

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 4192 OF 2016
IN
FIRST APPEAL NO.535 OF 2014

Smt. Bharatiben w/o Pankajkumar Applicants
Nayani & Ors.

Vs.

B.M.C. & Anr. Respondents

Mr. Mohit P. Jadhav, Advocate for the Applicants.

Ms. M.R. Bhoir, Advocate for BMC/ Respondents no. 1.
Mr. Sandip Mahadik i/by Mr. Manoj Kumar Upadhyay, Advocate
for Respondent no.1.

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

Date : 14th October, 2016

P.C. :

1 This Civil Application filed by the applicants seeks three reliefs. First is for recalling the order dtd. 15th April, 2016 passed by this court in the First Appeal No.535 of 2014 by condoning the delay of 86 days. The second relief is to allow the applicants to withdraw their respective undertakings filed in this court on 15th April, 2016 and the third relief is to permit the

applicants to submit their representation for regularisation of the premises/structures in their respective occupation to the competent authority of respondent no.1, the Municipal Corporation of Greater Mumbai. Respondent no.2 is the owner of the structures in question and the applicants are the tenants in respect of the suit premises.

2 There is no dispute as regards the fact that the structures in occupation of the applicants are unauthorised structures, in respect of which respondent no.1, Corporation had initiated action for removal. There were proceedings filed by the owner of the structures to challenge the action. Those proceedings have been dismissed by the Bombay City Civil Court. The applicants being the occupants of the unauthorised structures were served with notices under Section 488 of the Mumbai Municipal Corporation Act calling upon them to vacate the structures immediately for the purpose of demolition. The applicants, as affected persons challenged the order of the Bombay City Civil Court of dismissing the suit by preferring First Appeal No.535 of 2014, which came to be disposed off by the order dtd. 15th April, 2016. On realising their position, as regards the facts as well as the law applicable, the learned advocate then appearing for the applicants had made a statement on instructions from the applicants that they shall vacate the premises in their respective occupation to enable respondent no.1 to demolish the structures. The undertakings have been accepted by this Court.

3 Today, the applicants claim that, they have now learnt that there is sufficient FSI potential still in balance to be utilised on the said property and so as to save the premises in their respective occupation they desire to make an application for regularisation of the structures.

3 The Undertakings accepted by the Court made available time of six months to the petitioners. During this time, they have not even moved anybody for regularisation of the structures in their occupation. Mr. Jadhav, the learned advocate for the applicants submits that the difficulty in the way of the applicants was the undertaking filed by them in this court that they would vacate the premises. One fails to understand as to how the undertaking to vacate the premises could come in the way of the applicants moving respondent no.1 for regularisation of the structures. Apparently the real difficulty of the applicants is that, not the owners of the structures for seeking it's regularisation. In the circumstances, there can be no question of recall of either the order or the undertaking dtd. 15th April, 2016. As regards third prayer, it is not for this court to grant any permission to the applicants to submit their representation for regularisation. It is for the applicants to seek appropriate legal advise for the purpose and take the action accordingly. Hence, the Civil Application is dismissed.

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