

LAXMIDAS MORARJI (DEAD ) BY LRS. A

v.

MISS BEHROSE DARAB MADAN  
(Civil Appeal No. 5786 of 2002 etc.)

SEPTEMBER 18, 2009 B

[B.N. AGRAWAL, G.S. SINGHVI AND H.L. DATTU, JJ.]

*Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 – s. 28 – Suit under – Maintainability of – Held : Suit u/s. 28 is maintainable provided landlord-tenant relationship is established – On facts, tenant-landlord relationship not established between the landlord and the person in possession of suit premises – Therefore, suit not maintainable.* C

*Constitution of India, 1950 – Article 142 – Jurisdiction under – Scope of – Held : The power is though not controlled by statutory provisions, it cannot be used to supplant the law applicable to the case – The power has to be used sparingly in cases which cannot be effectively and appropriately tackled by the existing provisions of law.* D

*Words and Phrases – ‘Tenant’ – Meaning of, in the context of s.5(11)(c)(i) of Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947.* E

**After death of deceased tenant, appellant-plaintiff (landlord) issued notice to the trustees and executors of Will of the deceased tenant. No notice was issued to the person in possession of suit property (defendant No. 5). Thereafter, he filed suit before Court of Small Causes. In the suit, plaintiff specifically stated that defendants 1 to 4 (executors and trustees of will) had parted with the possession of the suit premises for defendant No.5 (respondent); and that defendant No. 5 was not the** F

A tenant. However, she was made a party by way of caution. Small Causes Court dismissed the suit holding that defendant No.5 was entitled to claim tenancy right. Appellate Court held that suit was not maintainable in absence of landlord-tenant relationship between the plaintiff and executors of Will. High Court dismissed the writ petition which was filed questioning the order passed by the appellate court. Review application against the same was also dismissed by High Court. Hence, the present appeals.

C The issue for consideration before this Court was whether the suit filed by the owner of the suit premises was maintainable before the Small Causes Court.

D Dismissing the appeals, the Court

D Held : 1. The definition of 'tenant' under Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 means any person by whom or in whose account rent is payable for any premises. Section 5(11)(c) (i) of the Act, is too exhaustive to include any member of the tenant's family residing with the tenant at the time of his death. There are two requirements u/s. 5 (11) of the Act, which must be fulfilled before a person may be called 'tenant' under sub-clause(c); firstly, he must be a member of the tenant's family and secondly, he must have been residing with the tenant at the time of his death. Besides, fulfilling these conditions, he must have agreed upon to be a tenant by the members of the tenant's family. In default of such agreement, the decision of the court shall be binding on such members. [Para 16] [786-D-F]

G 2. The Rent Control Act is a special enactment conferring certain special rights and imposing certain special obligations upon landlords and tenants. The Rent Control Act imposes restrictions on the right of landlord

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to evict his tenants on the grounds other than what is specified in the statute. Mere denial of relationship of landlord and tenant cannot oust the jurisdiction unless it is specifically provided in the statute. If the Rent Controller finds that the opposite party is not a tenant of the landlord, he must dismiss the landlord's application for eviction, but if he finds that such a plea by the opposite party is not true and that the opposite party is a tenant of the landlord, then, if the ground of eviction is proved, he must order eviction of the tenant. [Para 20] [788-H; 780-A-B; E-G]

3. Section 28 of the Act deals with the jurisdiction of the courts, to decide on issues arising out of the Act. In a suit relating to possession of the premises where the relationship of landlord and tenant admittedly subsists between the parties, jurisdiction to entertain and try such a suit is in the courts specified in Section 28. All applications made under the Act are also to be entertained and disposed of by the courts specified in Section 28 and no other. In all such suits or proceedings the courts specified in Section 28 also have the jurisdiction to decide all claims of questions arising out of the Act or any of its provisions. In the instant case, the suit premises is situate within the jurisdiction of Greater Bombay. In view of Section 28 of the Act, the Court of Small Causes, Bombay, will have jurisdiction. The appellants have filed a suit for eviction. The suit is maintainable provided that a landlord-tenant relationship is established. However, it is clear from the pleadings of the appellants that they do not consider respondent No.5 as a tenant. In furtherance of this stand, the appellants have gone on to adduce evidence to prove that respondent does not qualify the conditions to be deemed as tenant under the Act. Therefore, the inevitable conclusion is that Small Causes Court at Bombay had no jurisdiction to entertain the suit filed by the owners of the

A suit premises. [Para 21] [790-A-D]

*Om Prakash Gupta v. Rattan Singh and Ors.* (1964) 1 SCR 259; *Khem Chand Dayalji and Co. vs. Mohammed Bhaichand* (1969) 1 SCC 884, relied on.

B 4. Article 142 of the Constitution of India, being in the  
nature of a residuary power based on equitable  
principles, the courts have thought it advisable to leave  
the powers under the article undefined. The power under  
C Article 142 is a constitutional power and, hence, not  
restricted by statutory enactments. Though the Supreme  
Court would not pass any order under Article 142 of the  
Constitution which would amount to supplanting  
substantive law applicable or ignoring express statutory  
provisions dealing with the subject, at the same time these  
D constitutional powers cannot in any way, be controlled  
by any statutory provisions. However, it is to be made  
clear that this power cannot be used to supplant the law  
applicable to the case. This means that acting under  
Article 142, the Supreme Court cannot pass an order or  
E grant relief, which is totally inconsistent or goes against  
the substantive or statutory enactments pertaining to the  
case. The power is to be used sparingly in cases which  
cannot be effectively and appropriately tackled by the  
existing provisions of law or when the existing provisions  
F of law cannot bring about complete justice between the  
parties. [Para 23] [790-G-H; 791-A-C]

*Dhananajaya Sharma vs. State of Haryana and Ors.*  
(1995) 3 SCC 757; *Teri Oat Estate Pvt. Ltd. vs. U.T.*  
*Chandigarh* (2004) 2 SCC 130, relied on.

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Case Law Reference:

(1964) 1 SCR 259

Relied on.

Para 20

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BEHROSE DARAB MADAN

(1964) 1 SCR 259 Relied on. Para 21 A  
(1995) 3 SCC 757 Relied on. Para 22  
(2004) 2 SCC 130 Relied on. Para 23

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5786 of 2002. B

From the Judgment & Order dated 30.8.2001 of the High Court of Judicature at Bombay in Civil Application No. 5701 of 2000 in Writ Petition No. 519 of 1987.

WITH C

C.A. No. 5787 of 2002.

E.R. Kumar, Sameer Parekh, Sumit Goel, Somanadri Goud (Parekh & Co.) for the Appellants. D

Behrose Darab Madan (Respondent-In-person), Ashok K. Mahajan for the Respondents.

The Judgment of the Court was delivered by E

**H.L. DATTU, J. 1.** These appeals are directed against the decision of Bombay High Court in Writ Petition No.519 of 1987 dated 12.02.1998 and the order passed in Civil Application No.5701 of 2000 in Writ Petition No.519 of 1987 dated 30.8.2001. By the impugned order, the High Court, has dismissed both the writ petitions and also the civil application. F

2. The facts leading to these appeals are as under:-

Mr. Salehbhai Alibhai Rangwala was the owner of a building then known as Mohamedali Mansion, situated at 241, Princess Street, Bombay. The Flat No. 2-B on the second floor of the building, (hereinafter referred to as 'the suit premises') had been let out to one Dosabai, the brother of Ms. Dhanbai Batliwala, (hereinafter referred to as the 'deceased-tenant'), on G

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A a monthly rent of Rs. 104.10 paisa. Dhanbai was staying with her brother in the suit premises. After the death of her brother in the year 1953, Dhanbai became the tenant of the suit premises by virtue of Section 5(11)(c)(i) of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 ('the Act' for short). She expired on 17.12.1963. It appears that the deceased tenant in her last will dated 24th April, 1959 had appointed the trustees and executors of her will. Sometime in the early part of the year 1965, the original owner had sent notice to the trustees and executors of the will of the deceased tenant to hand over the vacant possession of the suit premises and also to pay the arrears of rent alleged to be due from 01.11.1964. Since the trustees and executors of the will failed to vacate the suit premises, the original owner filed Suit No.310 of 1967 before the Court of Small Causes at Bombay, against the trustees and the respondent in this appeal, inter-alia seeking recovery of possession of the suit premises and for payment of Rs.3018.90 paisa, being the arrears of rent for the period from 01.11.1964 to 31.03.1967. In the suit filed, it was specifically stated, that, the defendant No. 5 (respondent) is not the tenant and has no legal and valid claim over the suit premises and therefore no notice was required to be given to her, however, she is arrayed as a party in the suit by way of caution and to avoid any technical objection in future. It was also mentioned in the suit, that, the defendants 1 to 4 (trustees and executors of the will) have parted with the possession of the suit premises to defendant No.5, respondent in this appeal.

3. In the written statement filed, respondent apart from others, had stated that the court of small causes at Bombay has no jurisdiction to entertain the petition, since the landlord of the premises has not accepted her as a tenant of the suit premises; she has been adopted as a daughter by the deceased tenant; deceased tenant has by her last will, bequeathed the tenancy rights of the suit premises; she is the daughter of sister of the deceased tenant and was residing with the deceased tenant and, therefore, would fit in to the definition of a tenant as

envisaged under Section 5(11)(c)(i) of the Act and, therefore, A  
entitled to an eviction notice.

4. The Small Causes Court, while dismissing the suit by B  
its order dated 02.07.1977, held that, the law of adoption is  
unknown to the Parsis and the defendant No.5 (respondent)  
has proved the fact that she was residing with the deceased  
tenant as a member of her family and as such she is entitled  
to claim tenancy rights under the provisions of Section  
5(11)(c)(i) of the Act.

5. The original owner along with the predecessor of the C  
present petitioners, being aggrieved by the judgment of the  
court of Small Causes at Bombay preferred an appeal before  
the court of Small Causes at Bombay in Appeal No.74 of 1978.  
The appellate court, on consideration of oral and documentary D  
evidence held that, there was no landlord and tenant  
relationship between executors of will and the petitioners and  
therefore the suit itself was not maintainable. The respondent  
retains the tenancy rights as she was the adopted daughter of E  
the deceased tenant under her will dated 2nd April, 1959 and  
was a member of her family residing with her at the time of her  
death. It was also observed that bequeath of the tenancy rights  
either of the residential premises or of shop premises cannot  
be given effect to, unless the concerned person satisfies the  
requirement of Section 5(11)(c)(i) of the Act and lastly the  
defendants 1 to 4 have not produced any evidence to show that F  
the adoption is unknown to Parsis. In view of the above findings  
the appellate court had dismissed the appeal.

6. Against the decision of the Appellate Court, the G  
appellant filed writ petition before the High Court. The learned  
single Judge dismissed the writ petition, being of the opinion  
that there is no perversity in the findings and the conclusions  
reached by the Trial Court and the first appellate court and also  
has observed that no exception can be taken to the findings  
recorded by the trial court that the respondent would inherit the  
tenancy of the suit premises as she was residing with the tenant H

A as a member of the family of the tenant.

B 7. Since the aforesaid order had been passed without hearing the learned counsel for the petitioner, an application for review came to be filed by the petitioners to review the order passed in the Writ Petition. It was dismissed vide order dated 30.08.2001.

C 8. Appellants have preferred separate appeals before this Court, inter alia, questioning the order passed by the High Court in the writ petition and the civil application filed for review of the order passed in writ petition.

D 9. These appeals were heard in part on 15th April, 2009 and 30th July, 2009 and when the matters were taken up for hearing on 6th August, 2009, the learned counsel for the respondent stated that as desired by the respondent, he has given no objection to her and she wants to argue the matter in person. The respondent was present before the Court. Instead of arguing the matter, she sought an adjournment. The same was declined, since the appeals were pending on the Board for last seven years and the learned counsel for the appellant had closed his submissions.

F 10. The learned senior counsel Mr. Rohinton Nariman submitted, that, the respondent is not a member of the deceased tenant's family and was not residing with the deceased at the time of her death and therefore respondent cannot claim to be the tenant of the suit premises. In aid of his submission, the learned senior counsel invites our attention to the definition of tenant under Bombay Rent Act. The learned senior counsel has also taken us through the pleadings and the evidence on record to substantiate that the respondent cannot claim any right, much less tenancy right, in the suit premises under the deceased tenant.

H 11. We do not think it necessary to discuss in detail the evidence adduced by the parties in view of the course we

propose to adopt in deciding these appeals.

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12. The primary issue which falls for our consideration and decision is, whether the suit filed by the owner of the suit premises was maintainable before the Small Causes Court, Bombay.

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13. The specific case of the plaintiff in the suit filed was that the respondent is not a tenant and has no legal and valid claim over the suit premises and therefore no notice was required to be given to her. However, she is arrayed as a party in the suit by way of caution and to avoid any technical objection in future. It was also mentioned in the suit that the defendants 1 to 4 (trustees and executors of the will) have parted with the possession of the suit premises to defendant No.5 (respondent in this appeal). It was also mentioned that the suit is for recovery of the suit premises to which the provisions of Bombay Rent Control Act would apply.

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14. Apart from others, it was the defence of the defendant No.5 (respondent in this appeal), that the Small Causes Court, Bombay does not have jurisdiction to try the suit, if the plaintiff were to assert that she is not the tenant of the suit premises.

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15. To decide the issues which have been raised for our consideration and decision, it is necessary to notice the definition of "tenant" and jurisdiction of courts under the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947. Section 5(11) of the Act reads :

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"(11)"tenant" means any person by whom or on whose account rent is payable for any premises and includes,-

(a) xx xx xx xx

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[(aa) xx xx xx xx

(b) xx xx xx xx

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A [(bb) xx xx xx xx

[(bba) xx xx xx xx

B [(c) (i) in relation to any premises let for residence, when the tenant dies, whether the death has occurred before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1978, any member of the tenant's family residing with the tenant at the time of his death or, in the absence of such member, any heir of the deceased tenant, as may be decided in  
C default of agreement by the Court."

D 16. The definition of 'tenant' under the Act, means any person by whom or in whose account rent is payable for any premises. Section 5(11)(c) (i) of the Act, is too exhaustive to include any member of the tenant's family residing with the tenant at the time of his death. There are two requirements under Section 5(11) of the Act, which must be fulfilled before a person may be called 'tenant' under sub-clause(c); firstly, he must be a member of the tenant's family and secondly, he must have been residing with the tenant at the time of his death.  
E Besides, fulfilling these conditions, he must have agreed upon to be a tenant by the members of the tenant's family. In default of such agreement, the decision of the court shall be bindings on such members.

F 17. Section 28 of the Act provides the Small Causes Court with special jurisdiction to try the cases under the Act. The Section is as under:

*"Jurisdiction of Courts*

G (1) Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction.-

H (a) in Greater Bombay, the Court of Small Causes,

Bombay,

[(aa) in any area for which, a Court of Small Causes is established under the Provincial Small Causes Courts Act, 1887, such Court and]

(b) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge the Court of the Civil Judge (Senior Division) having jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply [or between a licensor and a licensee relating to the recovery of the licence fee or charge] and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions and [subject to the provisions of sub-section (2)], no other court shall have jurisdiction to entertain any such suit, proceedings, or application or to deal with such claim or question.

[(2) (a) Notwithstanding anything contained in clause(aa) of sub-section(1), the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under the Provincial Small Causes Courts Act, 1887 and transfer the same for trial or disposal to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in such area.]

(b) Where any suit, proceeding or application has been withdrawn under clause(a), the Court of the Civil Judge (Senior Division) which thereafter tries such suit, proceedings or application, as the case may be, may either re-try it or proceed from the stage at which it was withdrawn.

(c) The Court of the Civil Judge trying any suit, proceeding

A or application withdrawn under clause (a) from the Court of Small Causes, shall, for purposes of such suit, proceeding or application, as the case may be, be deemed to be the Court of Small Causes.]

B Explanation- In this Section "proceeding" does not include an execution proceeding arising out of a decree passed before the coming into operation of this Act."

C 18. Section 28 of the Act begins with a non-obstante clause. By Section 28 of the Act, the legislature has designated certain courts to entertain and try any suit or proceeding between a landlord and a tenant relating to recovery of rent or possession of any premises to which any of the provisions of this part apply and to decide any application made under Bombay Rent Act and to deal with any claim or question arising out of Bombay Rent Act or any of its provisions. The designated courts are, the Court of Small Causes in Greater Bombay, a Court of Small Causes established under the Provincial Small Causes Courts Act, 1837, in any area where such court is established and in other areas, the court of Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situated or if there is no such Civil Judge, the court of Civil Judge (Senior Division) having ordinary jurisdiction.

F 19. This Court in the case of *Khem Chand Dayalji and Co. vs. Mohammed Bhaichand* (1969) 1 SCC 884, while discussing the provision prescribing the jurisdiction to the Small Causes Court, has noticed, that "by Section 28 of the Act certain courts were designated as courts of exclusive jurisdiction to entertain and try suits and proceedings between a landlord and tenant relating to recovery of rent or possession to which the provisions of the Act applied and also decide claims or questions arising under the Act."

G 20. The Rent Control Act is a special enactment conferring certain special rights and imposing certain special obligations

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upon landlords and tenants. The Rent Control Act imposes restrictions on the right of landlord to evict his tenants on the grounds other than what is specified in the Statute. This court in the case of *Om Prakash Gupta vs. Rattan Singh and Ors.* (1964) 1 SCR 259, has observed, that, ordinarily, it is for the civil courts to determine whether and if so, what jural relationship exists between the litigating parties. The Tribunals under the Act being creatures of the Statute have limited jurisdiction and have to function within the limits of the Statute creating them. But within the provisions of the Act, they are Tribunals of exclusive jurisdiction and their orders are final and not liable to be questioned in collateral proceedings, like a separate application in execution proceedings. The Court has further observed, that, therefore, there is no substance in the contention that as soon as the appellant denies the relationship of landlord and tenant, the jurisdiction of the authorities under the Act is completely ousted. A landlord must be very ill-advised to start proceedings under the Act, if there is no relationship of landlord and tenant. If a person in possession of the premises is not a tenant, the owner of the premises would be entitled to institute a suit for ejection in the civil courts, untrammled by the provisions of the Act. It is only when he happens to be the tenant of the premises in an urban area, the provisions of the Act are attracted. Mere denial of relationship of landlord and tenant cannot oust the jurisdiction unless it is specifically provided in the Statute. If the Rent Controller finds that the opposite party is not a tenant of the landlord, he must dismiss the landlord's application for eviction, but if he finds that such a plea by the opposite party is not true and that the opposite party is a tenant of the landlord, then, if the ground of eviction is proved, he must order eviction of the tenant.

21. Section 28 of the Bombay Rent Act deals with the jurisdiction of the Courts, to decide on issues arising out of the Act. In a suit relating to possession of the premises where the relationship of landlord and tenant admittedly subsists between the parties, jurisdiction to entertain and try such a suit is in the

A courts specified in Section 28. All applications made under the Act are also to be entertained and disposed of by the courts specified in Section 28 and no other. In all such suits or proceedings the courts specified in Section 28 also have the jurisdiction to decide all claims of questions arising out of the

B Act or any of its provisions. In the instant case, the suit premises is situate within the jurisdiction of Greater Bombay. In view of Section 28 of the Act, the Court of Small Causes, Bombay, will have jurisdiction. The appellants have filed a suit for eviction. The suit is maintainable provided that a landlord-tenant

C relationship is established. However, it is clear from the pleadings of the appellants that they do not consider respondent No.5 as a tenant. In furtherance of this stand, the appellants have gone on to adduce evidence to prove that respondent does not qualify the conditions to be deemed as

D tenant under the Bombay Rent Act. In the light of the principles stated by this Court in *Om Prakash Gupta's case* (1964) 1 SCC 259, the inevitable conclusion is that Small Causes Court at Bombay had no jurisdiction to entertain the suit filed by the owners of the suit premises.

E 22. The learned senior counsel for the appellant would submit that the lis between the parties is pending before various forums from last four decades and even as of now the landlord of the premises is unable to get vacant possession of the suit premises and, therefore, we should exercise our power

F under Article 142 of the Constitution of India and direct the respondent to quit and deliver vacant possession of the suit premises to the landlord. Reliance is placed on the decision of this court in the case of *Dhanajaya Sharma vs. State of Haryana and Others*; [(1995) 3 SCC 757].

G 23. Article 142 being in the nature of a residuary power based on equitable principles, the courts have thought it advisable to leave the powers under the article undefined. The power under Article 142 of the Constitution is a Constitutional

H power and, hence, not restricted by statutory enactments.

Though the Supreme Court would not pass any order under Article 142 of the Constitution which would amount to supplanting substantive law applicable or ignoring express statutory provisions dealing with the subject, at the same time these Constitutional powers cannot in any way, be controlled by any statutory provisions. However, it is to be made clear that this power cannot be used to supplant the law applicable to the case. This means that acting under Article 142, the Supreme Court cannot pass an order or grant relief, which is totally inconsistent or goes against the substantive or statutory enactments pertaining to the case. The power is to be used sparingly in cases which cannot be effectively and appropriately tackled by the existing provisions of law or when the existing provisions of law cannot bring about complete justice between the parties. It would be useful at this stage to refer to the observations made by this Court in the case of *Teri Oat Estates (P) Ltd. vs. U.T. Chandigarh* [(2004) 2 SCC 130], "sympathy or sentiment by itself cannot be a ground for passing an order in relation to where the appellants miserably fail to establish a legal right. Despite an extraordinary constituted jurisdiction contained in Article 142 of the Constitution, the Supreme Court ordinarily would not pass an order which would be in contravention of a statutory provision."

24. In view of the aforesaid settled legal principles, it is not possible to accept the request of learned senior counsel for the appellant.

25. Since we are of the opinion that the Small Causes Court at Bombay had no jurisdiction to entertain the suit, we have not pronounced any opinion on the merits of the appellant's case.

26. As the appellants were bonafide prosecuting the suit before the court which had no jurisdiction to entertain the same, we direct, that if along with the plaint, an application under Section 14 of the Limitation Act, 1963 is filed the time from the date of institution of the suit till this day shall be excluded in

- A computing the period of limitation in filing the suit. It is further directed that if any such suit is filed, the same and consequent appeal/appeals/revision shall be disposed of within a period of one year from the date of its filing in view of the fact that unfortunately the present eviction matter remained pending for
- B forty two long years.

27. Civil Appeal No. 5786 of 2002 is, accordingly, dismissed.

- C 28. In view of the dismissal of Civil Appeal No.5786 of 2002 by us today, Civil Appeal No.5787 of 2002 does not survive and is, accordingly, dismissed. No order as to costs.

K.K.T.

Appeals dismissed.