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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 991 OF 2014

Noorbano Yusuf Ansari and others	 Petitioner
V/s.	
Life Insurance Corporation of India	 Respondent

Ms. Rina Kundu a/with Ms. Kalpana Trivedi, for the Petitioner.
None for respondents.

CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 22nd APRIL, 2016.

P.C. :

1. The petitioner claims compensation in the sum of Rs.33 lacs from the Life Insurance Corporation of India. It is claimed that the petitioners are the heirs and legal representatives of one Md. Yusuf Ansari. On 2nd February, 2012, the deceased was walking adjacent to building known as Empire House, D. N. Nagar, near State Bank of India, Mumbai 400 001 i.e. the building stated to be belonging to and owned by respondent. It was not repaired for long time and that is why had posed threat to the life of those passing by. The deceased was unfortunate one, who was passing by and when a heavy piece of slab came down and fell on him. It is submitted that it was negligent and careless act of the

respondent and death has been caused only on account of the same. There are no disputed question of fact and therefore, this writ petition should be entertained.

2. We are unable to accede to this submission for more than one reason. The petitioners before us are the legal representatives of the deceased. They are urging that the deceased was walking alongside and adjacent to building, but on the road. That building belongs to the respondent and that was not repaired and in a dangerous condition. Because of neglect, the building or any part thereof, could have collapsed that is how while walking adjacent to the building, the deceased suffered a fatal injury.

3. We do not think that such allegations and one sided as they are, will bring the undisputed factual position on record. In writ jurisdiction, we do not ordinarily record evidence. There are no documents save and except a copy of F.I.R., stated to have been registered at the instance of complainants by Azad Maidan Police Station. That also is based on the statement made before police officials. We do not think that the claim for compensation can be awarded only on this material that the building is owned by respondent, that it was an old and dilapidated building, imminently and likely to fall; that it was in state of utter neglect and there were no repairs and maintenance works ever carried out and all these

therefore, caused the accident in which a passerby lost his life.

4. These facts are to be established on leading oral and documentary evidence. We do not think in writ jurisdiction, such opportunity can be granted. The petitioner will have to approach the competent Civil Court. However, if said Court finds that the claim made is time barred, there are ample powers in the Civil Court and if a party convinces and establishes that it approached a wrong forum or a Court refused to entertain it, for want of jurisdiction or like defect, then the period during which that Court was approached and till that court held that it had no jurisdiction, can be excluded while computing the period of limitation for bringing a civil action. We do not think that we have to observe anything further for parties like the petitioners. The Writ Petition certainly is not a remedy for them. Petition is dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]