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be sole proprietor of M/s. Mahendra Builders instituted T.E.&R.Suit No.68/73 of 2011 against defendant No.1-M/s. Brahmadevi Holding & Trading Ltd. and defendant No.2-M/s. Wrangle Investment Limited under Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 (for short 'Act') on the ground that the premises i.e. flat on the second floor of the property known as Clifflet situate at Sir Pochkhanawala Road, Worli, Mumbai 400 025 (for short 'suit premises') was let out to the Companies having paid up capital of Rs.1,00,00,000/- (Rupees One Crore only) or more and thus, the suit premises is exempt from the application of the Act.

4. It is not necessary to set out the facts in details, save and except Mahendra died on 19.07.2001. No application for bringing his legal representatives was made within 90 days and thus, after 18.12.2001, the Suit stood abated automatically. Interim Notice No.259 of 2002 was taken out by the respondent claiming to be heir and legal representative of Mahendra on 16.02.2002 that is almost after 1 and ½ years beyond the period of limitation. It appears that Interim Notice No.626 of 2002 was taken out for injunction. During the pendency of these interim notices, respondent took out interim Notice No.760 of 2002 inter alia seeking permission to withdraw interim Notice No.259 of 2002; for amending the plaint as shown in the Schedule to the application; and for amending the title in Interim Notice No.626 of 2002. The said notice was taken out on 25.10.2002. It appears that on 12.06.2003, the Suit was dismissed in default. It further appears that Interim Notice No.626 of 2002 and Interim Notice No.760 of 2002 were dismissed in default on 27.04.2004.

5. The respondent, therefore, took out Miscellaneous Notice No.151 of 2004 for setting aside the order dated 12.06.2003 dismissing the Suit in default and for restoration of the same; for restoration of Interim

Notices (for passing necessary orders in Miscellaneous Notice No.760 of 2002 on merits). By order dated 29.03.2006, the learned trial Judge made Notice No.151 of 2004 absolute, as indicated earlier.

6. Aggrieved by this order, defendant No.2 preferred Revision No.131 of 2006 before the Appellate Court. By order dated 07.12.2006, the Appellate Court dismissed the Revision Application. It is against these orders, defendant No.2 have instituted the present Petition.

7. In support of this Petition, Ms Gonsalves strenuously contended that admittedly, Mahendra died on 19.09.2001. Admittedly, no application for bringing legal representatives on record was made within 90 days. Thus, after the expiry of 90 days, the Suit instituted by Mahendra abated automatically. Respondent took out Interim Notice No.259 of 2002 on 16.02.2002, that is to say, after more than 1 and ½ years. The said notice was unconditionally withdrawn on 26.03.2004. Instead of applying for restoration of that notice, respondent filed Interim Notice No.760 of 2002, which is not maintainable. In fact, even Interim Notice No.259 of 2002 was not maintainable as the Suit stood abated after the death of Mahendra. In any case, Interim Notice No.760 of 2002 is not maintainable as the earlier Interim Notice No.259 of 2002 was withdrawn unconditionally. She submitted that by order dated 29.03.2006, the learned trial Judge declined to restore Interim Notice N.259 of 2002. The said part of the order is not challenged by the respondent. She submitted that the Courts below failed to appreciate these aspects while passing the impugned orders. As the Suit stood abated, the Courts below were not justified in passing the impugned orders. She, therefore, submitted that impugned orders deserve to be set aside thereby dismissing the Suit instituted by Mahendra.

8. As against this, Mr. Damle submitted that Suit was instituted by

Mahendra as a sole proprietor of M/s. Mahendra Builders through oversight. He submitted that the suit premises belongs to the partnership firm of M/s. Mahendra Builders. The said partnership firm is registered with the Registrar of the Partnership Firms. As the Suit was instituted in the name of Mahendra Shah as a proprietor of M/s. Mahendra Builders as also Interim Notice No.259 of 2002 was also taken out in the name of Mahendra as sole proprietor, respondent prayed for withdrawal of Interim Notice No.259 of 2002 as also for carrying out amendment as proposed in the Schedule attached along with the Interim Notice No.760 of 2002. He submitted that Interim Notice No.760 of 2002 was filed on 25.10.2002 that is to say, during the pendency of Interim Notice No.259 of 2002. Interim Notice No.259 of 2002 was thereafter withdrawn on 26.03.2004. As basically, the Suit as also Interim Notice No.259 of 2002 was filed in the wrong name of the plaintiff, it was withdrawn on 26.03.2004 and before that, already Interim Notice No.762 of 2002 was filed on 25.10.2002. He submitted that by order dated 12.06.2003, the Suit was dismissed. By order dated 27.04.2004, Interim Notices No.626 of 2002 and 760 of 2002 were dismissed. In view thereof, respondent took out Miscellaneous Notice No.151 of 2004, which was allowed by the trial Court. He submitted that as Interim Notice No.760 of 2002 is restored by order dated 29.03.2006, it is unnecessary to challenge the said order by which Interim Notice No.259 of 2002 is not restored. He submitted that by the impugned orders, Interim Notice No.626 of 2002 and 760 of 2002 are restored. By restoration of these Notices, no prejudice will be caused to the defendant No.2 and the said Notices will be decided on their own merits. He, therefore, submitted that no case is made out for interfering with the impugned orders.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the Suit was instituted by Mahendra

claiming to be the sole proprietor of M/s. Mahendra Builders. The respondent claims that the suit premises belongs to M/s. Mahendra Builders, which is a partnership firm and is not a sole proprietary concern of Mahendra. It is also not in dispute that on 19.09.2001, Mahendra died. No application for bringing legal representatives was made within 90 days. On 16.02.2002, Interim Notice No.259 of 2002 was taken out.

10. It is the case of the respondent that the Suit was instituted wrongly in the name of Mahendra as a sole proprietor of M/s. Mahendra Builders when in fact the suit premises belongs to the partnership firm. In view thereof, on 25.10.2002, respondent took out Interim Notice No.760 of 2002 inter alia for withdrawing Interim Notice No.259 of 2002 and for amending the plaint whereby instead of Mahendra Shah, sole proprietor, respondent wishes to substitute it by M/s. Mahendra Builders, a partnership firm registered under the Indian Partnership Act, 1932 and for carrying out consequential amendments. It is not the case that Interim Notice No.259 of 2002 was withdrawn and thereafter Interim Notice No.760 of 2002 was taken out. After filing Interim Notice No.760 of 2002 on 25.10.2002, Interim Notice No.259 of 2002 was withdrawn on 26.03.2004. It, therefore, cannot be said that as respondent did not seek permission to withdraw the said Notice with liberty to file fresh Notice, Interim Notice No.760 of 2002 is not maintainable. Defendant No.2 has also not demonstrated any prejudice is caused to them.

11. As mentioned earlier, on 12.06.2003, Suit was dismissed and on 27.04.2004, Interim Notices were dismissed. The respondent, therefore, took out Miscellaneous Notice No.151 of 2004. The Courts below, after considering the material on record, have allowed this Notice. For the

reasons recorded in paragraph 7 of the order dated 29.03.2006 passed by the learned trial Judge as also for the reasons recorded in paragraphs 11 and 13 of the order dated 07.12.2006 passed by the Appellate Court, I do not find that the Courts below committed any error in passing the impugned orders. Hence, Petition fails and the same is dismissed. Rule is discharged. In the circumstances of the case, there shall be no order as to costs. As the Petition was pending for more than 12 years in this Court and the Suit is of the year 2001, the learned trial Judge is requested to dispose of the Suit as expeditiously as possible and in any case, on or before 31.12.2020. Order accordingly.

12. At this stage, Ms Gonsalves orally applies for continuation of the interim order passed by this Court on 15.06.2007. It is not possible to accept this request. Hence, oral application is rejected.

(R. G. KETKAR, J.)

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