IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 493 OF 2024

Vishwanath Sakharam Churi And Ors. **... Applicants**

Versus

Vijay Sakharam Churi And Anr. **... Respondents**

Mr. Prashant G. Karande *a/w Mr. Sudam S. Patil i/b Praful S. Pawar for the Applicants*

Mr. Hasan Sayed *a/w Mr. R. A. Shaikh i/b Ms. Swati Marg for the Respondent No.1.*

CORAM : SANDEEP V. MARNE, J.

DATE : 23 SEPTEMBER 2024.

ORAL JUDGMENT :-

1) This Revisionary jurisdiction of this Court under Section 115 of the Code of Civil Procedure, 1908 (**Code**) is invoked by the Applicants for setting up a challenge to order dated 21 August 2024 passed by the learned Judge of the Small Causes Court, Mumbai rejecting the application filed by the Applicants seeking rejection of the Plaint under provisions of Order VII Rule 11 (d) of the.

2) Mr. Sayed, the learned counsel appearing for Respondent No.1/Plaintiff raises of preliminary objection about maintainability of the present application relying on judgment of this Court in ***Jasraj Lalaji Oswal Vs. Raziya Mehboob Patel***[1]. He would submit that Applicants have an alternate and equally efficacious remedy of filing of Revision under provisions of sub-Section (4) of Section 34 of the Maharashtra Rent Control Act, 1999 (**MRC Act**).

3) Mr. Karande, the learned counsel appearing for Petitioner seeks to distinguish the judgment of this Court in ***Jasraj Lalaji Oswal*** (supra) submitting that the judgment is rendered after recording a finding that the application for rejection of Plaint, if allowed in the facts of that case, would have affected substantial rights of the parties therein. He would submit that in the present case, even if the application filed under Order VII Rule 11 (d) was to be allowed, the same would not affect substantive rights of Plaintiff. He would place reliance on judgment of Division Bench of this Court in ***Vishankumari Udaysingh Varma Thr. Her Dauther And Constituted Attorney Manju U. Varma & Anr. Vs. Vijaysingh Rajasingh Varma & Ors***[2] in support of his contention that a suit challenging compromise decree is not maintainable and the proper remedy for aggrieved party is to file an application seeking recall of the order effecting compromise decree. Mr. Karande would accordingly submit that since the Plaintiff would still be left with a proper remedy of filing an application before the same learned Judge seeking recall of compromise decree, it cannot be stated that his substantive rights

1 2020 (1) ABR 782
2 2016 (4) Mh. L.J. 805

would be affected, if the application under Order VII Rule 11 (d) was to be allowed.

4) In ***Jasraj Lalaji Oswal*** (supra), Single Judge of this Court has taken into consideration the law expounded by full Bench of this Court in ***Bhartiben Shah Vs. Smt. Gracy Thomas & Ors***[3]**.** The Full Bench has held in Paragraph 84 to 88 as under:

> **"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.
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> **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.
>
> **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 CPC.
> (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.

3 2013 AIR CC 1660 (BOM)

(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 CPC.

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 Kambli / abs 74 of 75 WP-9562-2010 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 non-conformity 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."

5) After considering the law enunciated by Full Bench of this Court in ***Bhartiben Shah*** (supra), Single Judge of this Court in ***Jasraj Lalaji Oswal*** (supra) held in Paragraph 37 and 43 to 55 as under:

"**37.** After quoting a catena of Supreme Court cases, Bhartben Shah has observed that, going by wide language, if the word "order" is interpreted liberally to include procedural orders, which do not decide the parties' rights and liabilities, such wide interpretation results in delay and expense, causing immense hardship to one party, or the other, or both. The proceedings, then, become interminable. So it has held that revisions under the Rent Acts would be maintainable only against those orders that affect the substantive rights or liabilities of parties, that is, the rights or liabilities under the Rent Act or any other substantive law, but not under a procedural law.

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43. Finally, after an exhaustive analysis of the case law and the statutory provisions, Bhartiben Shah has held:

> [F]or 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."

44. In the light of the above principle, we may now consider the case holding ratio of Aspi R. Setha v. Sunermal M. Bafna. It is somewhat analogous on facts.

45. In a pending suit for possession under the Bombay Rent Act, the petitioner took out a notice for a declaration that the suit had abated because of the death of the sole defendant and prayed for stay of further proceeding. The Small Causes Court dismissed the said interim notice and hence the petitioner preferred civil revision application under Section 115 of the CPC.

46. In the revision, the learned Single Judge has observed that had the application been allowed, the suit would have been dismissed as having been abated, and that order would have been final-materially affecting the rights of the parties. So Aspi R. Setha has reasoned that such an order on application for declaring the suit as abated affects cannot be considered as mere procedural order. Hence, the revision application under Section 29(3) under the Bombay Rent Act would be maintainable before the appellate Bench of the Small Causes.

47. In fact, Bhartiben Shah has noticed that many revisions were filed Articles 227 of the Constitution, challenging interlocutory orders passed by the trial Courts. According to it, very often preliminary objection is raised about the maintainability of the revision under Articles 227, in the face of Section 34(4) of the Rent Act. Bhartiben Shah

has bemoaned that substantial judicial time and energy are lost in deciding whether the alternative remedy of revision under the Rent Act is Judgment, dated 19 December 2003, in Civil Revision Application No. 489 of 2003 available before the appellate Bench of the Small Causes Court or before the District Judge.

48. First, Bhartiben Shah has held that the power of superintendence conferred on the High Court under Articles 227 of the Constitution should be exercised most sparingly. It should be used only to keep subordinate courts and inferior tribunals within the bounds of their authority and "not for correcting errors of fact or of law."

49. Second, Bhartiben Shah has acknowledged that an order to be revisable need not necessarily be an order for possession or fixation or recovery of rent. But 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.

50. Finally, Bhartiben Shah has held that 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.

51. Illustratively, Bhartiben Shah has enumerated the revisable orders under Section 34(4) of the Rent Act:

> (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 CPC.
>
> (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.

52. Bhartiben Shah has, equally illustratively, listed out the instances not attracting revisional jurisdiction:

> (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 CPC.

53. Let us remember that Bhartiben Shah has approved Hemchand's dictum that interlocutory and other orders which the Special Court can pass in entertaining, trying, and deciding matters within its exclusive jurisdiction "which are appealable [or revisable] under the provisions of the Code of Civil Procedure will be appealable [or revisable] under Section 29 of the Rent Act [or Section 34 of the New Act]."

54. Let us also remember that Bhartiben Shah has approved Aspi R. Setha V. Sunermal M. Bafna. In the context of abatement, the Court has observed that had the application been allowed, the suit would have been dismissed as having been abated. And that order would have materially affected the parties' rights.

55. Here, too, as is the case with Aspi R. Setha, had the defendant's application been allowed, it would have resulted in the rejection of the plaint and the dismissal of the suit. Thus, it would have affected the parties' rights. So, we cannot say an application under Order 7, Rule 11 of CPC, even if dismissed, is a mere procedural step. The application decided either way, it substantially affects the parties' rights one way or the other. So it is eminently revisable. And that revision must be under Section 34 (4) of the Maharashtra Rent Control Act, 1999."

Thus, in ***Jasraj Lalaji Oswal*** (supra), this Court has held that if application for rejection of Plaint under Order VII Rule 11 of the Code was to be allowed, it would have resulted in rejection of Plaint and dismissal of the suit and would have affected substantive rights of the

parties. Therefore, this Court held that the proper remedy for the party aggrieved by an order rejecting application for rejection of Plaint under Order VII Rule 11 of the Code is to file a Revision under provisions of Section 34(4) of the MRC Act.

6) I am not impressed by the submissions of Mr. Karande that in the facts of the present case, the law expounded by this Court in ***Jasraj Lalaji Oswal*** (supra), cannot be applied. What Mr. Karande contends is that the present case involves peculiar facts, where even upon rejection of the Plaint on account of the order passed under Order VII Rule 11 of the Code, the Plaintiff would still be left with a remedy of filing an application before the same learned Judge for recall of the compromise decree by which he is aggrieved. In my view, this is something which touches upon the merits of the application filed by Petitioner seeking rejection of the Plaint under Order VII Rule 11 of the Code. It is too premature and speculative for Defendants to presume that the Plaintiff would follow the course of action of filing application for recall of compromise decree, if application for rejection of Plaint is allowed. Plaintiff can also file a substantive appeal before the Appellate Court if he carries a belief that the suit is maintainable. If Plaintiff can file substantive appeal challenging the decree resulting from rejection of Plaint, I do not see any reason why Defendants cannot file revision before the Appellate Bench upon rejection of his application for rejection of Plaint.

7) In my view, if application under Order VII Rule 11 of the Code is allowed the same results in dismissal of the suit and passing of

a decree. The remedy for the Plaintiff in such a case is to file a substantive appeal against such decree. On the other hand, if the application for rejection of Plaint under Order VII Rule 11 of the Code is rejected, the same does not result in the decree as the suit continues. However, as held by the single Judge of this Court in ***Jasraj Lalaji Oswal*** (supra), the Defendants in such case will have to exercise a remedy of filing a Revision under Section 34(4) of the MRC Act. Merely because in the peculiar facts of the present case, where the Plaintiff would still have a remedy of filing an application for recall of compromised decree, it does not mean that an Revision Application directly filed before this Court under Section 155 of the Code, without exercising the alternate remedy of filing a Revision before Appellate Bench of the Small Causes Court under Section 34(4) of the MRC Act, can be entertained. Therefore revision of the impugned order needs to be sought before Appellate Bench of the Small Causes Court under Section 34(4) of the MRC Act and not directly before this Court under Section 115 of the Code.

8) Accordingly, the Revision Application is **dismissed** leaving open the remedy for the Revision Applicants to file a Revision before Appellate Bench of the Small Causes Court. All questions raised in the Application are expressly kept open.

[SANDEEP V. MARNE, J.]