

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

**CIVIL APPLICATION NO. 3990 OF 2012
IN
FIRST APPEAL NO. 740 OF 1989**

Kandivali Co.op. Industrial Estate Society ... Applicant/ Intervenor

IN THE MATTER OF

Jamunabai Vesta Varli & Ors. ... Appellants

V/s.

The State of Maharashtra & Ors. ... Respondents

Ms. Mahek Bookwalal-Shetty i/b Kavita Shah for the
applicant/Intervenor.

Mr. Atul S. Singh for the Appellant.

Mr. Amit Palkar, AGP for respondent nos. 1 & 2.

CORAM : K. K. TATED, J.

DATED : 22/04/2015.

PC.:

. Heard learned Counsel for the parties.

2 This application is preferred by third party Kandivali Co.op. Industrial Estate Society for joining them as party respondent in First Appeal no. 740 of 1989.

3 In the present proceeding, the appellants plaintiffs filed S.C. Suit No. 7719 of 1988 in Bombay City Civil Court at Bombay challenging the notice no. SR-2082 dated 03.06.1988 and order dated 13.07.1988 passed by the Tahsildar (Encroachment) Borivali – 2 and for other

reliefs, which are as under:

“a) It may be declared by this Hon'ble Court that the impugned notice no. SR-2082 dated 3rd June, 1988 and the impugned order dated 13th July, 1988, issued by the Defendant no.2 are illegal, bad in law and ultra virus to the provisions of the Maharashtra Land Revenue Code and not binding upon the Plaintiffs;

b) It may be declared by this Hon'ble Court that the plaintiffs are the lawful co-owners of the suit land bearing S. No. 68, Hissa No. 2(A), Plot No. 109, admeasuring 1 acre 17.3/4 gunthas of village Kandivali, taluka : Borivali, Bombay, Charkop, Industrial Estate, Kandivali (W), Bombay - 400 067 and the Defendants have no right, title and interest therein;

c) That the defendants, their servants and agents may be permanently restrained by an order of this Hon'ble Court from enforcing and/or implementing and/or from evicting the plaintiffs, their servants and agents in respect of the suit land bearing S. No. 68, Hissa No. 2(A), Plot No. 109, admeasuring 1 acre 17.3/4 gunthas of village Kandivali, taluka : Borivali, Bombay, Charkop, Industrial Estate, Kandivali (W), Bombay and /or from demolishing the suit structures standing thereon and/or from taking any action pursuant to the said notices No. SR-2082 dated 3rd June, 1988 and/or impugned order dated 13th July 1988 in any manner whatsoever;

d) For interim and ad-interim injunction as prayed for in terms of prayer (c) above;

e) That this Hon'ble court may be pleased to appoint any officer of this Honourable Court to visit the suit property and report about the possession of the land and the suit structures standing thereon;

f) For costs of the suit and incidental thereto;

g) For further and such other reliefs as the nature and circumstances of the case may require may be granted by this Hon'ble Court.”

4 The appellants plaintiffs claimed in the said suit that they are lawful co-owner of the suit land i.e. S. No. 68, Hissa No. 2(A), Plot No. 109, admeasuring 1 acre 17.3/4 gunthas of village Kandivali, taluka :

Borivali, Bombay, Charkop, Industrial Estate, Kandivali (W), Bombay – 400 067. In that suit, the appellants preferred Notice of Motion no. 5999 of 1988. That Notice of Motion was dismissed by the Trial Court on 21.07.1989 and also rejected plaint under Order VII Rule 11(d) of the CPC. Hence, the appellants/plaintiffs preferred present First Appeal.

5 The learned Counsel Ms. Bookwala-Shetty appearing on behalf of intervenor submits that the respondent no.1 by memorandum dated 06.12.2002 directed District Collector, Mumbai Suburban District to transfer and hand over the possession of land including the suit property to the M.I.D.C. She submits that the respondent no.1 on 30.04.2004 approved transfer of all the said industrial estate including the suit property from M.I.D.C. to the applicant. Pursuant to the said order, on 12.05.2004 M.I.D.C. handed over the possession of the said industrial estate to the applicant. In support of this contentions, the learned Counsel for the applicant relies on letter of possession issued by the M.I.D.C. dated 12.05.2004. It is specifically stated in the said letter of possession that M.I.D.C. handed over the possession of the land to the applicant 'As it is where it is basis'.

6 The learned Counsel for the applicant submits that as on today, the property card transferred in the name of the applicant. She submits that they are in possession of the entire industrial estate. Hence, any order passed by this court in the First Appeal, same is going to affect their rights, title and interest. Therefore, they are necessary party before this Court.

7 The learned Counsel for the applicant further submits that as soon as they learnt about the present proceeding, they preferred Civil Application immediately. To that effect, the applicant made averments in paragraph 8 of the Civil Application.

8 On the other hand, the learned Counsel Mr. Singh appearing on behalf the appellants plaintiffs vehemently opposed the present Civil Application. They filed affidavit-in-reply dated 22.04.2014. He submits that the applicant failed and neglected to disclose the sufficient cause for condonation of delay. He submits that the plaintiffs by their letter dated 16.06.2009 informed the applicant about the present litigation. In spite of that, the applicant preferred Civil Application on 31.10.2012. The applicant has not disclosed the sufficient cause for condonation of more than 3 years delay in preferring the present Civil Application.

9 The learned Counsel for the appellants plaintiffs submits that the applicant is not necessary party in the present proceeding. He submits that the appellants plaintiffs filed S.C. Suit No.7719 of 1988 in the Bombay City Civil Court at Bombay for declaration them as co-owner of the suit land and also for declaration that notice issued by the defendants is bad in law. He submits that as on today, the appellants are in possession of the suit property. He submits that the Trial Court by order dated 21.07.1989 rejected the plaint under Order VII Rule 11(d) of the CPC on technical ground. Hence, to decide the present First Appeal, applicant is not necessary party to the First Appeal. Hence, there is no substance in the present application and same to be dismissed with costs.

10 I heard both the sides at length. Admittedly, in the present proceeding, the respondent State of Maharashtra and M.I.D.C. by their letter dated 12.05.2004 handed over the suit land to the applicant. To that effect, the applicant made a statement on solemn affirmation in their affidavit dated 14.04.2015 in paragraphs 3 and 4. They also relied on letter of possession dated 12.05.2004. It itself shows that as on today the suit property stand in the name of applicant. Hence, if any order is passed in the present First Appeal that will affect the rights, title and interest of the applicant. Hence, they are necessary party.

11 The present Civil Application cannot be dismissed on the ground of limitation, because this application is preferred by lawful owner to join them as party in the present proceeding.

12 It is to be noted that the Apex Court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123*** held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation

is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749.

- 13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."*

13 Considering the above mentioned fact, submissions made by the learned Counsel for the applicant and law declared by the Apex Court and as on today the applicants are in possession of the suit property as per possession letter dated 12.05.2004, I am satisfied that applicant has made out a case for allowing this Civil Application.

14 Hence, the following order:

a) Delay in preferring the present Civil Application is condoned.

b) The appellants plaintiffs are directed to join the applicant as respondent no.3 in First Appeal no. 740 of 1989 within four weeks from today, failing which First Appeal shall stand dismissed without referring back to the court .

c) After joining the applicant as respondent no.3 in First Appeal no. 740 of 1989, the appellants are directed to serve the copy of appeal memo alongwith all annexures and pending Civil Applications, if any, on applicants or their Advocates within two weeks from date of carrying out appropriate amendment.

d) The learned Counsel for the applicant waives service in First Appeal no. 740 of 1989.

e) Civil Application is disposed of accordingly.

(K.K.TATED, J.)