

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

**FIRST APPEAL NO.396 OF 2012
alongwith
CIVIL APPLICATION NO.901 OF 2012**

Smt. Indirabai Baburao Kanade Appellant/
Ori. Defendant

Vs.

Matru Chhaya Co-op. Hsg. Soc. Respondents
Ltd. & Anr.

Mr. Uday Warunjikar, Advocate for the Appellant.

Mr. Vineet B. Naik, Senior Advocate alongwith Mr. Sukand Kulkarni i/by Ashok Giri, Advocate for Respondents no. 1 and 2.

Coram : **Smt. R.P. SondurBaldota, J.**

Date : 10th June, 2016

P.C.

1 The original defendant to the S.C. Suit No. 50 of 2008 has filed this appeal to challenge the judgment and decree dtd. 18th January, 2012 by which she has been directed to execute conveyance in favour of respondent no.1- Society in respect of the suit property. On failure on part of the appellant to execute conveyance, respondent no.1 is at liberty to get it executed through the court.

2 The appellant was the owner of the suit property consisting of the land at sub-plot No.11, admeasuring 753 sq. yards and the building situate thereon of ground plus first floor with 16 flats. All the 16 flats were occupied by the tenants of the appellant. In January, 1994, there was a proposal from the appellant to sell the flats to the respective tenants. The appellant had agreed to execute conveyance of the property in favour of the society to be formed by the tenants. She gave her irrevocable consent for formation of the co-operative housing society. Accordingly, the society was formed and the members entered into agreements of sale with the appellant. The consideration under the agreement was paid to her. After the society was formed and registered, in the year 1999, it started paying the municipal charges, water charges and other expenses in respect of the building. Thereafter time and again, the society had requested the appellant to execute the conveyance. When the appellant did not respond to the request, the respondents filed the suit herein for a direction to the appellant to execute conveyance in favour of respondent no.1.

3 The appellant contested the suit by taking three preliminary objections as well as on merits. The preliminary objections were i) bar of the suit by the law of limitation, ii) non-joinder of necessary party and iii) lack of pecuniary jurisdiction of the Bombay City Civil Court. Respondent no.1- society was formed in the year 1999. Hence according to the appellant, the suit filed in the year 2008, was barred by the Law of Limitation. She secondly

alleged that one Rajendra Shah, her constituted attorney was a necessary party to the suit and in his absence the suit was bad for non-joinder of necessary party. Thirdly, she alleged that the value of the subject matter of the suit i.e. the land and the building standing thereon was way beyond the pecuniary jurisdiction of the Bombay City Civil Court. On merits, the appellant claimed that she had not received the entire consideration from all the occupants of the flats. She also contended that in a Special General Meeting of the Society, it was decided to redevelop the property and Rajendra Shah was authorised for such redevelopment. For that purpose, Memorandum of Understanding was executed on 22nd July, 2007 and development rights were given to him. Therefore, the appellant had no power to execute conveyance in favour of the society. She further alleged that she had not signed the application for formation of the society by the occupants of 16 flats and that her signature appearing on the application was a forged signature.

4 During trial, respondent no.1-Society examined one of its members. The appellant examined her constituted attorney, Mr. Rajendra Shah and one Rajesh Kulkarni, Deputy Registrar Co-operative Societies. On appreciation of the evidence before it, the Bombay City Civil Court answered all the preliminary issues in favour of respondent no.1. It held that denial by the appellant of her signature on the application for formation of the society was false. She had received the entire consideration under the

agreements of sale from the occupants of the flats and as such she was statutorily obliged under the Maharashtra Ownership Flats Act ("MOFA") to execute conveyance in favour of respondent no.1-society.

5 The three preliminary objections to the suit raised by the appellant were patently baseless. The relief sought in the suit of direction to the appellant to execute conveyance of the suit property to respondent no.1-society was in substance relief of enforcement of statutory obligation under MOFA by the appellant. Such relief can neither be barred by the law of limitation nor capable of monetary evaluation. As regards the contention of non-joinder of necessary party, once the principal is impleaded to the suit, there can be no question of the agent being impleaded separately.

6 The two contentions of the appellant on merit are also established to be not true. The evidence led by respondent no.1 proves that the payment of the consideration is made by each member to the appellant and that the appellant has failed to establish that her signature appearing on the application is forged. In fact the appellant's own witness, Rajesh Kulkarni, Deputy Registrar, Co-operative Societies admitted in his cross-examination that the appellant has signed the application. Besides the constituted attorney of the plaintiff could not have deposed this fact. It was necessary for the appellant to give evidence that

she has not signed the application and the signature appearing thereon is forged.

7 In view of above discussion, there is no merit whatsoever in the appeal. The appeal is dismissed with costs.

8 In view of dismissal of the First Appeal, the Civil Application does not survive. The same is accordingly disposed off.

(Smt. R.P. SondurBaldota, J.)