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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 356 OF 2025
(FOR AMENDMENT)
WITH
WRIT PETITION NO. 9266 OF 2024

The Bombay Swadeshi Stores Ltd, MumbaiApplicant/Petitioner
V/s.
Aditya Hotels Pvt Ltd. Pune & Ors.Respondents

Mr. P. K. Dhakephalkar, Senior Avocate (through V.C) a/w. Mr. Jagdish G. Aradwad (Reddy) for the Applicant/Petitioner.
Mr. Y.S. Jahagirdar, Senior Advocate a/w. Mr. Shailedra S. Kanetkar for Respondent No.1.

CORAM : M.M. SATHAYE, J.

DATE : 9th JANUARY, 2026

P.C. :

1. Heard learned Senior Advocates for the parties.
2. This application is taken out by Writ Petitioner in pending writ petition, which is directed to be heard finally. The Application seeks amendment of the memo of petition, to incorporate challenge to the constitutional validity of Sections 2(2) and Section 58(c) of Maharashtra Rent Control Act, 1999 (for short, 'MRC Act') to the extent of its applicability for Pune Cantonment area and Part-IV of the Schedule-I of the MRC Act.
3. Mr. Dhakephalkar, learned senior Advocate for the Applicant, submitted that in the plaint, the Respondent No.1/Plaintiff has taken both stands - that MRC Act does not apply as well as that if the Court

comes to the conclusion that MRC Act applies, then the grounds of *bona fide* requirement and default are pressed on merits. He submits that according to the Petitioner, the view taken by the learned Single Judge of this Court (Coram : R.G. Ketkar, J) in **Shireen Dady Adenwalla Vs. Yasmin Dinyar Ilavia [2018 SCC OnLine Bom 14680]** does not lay down the correct position of law and he would canvas his submission that provisions of MRC Act do not apply to the suit premises, being situated in cantonment area. He submitted that if the amendment regarding constitutional challenge is allowed, which amendment according to Mr. Dhakephalkar, this Court is competent to consider, then the the petition will have to be considered by Division Bench of this Court. He submits that there is no bar for this Court to consider such amendment, in as much as, earlier on similar submissions, even Civil Revision Application has been directed to be heard alongwith petitions before Division Bench. He relies on order dated 21.11.2017 in CRA/276/2014 in support of said submission.

4. On the other hand, Mr. Jahagirdar learned Senior Advocate for Respondent No.1, submitted that so far as the argument that 'MRC Act would not apply and the view taken by learned Single Judge of this Court in **Shireen Dady Adenwalla (supra)** does not reflect correct possession of law' is concerned, it being legal submission can always be considered at the time of hearing of the writ petition without prejudice to his rights and contention and for that purpose, amendment is not necessary. He also submitted that even on merits, in the written statement filed by the Petitioner there is a specific admission about applicability of the provisions of MRC Act to Pune

Cantonment Area.

5. I have considered rival submissions.

6. At the outset it is material to note that the jurisdiction as invoked in this writ petition under Article 227 of the Constitution of India is supervisory in nature and the same is limited to testing the legality of the impugned judgment and decree, which is passed by the Rent Court under the provisions of MRC Act. Assuming that Respondent No.1/Plaintiff pleaded that the MRC Act does not apply and further assuming invocation of the jurisdiction of the Civil Court (not Rent Court) in the suit, even then, the consideration in the writ petition would still remain as consideration by either Civil Court or Rent Court and not a jurisdiction under which constitutional validity can be gone into.

7. In that view of the matter, I am not inclined to permit the amendment challenging constitutional validity as raised. Needless to mention that the Petitioner is at liberty to challenge the constitutional validity of the said sections independently, if so advised.

8. Considering the fact that both the learned counsel for the parties are *ad-idem* on the position that the argument about applicability of the MRC Act to the suit premises located in the Contentment Area and the correctness of the view taken by the learned Single Judge of this Court in **Shireen Dady Adenwalla (supra)** can be considered at the time of hearing of the writ petition even without formal averments for grounds in that behalf, it is not necessary to consider the other proposed amendment.

9. In that view of the matter, **the interim application is disposed of** by clarifying that the argument about applicability of MRC Act to the suit premises in the light of argument that view taken in **Shireen Dady Adenwalla (supra)** is not correct, is kept open to be considered at the time of hearing of the writ petition.

10. Since this Court has not considered the writ petition on merits and what was under consideration was only the proposed amendment, it is clarified that all contentions of all parties on merits of the writ petition, are kept open.

(M.M. SATHAYE, J.)