

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2189 OF 2015
IN
WRIT PETITION NO.3156 OF 2015**

Lodha Properties Development Private Limited	: Petitioner/ Org. Applicant.
Versus	
Kedia Holdings Private Ltd and ors.	: Respondents.
And	
Kedia Holdings Private Ltd.	: Applicant.

**Mr. Aditya Shiralkar a/w Ms. Shruti Bandekar i/by Narayanan &
Narayanan for the Applicant/Original Respondent No.1
Mr. Neveille Mukherjee i/by Veritas Legal for the original Petitioner.**

**CORAM : R. M. SAVANT, J.
DATE : 21st August 2015**

P.C.

1 The above Civil Application has been filed seeking extension of time to carry out amendment to the plaint in L.C.Suit No.4298 of 2013 pursuant to the judgment and order dated 11/03/2015 passed by this Court in the above Writ Petition. The said relief is sought vide prayer clause (a) which is the substantive prayer in so far as the above Civil Application is concerned.

2 It is required to be noted that this Court by the said order dated 11/03/2015 had granted 4 weeks time to the Applicant i.e. the original Respondent No.1 to the Writ Petition to carry out amendment so as to array the

original Petitioner i.e. Lodha Properties Development Private Limited as party Defendant to the said suit. The instant Application has been filed on 22/07/2015 i.e. almost after a period of 4 months after the said order dated 11/03/2015 was passed by this Court. The delay in filing the Application is attributed to the fact that the Applicant was contemplating filing an SLP in the Apex Court against the said order dated 11/03/2015 and accordingly had sought the opinion of a learned Counsel practicing in the Supreme Court. It is the case of the Applicant that the learned Counsel advised the Applicant against laying a challenge to the said order dated 11/03/2015. It is also the case of the Applicant that thereafter the applications were made before the City Civil Court seeking extension of time to carry out amendment and ultimately the instant Application has been filed in this Court.

3 The instant Application is vehemently opposed on behalf of the original Petitioner Lodha Properties Development Pvt. Ltd. The learned Counsel for the original Petitioner Shri Mukherjee, by relying upon a list of the dates and events which the original Petitioner has prepared, would seek to draw this Court's attention to the conduct of the Applicant post the passing of the said order dated 11/03/2015. It is the contention of Shri Mukherjee that the Applicant has made every attempt to protract the proceedings and see to it that the interim order which is operating in favour of the Applicant continuous indefinitely.

4 Per contra, the learned Counsel for the Applicant Shri Shiralkar, by drawing this Court's attention to the averments made in the Civil Application, would contend that it is for the reasons mentioned in the Application that the delay has occasioned in filing the above Civil Application.

5 In the context of the extension sought, it is required to be noted that after the order dated 11/03/2015 was passed in the above Petition, the Applicant had approached the Counsel practicing in the Apex Court and as per the Applicant's own averments in paragraph 6, the opinion of the said Counsel become available to the Applicant on 5/4/2015. Thereafter the matter had appeared on various dates before the City Civil Court which have been mentioned in the subsequent paragraphs of the Civil Application, on which dates it seems that a motion for adjournment was made on behalf of the Applicant on the ground that this Court had granted 4 weeks time, and therefore, the Trial Court should extend the time to carry out the amendment, it is thereafter that the instant Application is filed.

6 The filing of the instant Application therefore proves the factum of the Applicant being aware of the fact that the extension of time could be granted only by this Court as it is this Court which had originally granted time of 4 weeks to carry out the amendment. However, inspite of the said

awareness, applications were sought to be made before the Trial Court seeking extension of time. One such application which is dated 13/4/2015 is tendered across the bar by the learned Counsel Shri Mukherjee. Filing of the said applications and applying for extension of time to the Trial Court when the Applicant was very well aware of the fact that the extension of time would have to be sought from to this Court impinges upon the bonafides of the Applicant. There is therefore merit in the submission of learned Counsel Shri Mukherjee that attempt of the Applicant seems to be to protract the proceedings as there is an ad-interim order operating in favour of the Applicant in the suit filed by it.

7 In my view, though the bonafides of the Applicant are in question and there seems to be an attempt to protract the proceedings, the Applicant cannot be non-suited on the said ground at this stage and would have to be shown a final indulgence. The same would obviously be by putting the Applicant to terms by imposing costs. The above Civil Application is therefore allowed in terms of prayer clause (a). Since the learned Counsel for the original Petitioner Shri Mukherjee states that the costs may be deposited with the State Legal Aid Fund, the Applicant is directed to deposit costs of Rs.10,000/- with the State Legal Aid Fund within two weeks from date. The deposit of the costs is a condition precedent. If the costs are not deposited and receipt evidencing the said deposit is not produced before the Trial Court, the

benefit of this Order would not enure to the Applicant and resultantly the above Civil Application would be deemed to have been rejected, and in the said event, the learned Judge of the City Civil Court would thereafter pass appropriate orders in the suit in question. If the costs are deposited and the evidence to that effect is produced before the Trial Court, the Applicant would be entitled to carry out amendment to the suit in question on or before 10/09/2015. On the amendment being carried out, the Applicant to serve the copy of the amended cause title on the respective Defendants. The above Civil Application is accordingly disposed of.

8 The parties to act upon an ordinary copy of the instant order duly authenticated by the Court Associate/Sheristedar.

[R.M.SAVANT, J]