

*Sharayu Khot.*

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

INTERIM APPLICATION NO. 308 OF 2019

IN

SUIT (L) NO. 1132 OF 2019

Lok Everest Co-op. Hsg. Soc. Ltd.

...Applicant/  
Plaintiff

*Versus*

M/s. Jaydeep Developers & Ors.

...Defendants

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Dr. Abhinav Chandrachud a/w Ms. Ashwini Patil i/by Solicis Lex for the Plaintiff.

Mr. Vishal Narichania a/w Jugal Haria, Srinidhi Suryavanshi i/by Neeta Solanki for the Defendant No. 1.

Mr. Rohaan Cama with Mr. Prathamesh Kamat, Ms. Ayushi Anandpara, Mr. Ketan Mutha, Ms. Neha Achaliya i/by Ms. Sapana Raichure for the Petitioners in Writ Petition (L) No. 16598 of 2021 and Writ Petition (L) No. 16013 of 2021 covered under Notices dated 15th September 2022.

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**CORAM : R.I. CHAGLA J**

**DATE : 10 March 2023**

**ORDER :**

1. Dr. Abhinav Chandrachud, the learned Counsel appearing for the Applicants/Plaintiffs states that the Interim



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Application has been placed for directions, in view of the Suit having been rejected pursuant to the common notice issued by the Prothonotary & Senior Master of this Court dated 15th September 2022 for non removal of office objections within the stipulated period of eight weeks, applicable for all Suits in which the office objections had not been removed and which were lodged on or before 31st December 2021. The said notice is purportedly issued under Rule 986 of the Bombay High Court (O.S.) Rules, 1980.

2. Dr. Chandrachud has submitted that the Applicants/Plaintiffs were not even aware of the Suit having been rejected pursuant to the common notice dated 15th September 2022. He has referred to Rule 986 of the Bombay High Court (O.S.) Rules, 1980, which is as under :-

**“ R.986. Rejection of plaint, memo of appeal, execution application and applications and petition of original nature for non-removal of office objections. ---**

*Every plaint, memo of appeal, application for execution and all other applications and petitions of the original nature, including the petition by an indigent person, in which the*

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*Plaintiff/Appellant/Applicant/Petitioner does not remove the office objections within 30 days from the date of lodging the said documents, shall be placed before the Prothonotary and Senior Master for directions, who may reject such documents for non-removal of office objections. Rule 133 of these rules will apply to such rejection.”*

3. Dr. Chandrachud has submitted that the rejection of *inter alia* the Plaint/Suit contemplated by this Rule is only effected when office objections have not been removed within 30 days from the lodging of the Plaint and prior to which the matter is placed before the Prothonotary & Senior Master of this Court for directions. Only then can the discretion be exercised by the Prothonotary & Senior Master of this Court to either reject the Plaint for non removal of office objections or grant further time. He has submitted that by the common notice dated 15th September 2022, the Prothonotary & Senior Master of this Court without placing the Suits before him has passed a blanket order by which the Suits which were lodged on or before dated 31st December 2021 and pending non removal of office objections were granted time of eight weeks or failing which, they would stand rejected. These Suits were to be placed on board for directions by the Prothonotary & Senior Master of this Court as

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required under Rule 986 of the Bombay High Court (O.S.) Rules, 1980 prior to passing blanket directions for removal of office objections within eight weeks. He has submitted that as in the present case, the Applicants/Plaintiffs were not even aware that their Suit had been rejected. He has accordingly, submitted that the common notice dated 15th September 2022 be recalled as such cyclostyled notice issued by the Prothonotary & Senior Master of this Court is contrary to Rule 986 of the Bombay High Court (O.S.) Rules, 1980. His submission is supported by the other learned Counsel appearing in their independent matters where the Suits having similarly rejected, pursuant to the common notice issued by the Prothonotary & Senior Master of this Court on 15th September 2022.

4. Mr. Rohaan Cama, learned Counsel appearing for the Petitioners in the Writ Petition (L) No. 16598 of 2021 and Writ Petition No. 16013 of 2021 submits that by a similar separate notice issued on 15th September 2022 by the Prothonotary & Senior Master of this Court, Writ Petitions lodged on or before 31st December 2021 and pending office objections were to be rejected in the event the office objections were not removed within eight weeks from the date of the notice under Rule 986 of the Bombay High Court (O.S.) Rules,

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1980. There are two other notices bearing the same date issued by Prothonotary & Senior Master of this Court in respect of the Commercial Suits as well as Arbitration Petitions which are identical to the aforementioned notice issued by the Prothonotary & Senior Master of this Court dated 15th September 2022.

5. Mr. Cama has relied upon the decision of the Full Bench judgment of this Court in **Prem Siddha Co-Op. Housing Society & Anr. Vs. High Power Committee-II & Ors.**<sup>1</sup>, which has followed the decision of the Division Bench of this Court in **Bank of Baroda Vs, Deepak Raghuvir Wagle & Anr.**<sup>2</sup> and in **Lawrence Fernandes Vs. State of Maharashtra**<sup>3</sup>. In **Lawrence Fernandes** (supra), this Court held that the Prothonotary & Senior Master of this Court is empowered to direct dismissal of the Plaint, Memorandum of Appeal, Execution Application, etc. for non removal of office objections only after such matters are placed before him. Further in **Bank of Baroda** (supra), the Division Bench of this Court has observed that the Prothonotary & Senior Master of this Court is required to issue his board listing matters which according to the Prothonotary's record objections have

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1 2016(5) Mh.L.J.778

2 (2007) 6 AIR Bom R 672

3 W.P. (L) No.2396/2014, Dt.9.9.2015

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not been removed. The Full Bench in the above decision has gone as to hold that the Prothonotary has the power to restore the proceeding which he had dismissed under Rule 986 of the Bombay High Court (O.S.) Rules, 1980.

6. In the present case, it is submitted that the common notices issued by the Prothonotary & Senior Master of this Court dated 15th September 2022 be recalled as being contrary to Rule 986 of the Bombay High Court (O.S.) Rules, 1980 in view of the matters not being listed prior to their rejection.

7. Mr. Cama has further submitted that the matters which have been rejected and till date not been restored to file by subsequent orders of this Court or by the Prothonotary, those matters are required to be automatically restored to file with effect from 15th September 2022 i.e. the date of the common notice. This direction is necessary as there are orders passed by this Court including by the Appellate Bench of this Court after the matters were rejected. Further, in some cases the date of rejection shown is the date of the said common notice.

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8. Thereafter, time may be granted for removal of office objections by the Prothonotary after listing the matters under Rule 986 of the Bombay High Court (O.S.) Rules, 1980.

9. Having considered these submissions, in my view, these submissions have considerable merit. The common notices issued by the Prothonotary & Senior Master of this Court on 15th September 2022 are clearly contrary to Rule 986 of the Bombay High Court (O.S.) Rules, 1980 as the common notice was issued without listing of the matters, which are the subject matter of these notices. In my considered view, there is no power to issue such blanket directions of removal of office objections within the period stipulated in the common notices without first listing these matters and accordingly, the common notices dated 15th September 2022 are being recalled. The following order is passed:-

- (i) The common notices issued on 15th September 2022 are recalled.
- (ii) It is clarified that where the orders have already been passed restoring the Suits by extending the time

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granted by the said common notice issued by the Prothonotary dated 15th September 2022, the orders will not be effected by this order recalling the notice dated 15th September 2022.

(iii) The matters which were rejected as per the common notices dated 15th September 2022 on the ground that the office objections have not been removed within the time stipulated therein stand restored by this order with effect from 15th September 2022.

(iv) The matters which stand restored to file by this order with effect from 15th September 2022 shall be listed on board before the Prothonotary & Senior Master of this Court for directions and/or for issuance of the orders for removal of office objections which directions shall be issued by the Prothonotary & Senior Master of this Court in accordance with Rule 986 of the Bombay High Court (O.S.) Rules, 1980. Further, the time to be fixed for removal of office objections shall be considered on a case to case basis by the



Prothonotary & Senior Master of this Court dependent upon the nature of objections which are to be removed.

(v) The Prothonotary & Senior Master of this Court shall immediately give effect to this order.

(vi) Pending the removal of office objections, the matters shall be listed on lodging number and Advocates for the parties may circulate such matters for urgent *ad-interim* orders and which shall be considered dependent on their urgency, particularly, considering that the office objections are still required to be removed.

10. At this stage, Dr. Chandrachud states that the statement made on behalf of Defendant No. 1 and recorded in the order dated 5th February 2020 has been continued from time to time and by order dated 16th November 2022 continued till 23rd November 2022. However, prior to that date, it appears that the above Suit had been rejected for non removal of office objections.



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Accordingly, by virtue of this order, he has sought clarification that as the Suit has been restored, the statement be continued till the next date.

11. Statement on behalf of Defendant No. 1 recorded in the order dated 5th February 2020 shall continue to operate till the next date.

12. Interim Application be placed for hearing on 19th April 2023 at 2.30 p.m.

**[R.I. CHAGLA J.]**