

3. In support of this Application, Mr.Muchhala submitted that respondent No.1 filed Waqf Application No. 40 of 2014 before the Tribunal inter alia challenging no objection certificate dated 15/02/2008 issued in favour of respondent No.3 – Seth Allibhoy Amiruddin Wakf Estate (for short 'Waqf') in respect of property bearing Cadastral Survey No. 88 of Lower Parel Division situate at N.M.Joshi Marg, Mumbai 400 011; for cancelling development agreement dated 06/01/2008 executed by and between respondents No.2 and 7 as also tripartite agreement dated 06/01/2008 executed by and between respondent No.2 – Waqf and respondent No.7 and Deen Building Co-operative Housing Society, among other prayers. Mr.Muchhala submitted that in paragraph 38 of the Application, respondent No.2 dealt with issue of limitation. It was inter alia contended that the cause of action is a continuing one and therefore, the application is filed within limitation. Respondent No.1 thereafter filed application under Section 5 of the Act for condoning the delay. Respondent No.1 thereafter filed application for withdrawal of the application filed for condoning the delay. By the impugned order, the Tribunal allowed respondent No.1 to withdraw the application. Mr. Muchhala submitted that the Tribunal permitted respondent No.1 to withdraw the application without deciding the question whether the proceedings are instituted within a period of limitation.

4. On the other hand, Mr.Martis supported the impugned order. He reiterated the submission that proceedings are filed within a period of limitation.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, by the impugned order, the Tribunal has permitted respondent No.1 to withdraw the application filed under Section 5 of the Act for condoning the delay in filing the main proceedings. In my opinion, notwithstanding withdrawal of the application, the Tribunal will deal with the objections raised by respondent No.7 that the main proceedings are not filed within a period of limitation. Subject to this clarification, no case is made out for invocation of powers under Section 115 of C.P.C. Application fails and the same is dismissed. All the contentions of the parties in that regard are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)