

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1617 OF 2016

Ashok Towers D Co-op. Hsg. Soc. Ltd. ... Petitioner.
Versus
Peninsula Land Ltd. & ors. ... Respondents.

WITH
CRIMINAL WRIT PETITION NO. 1618 OF 2016

Ashok Towers Co-op. Hsg. Soc. Ltd. ... Petitioner.
Versus
Peninsula Land Ltd. & ors. ... Respondents.

Mr. A.H. Ponda a/w Mr. Hrishikesh Chavan, advocate for Petitioner.

Mr. A.P. Mundargi, Sr. Counsel and Mr. Aditya Mithe and Mr. Amey Mirajkar, Crishtina Bulley i/b. AZB & Partner, advocate for respondents.

Mr. A.R. Patil, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : JUNE 6, 2016

P.C.:

1 Heard the learned Counsel for the Petitioners and the learned Counsel for the respondents.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioners herein happen to be the original complainant in C.C. No. 192/SW/2014 and C.C. No. 188/SW/2014 pending before the learned Metropolitan Magistrate, 29th Court at Bhoiwada, Mumbai. The Petitioners had filed complaint before the learned Magistrate alleging therein that the accused i.e. the respondents in the present case have committed the offence punishable under Section 3,4, 5, 6, 7, 10, 11 punishable u/s. 13 read with 14 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter refer as MOFA 1963). Upon perusal of the complaint and the document filed on record, the learned Magistrate by an order dated 27th October, 2015 was pleased to issue process against the accused.

4 Being aggrieved by the order of issuance of process, the accused Peninsula Land Ltd. had filed Criminal Revision Application before the Additional Sessions Judge at Mumbai. There was a delay of 21 days in filing the revision. The application seeking condonation of delay was filed by Peninsula Land Ltd. There are in all 11 accused. The revision was filed on behalf of all the accused. By an order dated 10th March, 2016, the learned Sessions Court had issued notice to the respondent i.e. the complainant to file the say on the application seeking condonation of delay. On the same day i.e. on 10th March, 2016 the learned Revisional Court had considered the submission made by the learned Counsel for the Applicant in Revision Application and had also granted stay to further proceedings in C.C. No. 192/SW/2014 and 188/SW/2014 respectively.

5 It is pertinent to note that on the day on which the stay was granted, the revision application was not even registered since the application seeking condonation of delay was filed and notice was

issued. It appears that on 13th May, 2016, the application seeking condonation of delay was allowed and the delay has been condoned

6 The learned Senior Counsel Mr. Mundargi submits that in fact, the accused No. 1 to 10 had been served with the copy of the order of issuance of process within limitation. However, rest of the accused had received copy of the summons within limitation. However, they had approached the Sessions Court alongwith Peninsula Land Limited.

7 It is the settled position that the period of limitation is to be calculated from the date on which the order is passed to the date of filing of the petition/revision. The period of filing application seeking certified copy of the order and the date of receipt of the order is exempted from the period of limitation. In the present case, it would be irrelevant as to whether they were served with the copy of issuance of process within limitation or not. On the very first day i.e. on 10th

March, 2016 when the revision application was not registered and notice was issued to the complainant for filing say on application seeking condonation of delay, there was no occasion to consider the submission of the learned Counsel.

8 In view of this, the order dated 10th March, 2016 by which the proceedings have been stayed by the Additional Sessions Judge is quashed and set aside.

9 It is made clear that this Court has not gone into the merits of the matter. All contentions are kept open.

10 The learned Sessions Court shall consider the application seeking stay to the proceedings afresh and decide the matter after hearing both the parties without being influenced by the fact that this petition has been allowed. In the eventuality that the advocates representing respective parties make submission before the learned

Sessions Judge that they are ready and willing to argue the revision application finally, the learned Sessions Judge shall consider the said prayer in accordance with law.

11 Learned Counsel for the Petitioner fairly submits that on 13/6/2016, the Petitioner would not proceed with the matter before the learned Metropolitan Magistrate and inform the same to the learned Sessions Judge, Mumbai accordingly.

12 Rule is made absolute in the above terms. The Writ Petition stands disposed of.

(SMT. SADHANA S. JADHAV,J)