 of the Applicant. However, it is the case of the Respondents that they have never received said letter dated 19th December 2017 and they have never agreed for such reduction. The case of the Respondents is substantiated by their further letters dated 27th October 2017, 12th December 2017, 27th December 2017 and 26th February 2018. Although letters dated 27th December 2017 and 26th February 2018 are letters addressed by the Respondents to the Applicant, subsequent to the alleged letter dated 19th December 2017, however there is no reference to said letter in those letters. In fact, by said letters what is stated in letter dated 12th December 2017 was reiterated and reference is to said letter dated 12th December 2017. Therefore, there is grave doubt whether the Respondents have received letter dated 19th December 2017.

22. It is further significant to note that for the period from 1st October 2014 to 30th September 2017, licence fee for said advertisement hoarding was Rs.70,000/- per month. Therefore, in a city of Mumbai, it could not be imagined that licence fee with respect to hoarding which is at prime location in Mumbai will be reduced by 50% in 2018 as compared to what is charged in 2014. In any case, the material on record do not show that there is oral agreement between the parties to reduce the compensation to Rs.35,000/- per month from Rs.70,000/- per month. In fact, there is substance in the contention of the Respondents that they agreed for renewal only if the licence fee is increased to Rs.1,00,000/- per month.

23. Apart from the above discussion, this is not a case where

any interference in the impugned order of the Division Bench of Small Causes Court is required under revisional jurisdiction of this Court under Section 115 of the C.P.C. The Supreme Court in the case of **Sher Singh vs. Joint Director of Consolidation & Ors.**[6] has explained the scope of revision under Section 115 of Code of Civil Procedure, 1908. It is stated that Section 115 of the Code of Civil Procedure empowers High Court to satisfy itself on three matters:-

> (i) The order of the subordinate court is within its jurisdiction;
> (ii) The case is one in which the court ought to have exercised its jurisdiction and failed to do so and
> (iii) In exercising jurisdiction the Court has not acted illegally, that is, in breach of some provisions of law, or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision.

The Supreme Court after setting up above three criteria held that if the High Court is satisfied that there is no error in regard to any of the three above-mentioned matters, the High Court has no power to interfere merely because it differs from

6 (1978) 3 SCC 172

the conclusions of the subordinate Court on questions of law or fact.

24. Therefore, Revision Application is dismissed, however it is expressly clarified that all the observations in this order are made for the purpose of considering the legality and validity of the impugned order dated 12th March 2021.

25. There is one more aspect which is required to be clarified. Although the Division Bench of Small Causes Court has allowed the Revision Application and set aside the impugned order dated 20th August 2018 below Exhibit-13 in L.D. Suit No.35 of 2018 whereby Rs.35,000/- per month was directed to be deposited and although it has been specifically observed in paragraph 17 that Plaintiff is required to pay compensation at the rate of Rs.70,000/- per month, the same has remained to be included in the operative order. Therefore, operative order of the Division Bench of Small Causes Court is modified to that extent by directing that the Applicants to deposit Rs.70,000/- per month towards arrears of rent/compensation from the period from 1st March 2018 till the disposal of the suit without prejudice to the rights and contentions of both the parties. The

Applicant to deposit Rs.70,000/- per month w.e.f. 1st March 2018 till the disposal of the suit and such payment shall be made on or before 10th of every month till the disposal of the suit.

26. Mr. Mehta, learned counsel appearing for the Applicant states that Rs.35,000/- per month has already been deposited for certain period and thereafter it has not been deposited. The Applicant to deposit Rs.70,000/- per month w.e.f. 1st March 2018 and to clear the arrears on or before 31st October 2023. It is clarified that while clearing the arrears, the Applicant to take into account payment made at the rate of Rs.35,000/- per month.

27. The Respondents are allowed to withdraw the said amount of Rs.70,000/- per month without prejudice to the rights and contentions of both the parties.

28. Subject to above, the Civil Revision Application is dismissed however, with no order as to costs.

[MADHAV J. JAMDAR, J.]