

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN**

**CIVIL REVISION PETITION NO.4070 OF 2016**

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**ORDER:**

The petitioner herein is the 3<sup>rd</sup> defendant in O.S. No.619 of 2013 which was filed by the respondent plaintiff seeking mandatory injunction restraining the GHMC and the petitioner herein to remove the illegal construction made in the suit schedule property. The petitioner entered appearance on 25.04.2013, and his right to file a written statement was forfeited within three months thereafter on 30.07.2013. The petitioner filed an application to set aside the said order, whereby his right to file a written statement was forfeited, on 11.02.2014 by way of I.A. No.153 of 2014.

Sri Sharad Sanghi, Learned Counsel for the petitioner, would submit that, during the pendency of I.A. No.153 of 2014, the Counsel for the plaintiff filed a memo on 23.06.2014 informing the Court below that the plaintiff had died on 11.06.2014 leaving behind his legal heirs; while the suit proceedings are being adjourned from time to time, neither has any application been filed till date to set aside the abatement nor have the legal heirs of the deceased plaintiff been brought on record.

If the submission of Sri Sharad Sanghi, Learned Counsel for the petitioner, were to be accepted, the present CRP has been filed against an order passed in an interlocutory application in a suit which abated nearly two years ago. It is not known whether the Court below, while dismissing I.A. No.153 of 2014 on 02.06.2016, was even made aware that the plaintiff had died, and that the suit had abated. Be that as it may, as the order under revision was passed in a suit which has already abated, the revision petition filed thereagainst would also not lie.

Sri Sharad Sanghi, Learned Counsel for the petitioner, would

submit that, in case applications were to be filed on behalf of the plaintiff's legal heirs later, the suit is restored to file, and the legal heirs are brought on record, the suit would be decided even without a written statement being filed by the petitioner herein. Ends of justice would be met if liberty is granted to the petitioner herein to question the order passed in I.A. No.153 of 2014 in O.S. No.619 of 2013 dated 02.06.2016 in case, and after, O.S. No.619 of 2013 is restored.

Subject to the above observations, the Civil Revision Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

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**RAMESH RANGANATHAN, ACJ**

Date: 27.8.2016

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