

(2016) 08 BOM CK 0081

In the Bombay High Court

Case No : Writ Petition (L) No. 3016 of 2014

Prem Siddha Coop. Housing Society

APPELLANT

Vs

High Power Committee-II

RESPONDENT

Date of Decision : 23-08-2016

Acts Referred:

Bombay High Court (Original Side) Rules, 1980 — Rule 131, 133, 986

Citation : (2016) 11 ADJ 18 : (2016) AIR(Bombay) 253 : (2016) 5 AIRBomR 813 : (2016) 5 ALLMR 775 : (2016) 5 BCR 539 : (2016) 4 KLT 82 : (2016) 5 MhLJ 778 : (2017) 1 RCRCivil 879

Hon'ble Judges : Naresh H. Patil, S.C. Gupte and A.K. Menon, JJ.

Bench : Full Bench

Advocate : Mr. Sameer Vaidya, Advocate, for the Petitioners in WPL/3016 of 2014; Mr. Sameer Vaidya, Advocate, for the Respondent Nos. 7 and 10 in WP/505 of 2015 and WP/1205 of 2015; Mr. Nitin Thakkar, Senior Counsel a/w Dr. Milind Sathe a/w Mr. Bhushan Deshmukh a/w

Final Decision : Disposed Off

Judgement

S.C. Gupte, J.—The question raised in this reference is : Whether the Prothonotary & Senior Master has power to set aside an order of dismissal passed by him under Rule 986 of the Bombay High Court (Original Side) Rules, 1980 ?

2. Writ Petition (L) Nos.3016 of 2014 and 672 of 2014 were dismissed by the Prothonotary & Senior Master of this Court under Rule 986 of the Bombay High Court (Original Side) Rules, 1980 for non-removal of office objections. On oral requests, the Prothonotary set aside the orders of dismissal and restored the petitions to the file. When the petitions came up before the Court, a Division Bench (V.M. Kanade & Dr. Shalini Phansalkar-Joshi, JJ.) was of the view that there is a conflict between two Division Bench decisions of this Court on the question as to whether the Prothonotary & Senior Master has the power to restore a suit or a writ petition dismissed by him under Rule 986. The learned

Judges, in the premises, directed the petitions to be placed before the Hon'ble the Chief Justice with a request to refer this issue to a larger Bench under Rule 28. Upon that request being granted, this reference has been placed before us.

3. Since the matter generally concerns the Bar, we caused a notice to be given to the associations of both sides, namely, Bombay Bar Association and the Advocates Association of Western India. We have heard Counsel appearing for parties in the petitions before us as well as Counsel for both associations. Learned Counsel appearing for the petitioners as well as for both associations submitted that the Prothonotary has the requisite power, whilst Mr. Ankhad for the Respondents submitted that there is no such This Order is modified/corrected by Speaking to Minutes Order dated 06-10-2016 power in the Prothonotary and the matter must be brought before the Chamber Judge for recall or setting aside of a dismissal order.

4. First of all, we may note the historical perspective in which, and the provisions of law under which, the Prothonotary & Senior Master has been appointed an officer of this Court and powers have been conferred on him so as to assist the Court in administration of justice. This High Court was constituted by the Letters Patent issued on 28 December 1865. The appointment of its officers was governed by Clause 8 of the Letters Patent, under which the Chief Justice of the Court was authorised and empowered to appoint, from time to time and as occasion may require, so many and such clerks and other ministerial officers as shall be found necessary "for the administration of justice, and the due execution of all the powers and authorities granted and committed.... by....Letters Patent." The appointment of the Prothonotary has been under this power. Let us now consider the requirements of this Court for administration of justice. The High Court has both ordinary original civil jurisdiction and extraordinary original civil jurisdiction, respectively under Clauses 12 and 13 of the Letters Patent, to receive, try and determine original suits of every description. The condition for such jurisdiction under Clause 12 is that in the case of suits for land or immovable property, such land or property shall be situated or in all other cases, the cause of action, either wholly, or in case the leave of the Court is obtained, in part, shall have arisen or the defendant shall be dwelling or carrying on business, within the local limits of its ordinary original jurisdiction. Under Clause 13, the Court has the power to remove, and to try and determine, any suit within the jurisdiction of any Court, which is subject to its superintendence. Besides, this Court has jurisdiction, This Order is modified/corrected by Speaking to Minutes Order dated 06-10-2016 under Articles 226 and 227 of the Constitution of India, for issuance of writs, orders and directions. The suits referred to above as well as petitions for writs, orders or directions where the cause of action arises within the local limits of its original civil jurisdiction, are tried and decided on the original side of this Court. For the purpose of regulating all civil proceedings brought before it, the High Court is empowered, under Clause 37 of the Letters Patent, from time to time to make rules and orders provided that the Court has to be guided in making such rules and orders as far as possible by the provisions

of the Code of Civil Procedure. The Code of Civil Procedure, in turn, provides (Section 122) for the power of the High Courts (not being Courts of a Judicial Commissioner) to make rules regulating their own procedure and even to annul, alter or add to all or any of the Rules of the First Schedule of the Code. Even the High Courts which are Courts of a Judicial Commissioner are empowered to make rules (Section 128) so as to provide matters including procedure in suits and also "delegation to any Registrar, Prothonotary or Master or other official of the Court of any judicial, quasi-judicial and non-judicial duties." Our High Court has made rules inter alia for regulating suits and proceedings arising in its ordinary and extraordinary original jurisdiction, called the Bombay High Court (Original Side) Rules, 1980 ("OS Rules"), which inter alia provide for the powers and functions of the Prothonotary.

5. In this Reference, we are concerned with the subject of admission and rejection of plaints and petitions on the original side of this Court, and the powers of the Prothonotary & Senior Master as the officer of the Court in connection therewith. For that purpose, it is necessary, at the outset, to understand the scheme of the OS Rules for admission and rejection of This Order is modified/corrected by Speaking to Minutes Order dated 06-10-2016 plaints and petitions and other miscellaneous applications required to be made in the course of a trial, which are procedural in nature and many of which may be more or less formal or uncontested matters. Any proceeding initiated on the original side starts with the presentation of a plaint or a petition or an application. Under Rule 45 of the OS Rules, a plaint has to be lodged with the officer attending on the Judge in Chambers (in cases where leave of the Court is to be applied) or with such officer as the Prothonotary & Senior Master may direct (in all other cases). Every petition or application has to be likewise presented to, and scrutinised by, the Prothonotary or other designated officer. The very first business that the Court has to undertake is, thus, admission and rejection of plaints (as also petitions). This is one of the chamber matters, for hearing and disposing of which a Judge is nominated by the Chief Justice, who is known as the "Judge in Chambers". Apart from admission and rejection of plaints, various other miscellaneous applications arising in the course of trials in suits, such as appointment of guardians-ad-litem of minors, applications for substituted service of a writ of summons, amendment of the plaint or subsequent proceedings, bringing legal heirs of deceased parties to suits on record, etc., are to be disposed of by the Judge in Chambers. The matters which may be so disposed of are listed in Rule 121 of the OS Rules. Many of these matters, notably with the exception of contested matters such as (i) amendments of plaints and subsequent proceedings other than formal amendments, (ii) applications for judgment in summary suits, (iii) summary suits in which leave to defend has not been obtained, (iv) applications in execution, etc., are delegated to the Prothonotary & Senior Master, under Rule 131 of the OS Rules. The matter of "admission and rejection of plaints" is one such delegated matter. Though This Order is modified/corrected by Speaking to Minutes Order dated 06-10-2016 any

rejection of a plaint or a petition may be said to result generally into dismissal of the suit or the petition, as the case may be, and is ordinarily referred to as such, it is really a rejection of a document. Rule 986 of the OS Rules makes the matter clear. The Rule is quoted below :

Rule 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 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.

Rules 131 and 986, thus, make it clear that the power of admission or rejection of plaints or petitions thereunder is clearly with the Prothonotary.

6. That takes us to the next question, namely, what does this power envisage. Normally, and even lexicologically, a power to admit or reject would include a power not to admit or reject, or in other words, from a practical standpoint, to give further time to the party to comply with the office objections or excuse the delay. In a matter, for example, kept before the Prothonotary for rejection of plaint or petition for non-removal of office objections, it is permissible for the Prothonotary to grant further time to the party for removal of objections. It is equally conceivable that even This Order is modified/corrected by Speaking to Minutes Order dated 06-10-2016 where the Prothonotary passes a self-operating order of rejection of a plaint or a petition for non-removal of office objections within a specified time reserved thereunder, that time may be extended by the Prothonotary at any time before it expires and the rejection takes effect. The Prothonotary has been almost routinely passing such orders ever since inception, and indeed, no objection can be taken to it on a matter of principle, for the matter is still within the seisin of the Prothonotary and there is no effective rejection as yet at that stage. Now, the question is whether the Prothonotary ceases to have such power after the rejection comes into effect, that is to say, to grant further time ex post facto.

7. Before we go into the judgments delivered by this Court, which may have a bearing on this issue, we may notice that there should be no objection to the Prothonotary exercising such power ex post facto as a matter of principle. After all, all that he does whilst acting under Rule 986 is rejection of a document, namely, a plaint or a petition, as the case may be, for want of a procedural compliance and if he can exercise such power, i.e. excuse the delay in such compliance, in the case of a self-operating order of rejection, though before the order takes effect, there is nothing, in principle, to deny such power to him after the order takes effect. It is still a matter as between the party and the Court, and

not a lis as yet, and just as rejection would be a matter of procedure, even condonation of the default and subsequent admission of the document after due compliance would be a procedural matter. No equity or other right arises in favour of any third party, particularly the opponent, as a result of the original rejection and none is lost upon the subsequent recall and admission. This Order is modified/corrected by Speaking to Minutes Order dated 06-10-2016.

8. The first judgment having a bearing on the Prothonotary's power in this behalf is a decision of a learned Single Judge of this Court (S.H. Kapadia J, as the learned Judge then was) delivered on 27 April 1998 in the case of Central Bank of India v. Rima International, Nt. of Motion No. 1716 of 1996 in Suit No. 2308 of 1990. That was a case, where a suit was placed for directions before the Prothonotary under Rule 157 of the OS Rules read with Rule 131 thereof. (Rule 157 provides for the power of the Judge in Chambers to issue directions with respect to various matters, which are pretrial formalities, such as filing of pleadings, interrogatories, discovery and inspection, admission and denial of documents, facts, etc. Under Rule 131, this power is also delegated to the Prothonotary.) The plaintiffs and their advocates remained absent; the suit was adjourned for dismissal; and upon their absence even on the adjourned date, the Prothonotary dismissed the suit. In these facts, the plaintiffs took out a Notice of Motion before the Court for setting aside the order of dismissal passed by the Prothonotary. The learned Judge noted, in the first place, that upon delegation of the power to issue directions, the Prothonotary has the power to dismiss the suit in case the Plaintiffs/advocates remain absent. In cases where the defendants/advocates remain absent, the Prothonotary has the power to transfer the matter to the Court for an ex parte decree. The learned Judge, thereafter, in the light of Rules 87, 131, 133, 157 and 986, held that in cases where after the suit is so dismissed or transferred to Court for ex parte decree, a praecipe is filed explaining the absence, the Prothonotary may, on being satisfied as to sufficient cause, set aside his order. The learned Judge observed as follows :

"Prior to the amendment of the Rules, suits were placed for Directions before the Court. This power is now vested in the Prothonotary. In case where the Plaintiffs/Advocates remain absent, the Prothonotary has power to dismiss the suit. Similarly, in cases where Defendants/Advocates remain absent, the Prothonotary has power to transfer the matter to the Court for ex parte decree. However, in cases where praecipe is filed after the suit is dismissed or transferred for ex parte decree explaining sufficient cause for absence at the stage of Directors, the Prothonotary may, on sufficient cause, set aside his Order dismissing the suit. The above position is clear under Rules 87, 133, 131, 157 and 986. In large number of matters, parties and their Advocates do not appear before the Prothonotary for Directions. In the circumstances, suits are dismissed. Thereafter, they do not move the Prothonotary showing good cause for restoration of the matter but they prefer Notices of Motion. The result is delay and multiplicity of proceedings. One more fact may be noted that on account of the Party/their Advocates remaining absent before the Prothonotary, on many

occasions important objections remain outstanding and uncleared. It is not for this Court to go into the objections like non-service of writ of summons within six months as provided under Rule 87. Under Rule 87, if the Plaintiffs/their Advocates do not serve the writ of summons within six months then they shall apply for extended returnable date showing good cause to the Prothonotary."

Going by this judgement, if the Prothonotary has the power to set aside an order of dismissal passed for default in appearance at the stage of "directions", there is indeed no reason why he should have no power to allow the plaintiff to remove office objections and thereafter to admit the plaint, having first rejected it under Rule 986.

9. A difficulty arose later, however, when another learned Single Judge, A.M. Khanwilkar, J. as the learned Judge then was, in the case of *Bank of Baroda v. Deepak Raghuvir Wagle*, 2007(3) Bom. C.R. 42, held that the Prothonotary has no power to dismiss a suit for default when it is placed before him for "directions". The learned Judge held that the Prothonotary merely had the power to reject a plaint under Rule 986 for non-removal of office objections and not to dismiss the suit for default of advocates or parties to appear before him. The learned Judge, in the premises, restored the suit.

10. The seeming conflict between the views of the two learned Judges noted above led to a reference before a Division Bench in *Bank of Baroda v. Deepak Raghuvir Wagle*, 2008(2) Mh.L.J. 381 upon an office note of the Prothonotary, which was treated as a review petition in the suit restored by Khanwilkar J. In its judgment, the Division Bench (Per D.K. Deshmukh and J.H. Bhatia JJ.) disagreed with the view taken by Khanwilkar J. and upheld the view of Kapadia J. It held that possession of such power, i.e. power to dismiss a suit for default, is necessary, so that the Prothonotary can effectively exercise the power expressly conferred on him by the Rules, i.e. power to reject the plaint for non-removal of office objections (Rule 986) or power to dismiss a suit for non-service of summons within a reasonable time (Rule 87). The Division Bench relied on the following observations of the Supreme Court in the case of *Jamal Uddin Ahmad v. Abu Saleh Najmuddin*, (2003) 4 S.C. Cases 257 on enabling powers and ancillary powers flowing therefrom :

"11. "For a long time courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose. But before this unusual kind of power is exercised it must be clear that the statutory procedure is insufficient to achieve. This Order is modified/corrected by Speaking to Minutes Order dated 06-10-2016 justice and that to require additional steps would not frustrate the apparent purpose of the legislation, said Lord Reid in *Wiseman v. Borneman*, (1971) AC 197, 308. "If a statute is passed for the purpose of enabling something to be done, but omits to mention in terms some detail which is of great importance (if not actually essential) to the proper and effectual performance of the work which the statute has in contemplation, the courts are at liberty to infer that the statute by

implication empowers that detail to be carried out." (Craies on Statute Law, Seventh Edition. p. 111.) Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potuit " Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution." (See Maxwell on Interpretation of Statutes, Eleventh Edition, p.350). Referring to Maxwell (ibid), Sutherland's Statutory Construction and Domat's Civil Law, the law was thus stated, as a "firmly established rule", by this Court in Income-tax Officer, Cannanore v. M.K. Mohammed Kunhi, (1969) 2 SCR 65, that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective. In Chief Executive Officer & Vicechairman, Gujarat Maritime Board v. Haji Daud Haji Horun Abu and ors., (1996) 11 SCC 23, this Court held that the conferral of incidental and ancillary powers necessarily flows from the conferral of the substantive power. "It is well settled that where a substantive power is conferred upon a Court or Tribunal, all incidental and ancillary powers necessary for an effective exercise of the substantive power have to be inferred".

Relying on this statement of law, the Division Bench held that the Prothonotary has the power to reject the plaint or dismiss the suit for failure of the party to appear before him, holding as follows :

"By the Rules framed by it, the High Court has conferred certain powers on the Prothonotary to reduce, to some extent, the burden on the Court's board. Power to see that all the objections to the plaint are removed by the plaintiff is conferred on the Prothonotary, because, the Court does not This Order is modified/corrected by Speaking to Minutes Order dated 06-10-2016 want to spend its time on getting the office objections removed and in the opinion of the Court, the Prothonotary is competent to do the job. The intention of the Court as a Rule making authority, while conferring above referred power on the Prothonotary was that when the plaint comes before the Court for hearing all the office objections raised to the plaint should have been removed, so that the Court can begin the hearing, without it being required to see that the plaint is in order and has been filed in compliance with the Rules. The power conferred on the Prothonotary to see that all objections that are raised to the plaint are removed, to see that the writ of summons on the party is duly served within a reasonable time, cannot be effectively exercised by the Prothonotary without the Prothonotary getting power to reject the plaint or dismiss the suit for failure of the plaintiff to appear before the Prothonotary to satisfy the Prothonotary that he has removed all the objections or that the writ of summonses have been served on all the defendants."

11. Whilst explaining the judgment in Bank of Baroda's case, another Division Bench of our Court in Lawrence Fernandes v. State of Maharashtra, W.P. (L) No.2396 of 2014 decided on 9 September, 2015 (Per S.C. Dharmadhikari & B.P. Colabawalla JJ.) held that the former case shows that the Prothonotary is

empowered to direct dismissal of a Plaint, Memo of Appeal, Execution Application, etc. for non-removal of office objections, after such matters are placed before him, but does not support his power to order restoration routinely of the matters so dismissed. (The learned Judges, as noted above, qualify their statement as to the Prothonotary's power by the word "routinely", suggesting possibly that in an appropriate case, if a case of restoration is made out, the Prothonotary can order restoration.)

12. The learned Judges in Lawrence Fernandes are, in our opinion, and with utmost respect, right in making the observation that the Division Bench Order is modified/corrected by Speaking to Minutes Order dated 06-10-2016. Bench order in Bank of Baroda in itself does not affirm the power of the Prothonotary to order restoration. The case of Bank of Baroda concerned itself with the Prothonotary's power to dismiss a suit or a petition for default of appearance, when the matter is placed before him either under Rule 986 or Rule 87. The Division Bench (D.K. Deshmukh & J.H. Bharia, JJ.) in Bank of Baroda had no occasion to consider, and has indeed not considered, the further question, namely, once having dismissed the suit or the Petition under either of the Rules, does he have the power to restore the same. To that extent, one can even say that there is no real conflict between the decisions of the two Division Benches.

13. Yet, the question of the Prothonotary's power to restore is not adequately and fully answered. The view of S.H. Kapadia J. (as the learned Judge then was) was not just that the Prothonotary had the power to dismiss the suit for default of appearance, but that he had the power to restore the dismissed suit upon cause being shown. In fact, the real question considered by the learned Judge was about the latter power, namely, the power to restore. (The power to dismiss does not appear to have been even questioned in that case, but rather taken for granted.) The learned Judge acknowledged the power to restore upon a reading of Rules 87, 131, 133, 157 and 986 of the OS Rules. That was in 1998 and the judgment has held the field for eighteen years that followed. Almost every restoration application has been made all these years before the Prothonotary.

14. Though the Division Bench in Lawrence Fernandes considered whether or not the existence of the Prothonotary's power to restore was This Order is modified/corrected by Speaking to Minutes Order dated 06-10-2016 supported by the judgment of the earlier Division Bench in Bank of Baroda (and held that it was not supported), it did not, in terms, consider the correct position in law on the power itself, on the basis of the OS Rules considered by Kapadia J. In fact, the judgment of Kapadia J. was not considered at all by the Division Bench in Lawrence Fernandes. Secondly, the Division Bench did not come to any categorical conclusion that the Prothonotary can in no circumstances exercise such power. What it said was that there is no power "to order restoration by the above process routinely." The Division Bench really found fault with the manner in which orders were passed by the Prothonotary. In its own words, the suits, petitions, etc. "are perfunctorily dismissed or restored by the Prothonotary &

Senior Master." And as a result, what it finally recommends is the following corrective measure :

"It is time that we take serious note of above acts of the Prothonotary & Senior Master and take corrective steps. One of the corrective measures would be to invest all judicial powers, even in Original Side matters, in the Registrar (Judicial) or appoint a senior Judicial Officer as Prothonotary and Senior Master and invest in him so also confer upon him the requisite powers. At the end of all this, all concerned ought to realise that a Court of law is meant for the litigants and should protect the interest of all litigants at any cost and which would include taking note of serious inaction, lapses or acts of omission and commission of our own officers."

15. We are of the view, in the premises, that the Division Bench in Lawrence Fernandes does not overrule the judgement of Kapadia J. in Rima International. The judgement of Kapadia J., which has held the field for the last many years, contains a proper and reasonable view on the power of the Prothonotary to restore a suit dismissed by him earlier. As we This Order is modified/corrected by Speaking to Minutes Order dated 06-10-2016 have noted above, the position not only does not admit of any doubt on principle, but accords with the law laid down by the Supreme Court in Jamal Uddin Ahmed's case (supra). The dictum in Maxwell on Interpretation of Statutes, referred to in this behalf by the Supreme Court, puts it succinctly in the following words :

"Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution."

The OS Rules confer the power to admit or reject a plaint on the Prothonotary. This power not only includes the power to grant time, but to admit a once rejected plaint after condoning the default. Such power can only be said to be an ancillary or incidental power "necessary to its execution".

16. Even otherwise, the function discharged through the exercise of this power is administrative or ministerial in nature and it would be a better approach to leave that to an officer of the Court rather than burden the Court with the task of discharging such function. As we have noted above, no principle or consideration of propriety, logic or necessity requires the same to be performed only by the Court. The following observations of the Supreme Court are, in our opinion, apposite to note in this behalf :

"The functions discharged by a High Court can be divided broadly into judicial and administrative functions. The judicial functions are to be discharged essentially by the Judges as per the Rules of the Court and cannot be delegated. However, administrative functions need not necessarily be discharged by the Judges by themselves, whether individually or collectively or in a group or two or more, and may be delegated or entrusted This Order is modified/corrected by Speaking to Minutes Order dated 06-10-2016 by authorisation to subordinates

unless there be some rule of law restraining such delegation or authorization. Every High Court consists of some administrative and ministerial staff which is as much a part of the High Court as an institution and is meant to be entrusted with the responsibility of discharging administrative and ministerial functions. There can be "delegation" as also there can be "authorization" in favour of the Registry and the officials therein by empowering or entrusting them with authority or by permitting a few things to be done by them for and on behalf of the Court so as to aid the Judges in discharge of their judicial functioning. Authorization may take the form of formal conferral or sanction or may be by way of approval or countenance. Such delegation or authorisation is not a matter of mere convenience but necessity at times. The Judges are already overburdened with the task of performing judicial functions and the constraints on their time and energy are so demanding that it is in public interest to allow them to devote time and energy as much as possible in discharging their juridical functions, relieving them of the need for diverting their limited resources of time and energy to such administrative or ministerial functions, which, on any principle of propriety, logic or necessity are not required necessarily to be performed by the Judges. Receiving a cause or a document and making it presentable to a Judge for the Purpose of hearing or trial and many a functions post-decision, which functions are administrative and ministerial in nature, can be and are generally entrusted or made over to be discharged by the staff of the High Court, often by making a provision in the Rules or under the orders of the Chief Justice or by issuing practise directions, and at times, in the absence of rules, by sheer practise. The practise gathers the strength of law and the older the practise the greater is the strength. The Judges rarely receive personally any document required to be presented to the Court. Plaints, petitions, memoranda or other documents required to be presented to the Court are invariably received by the administrative or ministerial staff, who would also carry out a preliminary scrutiny of such documents presentable to the Judge, so that the valuable time of the Judge is not wasted over such matter as do not need to be dealt with personally by the Judge."

17. In keeping with the observations of the Supreme Court, even otherwise, as a matter of practise, the Prothonotary's power to restore suits earlier dismissed by him either on default of appearance or for non-removal of office objections has been long entrenched and has gathered "the strength of law" and there is no reason, as we have explained above, to disturb the same now.

18. Yet another important consideration rules in favour of the affirmation of such power. Every matter placed before the Prothonotary can always be brought before the Judge under Rule 133 of the OS Rules, which is quoted below :

Rule 133. Adjournment of matter to Judge. - Any party desiring to have any question decided by Prothonotary and Senior Master, whether disputed or not, adjourned to a Judge, may apply to the Prothonotary and Senior Master for such adjournment within four days from the passing of the order complained of. If the

application is within time, the Prothonotary and Senior Master shall adjourn the matter and put it on the board of the Judge in Chambers. If the party makes the application after the said four days, the Prothonotary and Senior Master may adjourn the matter to the Judge in Chambers if he is satisfied that the party had sufficient cause for not making the application in time.

Not only can this be done at the instance of a party, but even the Prothonotary himself can do so under Rule 131, which delegates the power to have the question decided, in the first place, to him. Rule 131 has the following proviso :

Provided that where any matter appears to the Prothonotary and Senior Master or the Additional Prothonotary and Senior Master proper for the decision of a Judge, the Prothonotary and Senior Master or the Additional Prothonotary And Senior Master may This Order is modified/corrected by Speaking to Minutes Order dated 06-10-2016 refer the same to the Judge in Chambers, and the Judge may either dispose of the matter or refer the same back to the Prothonotary and Senior Master or the Additional Prothonotary and Senior Master with such directions as he may thinks fit:

The net result of the provisions quoted above is that in a matter which admits of any doubt as to whether or not the order of restoration applied for should be passed in a given case, the Prothonotary himself before passing the order, or an aggrieved party after passing of the same, may bring up the matter before the Judge in Chambers and have the same decided. The Judge in Chambers, in other words, whilst being spared of an administrative or ministerial exercise, may yet take it up if there is any doubt or contest, giving the aggrieved parties an adequate remedy.

19. The upshot of the above discussion is that wherever a plaint or other document or petition is rejected by the Prothonotary under Rule 986 or a suit or a petition or other proceeding is dismissed under Rule 87 or for default of appearance, the Prothonotary has the power to set aside his own order and admit the document or restore the proceeding, as the case may be. Needless to add that such power is subject to Rule 133 and also the proviso to Rule 131 of the Bombay High Court (Original Side) Rules, 1980.

20. We answer the Reference accordingly.

21. Before we conclude, we must record our appreciation for the valuable assistance given to us by Counsel for the parties as also Counsel for both associations. We may also add a note that we are in full agreement with the observations made by the Division Bench (S.C. This Order is modified/corrected by Speaking to Minutes Order dated 06-10-2016 Dharmadhikari and B.P. Colabawalla, JJ.), which are quoted above, concerning the need to appoint in future a Senior Judicial Officer as Prothonotary and Senior Master so as to facilitate proper exercise of the functions of the Judge in Chambers delegated to him. That, of course, is a matter for the administrative side of this Court to deal with.