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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.954 OF 2014

M/s. Bata India Limited ..Applicant.

V/s.

Trustees of Parsi Panchayat Funds and Ors. ..Respondents.

Mr.PS.Dani, Senior Advocate with Mr.Umesh Mankapure for the applicant.

Mr.Agnel Carneiro with Vaibhav Shah i/b. Mulla & Mulla & C.B. & C for the respondent.

CORAM : N.M. JAMDAR, J.

DATED : 6TH DECEMBER, 2016

ORAL ORDER

By this Revision Application, the Applicant has challenged the judgments and orders dated 23 October, 2012 passed by the Small Cause Court, Mumbai in T.E. Suit No.159/201 of 2008 and by the Appellate Bench in 2b(i) Appeal No.88/2014 dated 30 July, 2014 decreeing the suit filed by Respondent and directing the Applicant to hand over the possession of the suit premises i.e. shop premises.

2. Admittedly, the applicant is a company having paid-up capital of more than one crore and, therefore, the Applicant does

not have protection under the Maharashtra Rent Control Act, 1999. The learned counsel for the Applicant, in view of this position, has advanced three submissions. Firstly, that the notice terminating the tenancy was not duly served. Secondly, that the suit was instituted before the expiry of the notice period and the Appellate Bench has incorrectly recorded the date of filing of the suit and thirdly, it is submitted that the suit has proceeded ex-parte as evidence of the Applicant was closed and, therefore, the Appellate Bench ought to have remanded the proceedings to the trial Court.

3. As far as the service of notice is concerned, except for the bald statement in written statement that notice was not served nothing further is stated by the applicant. The learned Small Cause Court Judge has examined receipt of notice which was sent at the registered address and both the Courts after examining the acknowledgment of this notice have rendered a finding of fact that the notice was duly served. As far point regard the suit being premature, there is apparently an error in the judgment of the Appellate Bench when the Appellate Bench has recorded that the suit is filed on 16 April, 2013. The learned counsel for the respondent has drawn my attention to the title of the Trial Court's order wherein it is stated that the suit was registered on 22 July, 2008 and presented on 24 July, 2008. The original presentation form to that effect has been placed on record. A copy of the same is taken on record. Therefore, even assuming that there is an error in the judgment of the Appellate Bench, such error would not

enure to the benefit of the applicant. As far as the contention that proceedings ought to have been remanded, the learned Small Cause Court Judge has taken note of the conduct of the Applicant when various opportunities were given to the Applicant to appear in the suit and contest the same. After giving more than adequate opportunities, the evidence of the Plaintiff was closed and there is nothing to show that the Applicant was diligent. The Applicant is a public limited company and, therefore, cannot be stated to be unaware of the legal position. In these circumstances, there is no error of justice or perversity committed by both the Courts in appreciating the evidence on record. The Revision Application cannot be entertained and is accordingly rejected.

4. The learned counsel for the applicant seeks continuation of the ad-interim relief which was granted on 20 September, 2014. Considering the facts and circumstances, I am inclined to grant six weeks time. However, since it will take time to get a copy of the order, the ad-interim relief will continue for a period of eight weeks from today on the same terms and conditions as earlier.

(N.M. JAMDAR, J.)