

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

**WRIT PETITION STAMP NO.23751 OF 2015**

**M/s. Neelesh Kanade Group**

**A Proprietary firm**

**Through its Prop.**

**Shri Neelesh Satish Kanade**

**: Petitioner**

**versus**

**M/s. Twinkle Realtors Pvt. Ltd.**

**Through its authorized officer**

**Saachhidanand A Sahastrabuddhe**

**: Respondent.**

**Mr. U P Warunjikar a/w Mr. S S Panchpor for the Petitioner.**

**Mr. Naushad Engineer a/w Ms. Rashida Savliwala a/w Mr. Krushna Pandya**

**i/by M/s. Dhruv Liladhar & Co. for the Respondent.**

**CORAM : R. M. SAVANT, J.**

**DATE : 11<sup>th</sup> September 2015**

**P.C.**

1           The writ jurisdiction of this Court is invoked against the order dated 10/08/2015 passed by the learned 2<sup>nd</sup> Joint Civil Judge, Senior Division Pune by which order the Application (Exhibit 142) seeking condonation of delay in furnishing solvent security as well as for setting the order of striking of defence came to be rejected.

2           The issue of furnishing solvent security by the Petitioner has had a chequered history since the year 2012. The Petitioner is the Defendant in the Summary Suit No.16 of 2010 filed by the Respondent herein claiming an

amount of Rs.28,19,47,233/-. It is not necessary to dilate further on this aspect. Suffice it would be to state that by order dated 20/07/2011 conditional leave to defend came to be granted to the Petitioner on the Petitioner furnishing solvent security equal to the claimed amount within 15 days by the order dated 20/07/2011 passed by the learned 6<sup>th</sup> Joint Civil Judge, Senior Division, Pune. The said order was taken exception to by way of Writ Petition No.10681 of 2011 by the Petitioner. The said Writ Petition came to be dismissed by this Court by the order dated 25/10/2012, however, time granted to furnish solvent security was extended by six weeks. The petitioner thereafter applied for review of the said order dated 25/10/2012 by filing Review Petition Stamp No.1516 of 2013. The said Review Petition came to be dismissed by this Court by the order dated 12/02/2013. The Petitioner thereafter approached the Apex Court by SLP (Civil) No.8591 of 2013. The said SLP came to be dismissed by the Apex Court by the order dated 09/05/2013, however, time to furnish solvent security was extended by six weeks. It appears that thereafter the Petitioner applied for extension of time to the Apex Court by filing IA No.4/15 in the said dismissed SLP. The order dated 06/07/2015 passed by the Apex Court indicates that the said IA No.4 of 2015 was withdrawn.

3           It is thereafter that the Petitioner sought to comply with the said order in the matter of furnishing solvent security by presenting a Certificate

issued by one Solapur Siddheshwar Sahakari Bank Ltd. dated 8/4/2013. The said application(Exhibit 76) came to be rejected by the Trial Court by the order dated 25/08/2014.

4           The Respondent herein had filed the application (Exhibit 92) for striking out of the defence of the Defendant in view of the non-compliance of the order directing furnishing of the solvent security. The said application filed by the Respondent came to be allowed by the Trial Court by the order dated 25/8/2014 and the defence of the Defendant was struck off. The petitioner thereafter filed Writ Petition No.30425 of 2014 in this Court challenging the orders passed on Exhibit 76 and Exhibit 92 both dated 25/8/2014. The said Writ Petition came to be dismissed. In the context of the challenge raised in the present Petition paragraph 6 and 7 of the said order are relevant and are therefore reproduced herein under for the sake of ready reference :-

6           The learned Senior Counsel for the Petitioner Shri V B Naik in the course of making submissions submitted the list of properties which has been submitted to the Court, below Exhibit 85, and would submit that the Trial Court has not considered the same. The learned Senior Counsel would contend that in view of the fact that the said documents have not been considered, the matter is required to be relegated back to the Trial Court for a denovo consideration of the said documents. The learned Senior Counsel would contend that to the above Writ Petition is annexed a certificate issued by the Government Approved Valuer in respect of the properties being CTS Nos.925 B-3 and 925 C, the

certificate of the Government Approved Valuer is to the effect that the value of the said two properties is more than Rs. Twenty Nine Crores. It is required to be noted that the said report of the Government Approved Valuer was not before the Trial Court when it adjudicated upon the application (Exhibit 76). In so far as the said two properties are concerned, the learned counsel appearing for the Respondent/Plaintiff would controvert the claim of the Petitioner on the instructions of the Plaintiff by contending that in so far as property bearing CTS No.925 B-3 is concerned, the same is encroached and is a slum and, in so far as property bearing CTS No.925 C is concerned, the Defendant has already subleased it and therefore the security by way of the said two properties is no security in the eyes of law. It is on the said basis that the Respondent is questioning the efficacy of the said two properties as being solvent security.

7 Now coming to the application (Exhibit 85), which has been tendered the same is in the form of a table, the status of the properties is mentioned therein on the basis of whether they are under litigation or not. Hence it is not as if the properties, a list of which was sought to be submitted vide Exhibit 85, qualify as unimpeachable solvent security. The interest of the Defendant in the said property is also not as owner but as a Power of Attorney Holder or a Developer. The said solvent security sought to be furnished vide properties mentioned in Exhibit 85 would have to be considered in the context of the fact that this court had confirmed the order passed by the Trial Court by extending the time by six weeks to provide the solvent security. The order passed by this Court has been confirmed by the Apex Court by granting further six weeks time and in spite of the aforesaid extensions granted, the Petitioner has still not provided unimpeachable solvent security. In my view, to say the least the Petitioner is merely trying to prolong the matter on some pretext or the other. The Petitioner i.e. the original Defendant is obligated to furnish unimpeachable solvent security and it cannot expect the Trial Court to embark upon an exercise to determine whether the security provided is

unimpeachable. The list Exhibit 85 prima facie does not inspire confidence. Hence the submission of the learned Senior Counsel for the Petitioner that the matter be remitted back to the Trial Court would have to be rejected. The order passed by the Trial Court striking off the defence of the Petitioner/Defendant having regard to the aforesaid facts cannot be found fault with. The facts as narrated herein above impinge upon the bonafides of the Petitioner in the matter of complying with the order passed by this Court as well as the Apex Court. In that view of the matter, no further indulgence can be shown to the Petitioner. Hence there is no merit in the above Petition which is accordingly dismissed.”

Hence this Court had considered the solvent security which the Petitioner had sought to furnish and which this Court found not acceptable as the same was not unimpeachable security. It seems that the Petitioner thereafter filed Exhibit 120 to furnish solvent security which application was filed invoking Section 151 of the Code of Civil Procedure. The said application has been rejected by the Trial Court however, the said order is not the subject matter of the above Petition. The Petitioner it seems contemporaneously also filed an application (Exhibit 142) seeking condonation of delay in furnishing solvent security and it would be interesting to note prayer clause (a) of the said application which for the sake of ready reference is reproduced herein under :-

(a) The delay of 8 days from the date of Hon'ble apex court and delay of 25 days from the date of Hon'ble High Court order or any other such delay in furnishing of solvent security be condoned”

Hence the Petitioner was seeking delay of 8 days from the date of the order passed by the Apex Court and delay of 25 days from the date of the order passed by this Court in an application which is filed on 23/07/2015 and in respect of the orders which have been passed as long back as in the year 2012 and 2013.

5           The Trial Court i.e. the learned 2<sup>nd</sup> Joint Civil Judge, Senior Division Pune in the background facts as aforestated did not deem it appropriate to grant the relief sought, and has accordingly rejected the application (Exhibit 142).

6           The learned counsel for the Petitioner Shri Warunjikar sought to contend that the application (Exhibit 142) has not been considered in the manner that it was required to be considered viz. that the Trial Court was obligated to consider whether the Petitioner has shown sufficient cause or in the alternative whether the Petitioner has made out a case for enlargement of the time as contemplated under Section 148 of the Code of Civil Procedure.

7           In my view, it is not possible to accept the said contention of the learned counsel for the Petitioner. This is not a case where the right to file proceedings is in question. This is a case where there is non-compliance of the order passed by this Court and thereafter confirmed by the Apex Court which is

to be taken into consideration. Hence the contention of the learned counsel for the Petitioner that the Trial Court has not considered it as an application for condonation of delay cannot be countenanced. In the background facts as aforestated no indulgence can be shown to the Petitioner in the matter of enlargement of time. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

**[R.M.SAVANT, J]**

Certified to be true and correct copy of the original signed Order.