

Arjun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.14445 OF 2025

HDFC Bank Limited

...Petitioner

Versus

Quest Co-Works Pvt. Ltd.

...Respondent

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Dr. Birendra Saraf, Senior Advocate a/w Nishant Vyas, Ishwar Nankani, Huzefa Khokhawala, Karan Parmar & Kartik Gupta i/b M/s. Nankani & Associates, for the Petitioner.

Mr. Zubin Behramkamdin, Senior Advocate a/w Ronak K. Parekh & Devanshi Jain i/b Arete Juris, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.
PRONOUNCED ON: 02 DECEMBER 2025
UPLOADED ON: 23 DECEMBER 2025

JUDGMENT:

1. Heard Dr. Birendra Saraf, learned Senior Counsel appearing for the Petitioner and Mr. Zubin Behramkamdin, learned Senior Counsel appearing for the Respondent.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the Order dated 17th September 2025 passed by learned Judge, Small Causes Court, Bandra, Mumbai, below Exhibit-12 in L.E. & C. Suit No.97 of 2024 (“**impugned Order**”).

3. By the impugned Order, the learned Judge has directed that till the Application bearing Exhibit-16 filed by the present Respondent i.e.

Defendant is decided, the Application bearing Exhibit-12 filed in said Suit by the Petitioner-Plaintiff will not be heard.

4. Dr. Birendra Saraf, learned Senior Counsel for the Petitioner *inter alia* raised the following contentions :-

i. Section 10 of the *Code of Civil Procedure, 1908* (“CPC”) is concerning stay of suit. The Supreme Court in the decision of ***Indian Bank v. Maharashtra State Coop. Marketing Federation Ltd.***¹, has held that in view of the object and nature of the provision and the fairly settled legal position with respect to passing of interlocutory orders, it has to be stated that the word “trial” in Section 10 is not used in its widest sense. Learned Senior Counsel therefore, submits that the learned Judge of the Small Causes Court has committed grave irregularity and illegality by passing the impugned Order by which Order on Exhibit-12 Application has been postponed till the decision of Exhibit-16 Application.

ii. Learned Senior Counsel submits that on 9th December 2024 in the said Suit which has been filed by the Petitioner in Small Causes Court, Mumbai being L.E. & C. Suit No.97 of 2024, two applications were filed. Exhibit-11 Application has been filed seeking that the present Respondent be restrained from creating third party rights and Exhibit-12 has been filed for payment of compensation. He submits that thereafter on 11th December 2024 the Respondent filed Exhibit-16

¹ (1998) 5 SCC 69

Application under Section 10 of CPC. In the meanwhile, the learned Trial Judge heard the arguments on Exhibit-11 and Exhibit-12 Applications. Both the parties have filed their written arguments on Exhibit-11 and Exhibit-12 applications and thereafter the learned Trial Judge reserved orders on Exhibit-11 and Exhibit-12 Applications on 26th March 2025. On 2nd April 2025, 7th April 2025, 11th April 2025 and 15th April 2025, the *Roznama* records that the matter is adjourned for orders on Exhibit-11 and Exhibit-12 Applications. On 17th April 2025, the learned Trial Court passed order on Exhibit-11 Application allowing the same. Thus, the Respondent has been restrained from creating third party rights. However, no order was passed with respect to the Exhibit-12 Application. He submits that, thereafter even after a considerable period, although hearing was completed on Exhibit-12 Application on 26th March 2025, no order was passed on Exhibit-12 Application and thereafter on 17th September 2025 the learned Trial Court passed the impugned Order directing that till arguments are heard on Exhibit-16 Application and the same is decided, further proceedings on Exhibit-12 Application is stayed.

iii. Learned Senior Counsel submits that even on merits as far as application filed under Section 10 of CPC is concerned, although it is true that the Suit being Commercial Suit (L) No.23175 of 2024 is pending before this Court, the High Court has no jurisdiction to deal

with the said Suit being L. E. & C. Suit No.97 of 2024 which has been filed in the Small Causes Court under Section 41 of the Presidency Small Cause Courts Act, 1882 which is having exclusive jurisdiction and therefore Section 10 has no application.

iv. Learned Senior Counsel, in any case, submits that in view of the law laid down by the Supreme Court in the decision of *Indian Bank* (supra), stay to further proceedings in Exhibit-12 Application till decision on Exhibit-16 application is totally illegal order passed by the learned Judge of the Small Causes Court.

5. On the other hand, Mr. Zubin Behramkamdin, learned Senior Counsel for the Respondent raised the following contentions :-

i. Learned Senior Counsel submits that the learned Small Causes Court has not passed any order on Exhibit-16 Application and even on Exhibit-12 Application. What the learned Small Causes Court has held that for avoiding complications Exhibit-16 Application will be decided first and till that time Exhibit-12 Application is kept pending. Learned Senior Counsel submits that nothing has been decided by the learned Trial Court and therefore no interference in the impugned Order is warranted.

ii. Learned Senior Counsel further submits that this Court should not interfere in the impugned Order under the jurisdiction of this Court under Article 227 of the Constitution of India.

iii. Learned Senior Counsel submits that there is an alternate remedy of revision under Sub-Section (4) of Section 42 of the *Presidency Small Cause Courts Act, 1882* (“**Presidency Act**”) to challenge the impugned Order and therefore the Writ Petition is not maintainable.

iv. Learned Senior Counsel further submits that, in any case, the impugned Order is a procedural order and therefore Writ Petition under Article 227 of the Constitution of India be not entertained.

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

i. On 10th December 2018, Housing Development Finance Corporation Ltd. i.e. HDFC Ltd. entered into a Leave and License Agreement with the Respondent - Quest Coworks Pvt. Ltd. regarding user of Unit Nos.501 to 517, admeasuring 51,064.20 sq. ft. built up area on the 5th Floor of Wing ‘A’ and Wing ‘B’ in the building known as ‘Technopolis Knowledge Park’, situated at Andheri (East), Mumbai - 400 093. As per the said Leave and License Agreement, the term of license was till 24th July 2024.

ii. On 11th December 2018, an Addendum to the said Agreement was executed by HDFC Ltd. and the Respondent. The Addendum extended the term of the said Agreement by an additional five years.

iii. On 1st March 2023, due to differences having arisen between HDFC Ltd. and the Respondent, an MOU was executed between the

Respondent and HDFC Ltd., recording that the said Agreement shall expire on 24th July 2024.

iv. In the meanwhile, under the orders passed by the NCLT in Company Petition Scheme No.243 of 2022, HDFC Ltd. amalgamated into HDFC Bank Ltd. i.e. Petitioner and as a result, all assets held by HDFC Ltd., including the subject premises, were vested with the Petitioner - HDFC Bank Ltd.

v. As the Respondent on or before 24th July 2024, failed to vacate and handover peaceful possession of the subject premises, the Petitioner filed L.E. & C. Suit No.97 of 2024 on 22nd November 2024 in the Court of Small Causes at Mumbai.

vi. However, in the meanwhile, on 23rd July 2024, the Respondent filed Commercial Suit (L) No.23175 of 2024 along with Interim Application (L) No.23260 of 2024 in the High Court. The contention raised in the Commercial Suit is that the Leave and License Agreement was valid and binding till 24th July 2029 and that the same should be specifically performed.

vii. Interim Application (L) No.23260 of 2024 seeking interim relief in said Commercial Suit (L) No.23175 of 2024 was dismissed by learned Single Judge by an Order dated 25th February 2025 and the Appeal challenging the same was also dismissed.

viii. In the meanwhile, the Petitioner in said L.E. & C. Suit No.97 of

2024 on 9th December 2024 filed two Applications, one bearing Exhibit-11 seeking that the Respondent be restrained from creating third party rights and Exhibit-12 Application seeking payment of enhanced compensation. Dr. Birendra Saraf, learned Senior Counsel for the Petitioner, submits that the said relief of enhanced compensation is sought as Clause No.8.2 (xii) of the Agreement of Leave and Licence specifically provides for the same. Said Clause No.8.2 (xii) reads as under :-

“8.2 Licensee’s Obligations :

...

*xii) In an event **the Licensee fails to vacate the Premises on the expiry or termination of this Agreement, the Licensor being willing and ready simultaneous to refund the Security Deposit in full as aforesaid, shall, without prejudice to any other rights that are available to the Licensor under this Agreement for delay in handing over vacant and peaceful physical possession of the Premises, it shall be entitled to the following:***

(a) a payment amounting to 2 times the then applicable License Fee for each day of delay for the first 30 (thirty days);

(b) a payment amounting to 3 times of the then applicable License fee for each day of delay from 31st day (Thirty One);”

(Emphasis added)

ix. Perusal of the record shows that the hearing before learned Judge of Small Causes Court on the said Exhibit-11 and Exhibit-12 Applications was completed on 26th March 2025. Even both the parties

have filed their written arguments. The learned Trial Court adjourned the matter for passing orders on Exhibit-11 and Exhibit-12 Applications on 2nd April 2025, 7th April 2025, 11th April 2025 and 15th April 2025. On 17th April 2025, the learned Trial Court passed the order on Exhibit-11 Application allowing the same. However, no order was passed on Exhibit-12 Application, and the matter was adjourned on number of dates.

x. In the meanwhile, the Respondent on 11th December 2024 filed an Application bearing Exhibit-16 in said L. E. & C. Suit No.92 of 2024 seeking stay of the said suit. The said Application reads as under :-

“APPLICATION FOR STAY OF SUIT”

1. *The Defendant is a Private Limited Company incorporated under the Companies Act, 2013. That it is stated that **the Commercial Suit No. 23175 of 2024 has been filed by the defendant before the Hon’ble High Court of Mumbai on 23/07/2024.** Therefore, by order dated 28/08/2024 the Hon’ble High Court has asked the plaintiff to file an affidavit in reply to the Interim Application. Please find attached Exhibit “A”.*
2. *It is pertinent to mention that **the Plaintiff herein has also filed an order VII Rule II application before the Hon’ble High Court in the Commercial Suit 23/10/2025. Thereby submitting to the jurisdiction of the Hon’ble High Court.***
3. *The Plaintiff is also appearing before the Hon’ble High Court and the same contention are raised then also by the defendant herein.*
4. *That it is submitted that **this Interim application and the L. E. & C. Suit No. 97 of 2024 (ST. 968 of 2024) is barred by section 10 of the CPC, 1908.***

4. *That the defendant therefore prays -*
- a. *That **the civil suit is dismissed** as the same as learned by jurisdiction.*
 - b. *That the **Interim application to the civil Suit be also dismissed.***
 - c. *For such other and further relief, are Hon'ble Court may deem fit and proper."*

(Emphasis added)

Although the title of the Application states that application for stay of the suit, the prayer sought is dismissal of the Suit and dismissal of the Interim Application. However, during hearing of this Writ Petition, Mr. Zubin Behramkamdin, learned Senior Counsel, has fairly admitted that the said Application is under Section 10 of CPC which is concerning the stay of the suit.

xi. Perusal of the record further shows that as order on Exhibit-12 Application has not been passed for considerable time, the Petitioner-Plaintiff filed *pursis* on 26th August 2025, *inter alia*, pointing out that Order on Exhibit-12 Application has been pending since 26th March 2025.

xii. On 8th September 2025, the Respondent-Defendant filed an Application bearing Exhibit-46 under Section 151 of CPC, *inter alia* seeking prayer that Exhibit-16 Application filed by the Respondent under Section 10 of CPC be taken up and heard prior to any further hearing of Exhibit-12 and that the Court shall refrain from passing any

order on Exhibit-12 until Exhibit-20 application and Exhibit-16 application have been finally decided or until High Court finally disposes of the Commercial Suit (L) No.23175 of 2024, whichever is earlier. The said prayer clause (c) reads as under :-

“c. That this Hon’ble Court may please be pleased to direct that Exhibit-16 i.e., the Defendant’s application under Section 10 CPC to be taken up and heard prior to any further hearing of Exhibit-12 and that this Hon’ble Court refrain from passing any order on Exhibit-12 until Exhibit-20 and Exhibit-16 have been finally decided or until the Hon’ble High Court finally disposes of Commercial Suit No. (L) 23175 of 2024, whichever is earlier;”

xiii. Although, the impugned Order dated 17th September 2025 records that the Order is passed on Exhibit-12 Application, however, it is clear that the said Order is passed on Exhibit-46 Application filed under Section 151 of CPC read with Section 10 of CPC. The operative part of the impugned reads as under :-

“आदेश

निशाणी क्रमांक १६ प्रमाणेच्या अर्जावर युक्तिवाद होऊन निर्णय होईपर्यंत निशाणी क्रमांक १२ प्रमाणेच्या अर्जाचे काम तहकूब ठेवण्यात येत आहे.”

English translation of the same reads as under :-

“ORDER

Until the arguments on the Application marked as Exhibit No. 16 are heard and order is passed thereon, the proceeding of the Application marked as Exhibit No. 12 is adjourned.”

7. Thus, in view of the above background it is necessary to consider the rival submissions.

8. At the outset, it is required to be noted that although this Court is not considering Exhibit-12 Application seeking prayer to stay the proceeding before the Small Causes Court, it is necessary to consider Section 10 of CPC, for the purpose of examining the legality and validity of the impugned Order dated 17th September 2025 by which it has been directed that till decision of Exhibit-16 Application, further proceeding of Exhibit-12 Application is stayed. Section 10 of CPC reads as under :-

“10. Stay of suit.—No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in [India] have jurisdiction to grant the relief claimed, or in any Court beyond the limits of [India] established or continued by [the Central Government] and having like jurisdiction, or before [the Supreme Court].

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in [India] from trying a suit founded on the same cause of action.”

(Emphasis added)

Thus, what is contemplated under Section 10 is stay of the trial.

9. It is one of the contention of Dr. Birendra Saraf, learned Senior Counsel, that for stay of Suit under Section 10, most significant aspect

will be the High Court, where Commercial Suit (L) No.23175 of 2024 is pending, has jurisdiction to deal with the Suit filed in the Small Causes Court under Section 41 of the *Presidency Small Cause Courts Act, 1882*. It is his submission that the High Court has no jurisdiction to deal with the Suit which has been filed under Section 41 of the Presidency Act. However, as Exhibit-12 Application filed under Section 10 of CPC seeking stay of the Suit filed in the Small Causes Court in view of the pendency of the Commercial Suit filed in the High Court is pending in the Small Causes Court, it is not necessary to consider the said submissions. However, what is important to note is that Section 10 of CPC, contemplates stay of the trial and not of applications seeking interim relief. The Supreme Court, in the decision of *Indian Bank* (supra), has considered this issue extensively. The relevant discussion is to be found in Paragraph Nos.7 and 8, which reads as under :-

“7. Section 10 of the Code prohibits the court from proceeding with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit provided other conditions mentioned in the section are also satisfied. The word “trial” is no doubt of a very wide import as pointed out by the High Court. In legal parlance it means a judicial examination and determination of the issue in civil or criminal court by a competent Tribunal. According to Webster's Comprehensive Dictionary, International Edition, it means the examination, before a tribunal having assigned jurisdiction, of the facts or law involved in an issue in order to determine that issue. According to Stroud's Judicial Dictionary (5th Edn.), a “trial” is the conclusion, by a competent tribunal, of questions in issue in legal proceedings, whether civil or criminal. Thus in

its widest sense it would include all the proceedings right from the stage of institution of a plaint in a civil case to the stage of final determination by a judgment and decree of the court. Whether the widest meaning should be given to the word “trial” or that it should be construed narrowly must necessarily depend upon the nature and object of the provision and the context in which it is used.

8. *Therefore, the word “trial” in Section 10 will have to be interpreted and construed keeping in mind the object and nature of that provision and the prohibition to “proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit”. The object of the prohibition contained in Section 10 is to prevent the courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matters in issue. The provision is in the nature of a rule of procedure and does not affect the jurisdiction of the court to entertain and deal with the latter suit nor does it create any substantive right in the matters. It is not a bar to the institution of a suit. It has been construed by the courts as not a bar to the passing of interlocutory orders such as an order for consolidation of the latter suit with the earlier suit, or appointment of a receiver or an injunction or attachment before judgment. The course of action which the court has to follow according to Section 10 is not to proceed with the “trial” of the suit but that does not mean that it cannot deal with the subsequent suit any more or for any other purpose. In view of the object and nature of the provision and the fairly settled legal position with respect to passing of interlocutory orders it has to be stated that the word “trial” in Section 10 is not used in its widest sense.”*

(Emphasis added)

Thus, what the Supreme Court has held that the word “trial” in Section 10 will have to be interpreted and construed keeping in mind the object and nature of that provision and the prohibition to “proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit”. It has been further

held by the Supreme Court that the object of the prohibition contained in Section 10 is to prevent the courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matters in issue. It has been further held by the Supreme Court that the provision is in the nature of a rule of procedure and does not affect the jurisdiction of the court to entertain and deal with the latter suit nor does it create any substantive right in the matters. It has been further held by the Supreme Court that it is not a bar to the institution of a suit. It has been construed by the courts as not a bar to the passing of interlocutory orders such as an order for consolidation of the latter suit with the earlier suit, or appointment of a receiver or an injunction or attachment before judgment. It has been held that the course of action which the court has to follow according to Section 10 is not to proceed with the “trial” of the suit but that does not mean that it cannot deal with the subsequent suit any more or for any other purpose. It has been held that in view of the object and nature of the provision and the fairly settled legal position with respect to passing of interlocutory orders it has to be stated that the word “trial” in Section 10 is not used in its widest sense.

10. The impugned Order is required to be examined on the touchstone of the above legal position. By the impugned Order, the learned Judge, Small Causes Court, has stayed the proceeding of an

Application bearing Exhibit-12 until Exhibit-16 Application filed under Section 10 of CPC seeking stay of Suit is heard and decided. The reasons given by the learned Judge are to be found in Paragraph No.8, which reads as under:

“८. निशाणी क्रमांक १२ हा अंतरिम नुकसान भरपाई, वगैरे मिळण्यासाठीचा अर्ज आहे. या दाव्यातील पक्षकार यांचे दरम्यान याच वादविषय संबंधीचा कमर्शियल सूट क्रमांक २३१७५/२०२४ हा मा. ना. उच्च न्यायालय, मुंबई यांचेकडे प्रलंबित आहे. त्या अनुषंगाने या दाव्याचे कामकाज स्थगित करावे किंवा हा दावा चालू शकत नाही या संबंधीचा प्रतिवादी यांचा निशाणी क्रमांक १६ प्रमाणेचा अर्ज अद्याप सुनावणीसाठी प्रलंबित आहे. त्यामुळे माझ्या मते निशाणी क्रमांक १६ प्रमाणेच्या अर्जावर युक्तिवाद होवून योग्य न्यायनिर्णय होईपर्यंत हा अर्ज प्रलंबित ठेवला तर वादी यांचे कोणतेही नुकसान होणार नाही सुलभ न्यायदानाच्या दृष्टीने आणि प्रकरणात गुंतागुंत निर्माण होवू नये यासाठी प्रस्तुत अर्ज आदेशासाठी प्रलंबित ठेवणे योग्य राहील. निशाणी क्रमांक १६ प्रमाणे अर्ज प्रलंबित ठेवून केवळ अगोदर युक्तिवाद ऐकला आहे म्हणून निशाणी क्रमांक १२ प्रमाणेच्या अर्जावर आदेश दिला तर गोंधळाची परिस्थिती निर्माण होवू शकते....”

(Emphasis added)

English translation of the same is as under :-

“8. The Application at Exhibit No. 12 is an application for seeking an interim damages etc.. A Commercial Suit No. 23175/2024 on the very subject matter, filed between the parties to this suit is pending before the Hon'ble Bombay High Court, Mumbai. In this connection, the Defendant's Application in this regard at Exhibit No. 16 wherein it has been prayed that the proceeding of the said suit may be stayed or the said Suit is not maintainable, is still pending for hearing. Therefore, according to me, if this Application is kept pending till the time the arguments on the Application at Exhibit No. 16 are heard and appropriate judgement thereon is passed, the Plaintiff would not suffer any loss. Hence, from the view point of the straightforward administration of justice and also with a view that no complication is created in the matter, it would be proper to keep the said application pending for passing orders thereon. If an Order on the Application at Exhibit No. 12 is passed by keeping the Application at Exhibit No. 16 pending merely because the arguments thereon were already heard, a situation like confusion might arise....”

11. It is an admitted position that said Exhibit-16 Application has been filed under Section 10 of CPC seeking stay of Small Cause Court suit till the suit filed in the Bombay High Court is disposed of. As noted herein above, Exhibit-12 Application has been filed seeking interim prayer of additional compensation in view of the provisions as contained in the Leave and License Agreement. It is an admitted position that the Respondent is occupying the property by making payment as specified in Leave and License agreement but not the additional compensation. It is the contention of the Petitioner that the agreed period of Leave and License Agreement is over and the Respondent is continuing occupation without any authority and therefore the Respondent is liable to pay double and triple the charges of compensation in view of Clause No. 8.2(xii) of the Agreement of Leave and License. This Court is not required to consider the merits of Exhibit-12 Application, however, the issue involved in Exhibit-12 Application is set out, as this Court is exercising power under Article 227 of the Constitution of India and particularly as the submission is made by learned Senior Counsel appearing for the Respondent that no interference in the impugned order is warranted under Article 227 of the Constitution of India. Thus, as per the settled legal position stay of suit under Section 10 do not contemplate that the Court cannot even decide the interim applications. The impugned Order passed is contrary

to the law laid down by the Supreme Court in **Indian Bank** (supra). Thus, there is no impediment in deciding Exhibit-12 application or any application seeking interim relief by the learned Judge of the Small Causes Court even if said suit is stayed under Section 10 of CPC. Thus, in the facts and circumstances, it is necessary to interfere in the impugned Order passed under Article 227 of the Constitution of India.

12. It is also submitted by learned Senior Counsel of the Respondent that an alternate remedy of Revision is available before the Division Bench of the Small Causes Court. The said contention is raised in view of the provision of Section 42 of the Presidency Act. Said Section 42 reads as under :-

“42. Appeal.—(1) An appeal shall lie from a decree or order made by the Small Cause Court exercising jurisdiction under section 41, to a bench of two Judges of the said Court, which shall not include the Judge who made such decree or order:

Provided that, no such appeal shall lie from a decree or order made in any suit or proceeding in respect of which no appeal lies under the Code of Civil Procedure, 1908 (V of 1908).

(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 section 4, 5 and 12 of the Limitation act, 1963 (XXX of VI of 1963), shall, so far as may be apply.

(4) Where no appeal lies under sub-section from a decree or order in any suit or proceeding, the bench of two Judges specified in sub-section (1) may, for the purpose of satisfying

itself that the decree or order was according to law, call for the case in which such decree or order was made and pass such order with respect thereto as it thinks fit.”

(Emphasis added)

13. Learned Senior Counsel for the Respondent fairly admitted that Appeal under Sub-Section (1) of Section 42 is not available. However, he states that, in view of Sub-Section (4) of Section 42, Revision is maintainable. In view of the said contention raised by learned Senior Counsel for the Respondent, it is necessary to set out the answers given by the Full Bench of this Court in the case of *Bhartiben Shah v. Gracy Thomas*²:-

“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*

2 2013 SCC OnLine Bom 98

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.

86. Following are instances of revisable orders.

- (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 Civil Procedure Code.*
- (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.

87. Following are instances of orders which would not be revisable orders:—

- (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 Civil Procedure Code.*

This list is also illustrative and not exhaustive.

88. *As regards question No.1 about scope and ambit of power of revision under section 34(4) of the Maharashtra Rent Control Act, 1999, our answer is that after the revisional Court is satisfied about maintainability of the revision application, the revisional Court will consider whether the impugned order is according to law. However, “according to law” refers to the order as a whole, and is not to be equated to errors of law or of fact simpliciter. It refers to the overall order, which must be according to law, which it would not be, if there is a miscarriage of justice due to mistake of law. Hence, mere breach of, or nonconformity with, the provisions of Code of Civil Procedure or the Evidence Act or similar other procedural laws, will not be a ground for interfering with the impugned order of the trial Court. The revisional powers are intended to be exercised with a view to subserve and not to defeat the ends of justice. As a general rule where substantial justice has been done by order of the lower Court, the revisional Court will not interfere with it notwithstanding the fact that the reasons for the order are not correct or the order is improper or irregular.”*

(Emphasis added)

14. Although the said Judgment is concerning Section 34(4) of the *Maharashtra Rent Control Act, 1999*, both the learned Senior Counsel, agreed that Section 42(4) of the *Presidency Small Cause Courts Act, 1882*, is a similar provision. In view of the above discussion, it is

required to be noted that learned Senior Counsel for the Respondent has submitted that the Petition under Article 227 of the Constitution of India is not maintainable, as the order passed is merely a procedural order. Thus, on the basis of conclusions recorded by the Full Bench of this Court in the case of ***Bhartiben Shah*** (supra), it is clear that Revision Application is not maintainable. As what is sought to be done by the impugned Order is that it has been directed that Exhibit-12 Application will be decided after the decision of Exhibit-16 Application. However, the Writ Petition is required to be entertained as the impugned Order passed is contrary to the law laid down by the Supreme Court in the case of ***Indian Bank*** (supra).

15. There is substance in the contention raised by Dr. Birendra Saraf, learned Senior Counsel that even assuming that Exhibit-16 Application filed by the Respondent is allowed and even said L.E. & C. Suit No.97 of 2024 is stayed, then also there is no impediment in deciding Exhibit-12 Application.

16. It is an admitted position that the hearing of Exhibit-12 Application has been completed on 26th March 2025 and the order is reserved on Exhibit-12 Application since then.

17. Thus, in the facts and circumstances and in view of the law laid down by the Supreme Court in the case of ***Indian Bank*** (supra), the impugned Order is quashed and set aside.

18. The Writ Petition is allowed in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]