

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.95 OF 2015
IN
REVIEW PETITION ST.NO. 31114 OF 2014
IN
WRIT PETITION NO. 2780 OF 2014**

**Maria D'souza (Deceased) through
LR Anthony George D'Souza** **..Applicant**

In the matter of

Mrs. Gladys Francis D'souza **..Petitioner**

vs.

The Divisional Joint Registrar & Ors. **..Respondents**

Mrs. Archana Khan for the Applicant

Ms Neha Nagothanekar for the Respondent /original Petitioner

**CORAM : R. M. SAVANT, J.
DATE : 15th FEBRUARY, 2016**

P.C.

1 The above Civil Application has been filed for condonation of delay of 112 days in filing the Review Petition. By the above Review Petition review is sought of the order dated 8-7-2014 passed in the above Writ Petition No.2780 of 2014. By the said order, the above Writ Petition came to be allowed and the order passed by the Divisional Joint Registrar conferring membership

on the Respondent No.4 to the said Petition i.e. Maria D'Souza, came to be set aside. It is observed in paragraph 4 of the said order that the Respondent No.4 who is the daughter of the original member of the society one Dulcine may adopt civil proceedings as are available in law to assert her right in respect of the flat in question. The Petitioner in the said Writ Petition is the daughter-in-law of the said Dulcine.

2 The above Civil Application as indicated above has been filed for condonation of delay of 112 days in filing the Review Petition and the reasons therefor can be found in paragraphs 7 and 8 of the above Civil Application. The sum and substance of the reasons is that after the order came to be passed on 8-7-2014, the Applicant had by the legal notice dated 9-9-2014 issued to the society, had asked for inspection of the copy of the nomination form which was produced in this Court by the Respondent No.3 society. It is further the case of the Applicant that the said notice was not replied to and therefore another notice dated 15-10-2014 came to be issued to the society calling upon the society once again to grant inspection of the nomination form. It is the case of the Applicant that the said notice was also not responded to and thereafter the Applicant has filed the above Review Petition and by the above Civil Application has sought condonation of delay of 112 days in filing the Review Petition.

3 The above Civil Application has been opposed to on behalf of the original Petitioner i.e. Gladys Francis D'Souza by filing a reply.

4 The question that is therefore posed is whether the delay of 112 days in filing the above Review Petition is required to be condoned. The reasons mentioned in the application indicate that the legal notice came to be issued to the society in September 2014 after the period of 30 days for filing the Review Petition had already got over and the second notice was issued almost a month thereafter. The said reasons therefore hardly inspire confidence in so far as the condonation of delay is concerned, considering the fact that the condonation of delay is sought in an application for review, this Court therefore ventured to consider whether there was any merit in the Review Petition. The review is sought on the ground that the copy of the nomination form which is in possession of the Applicant is different from the copy of the nomination form which was produced by the office bearer of the Respondent No.3 society, Mr. Pramod Surve, in this Court when the order dated 8-7-2014 came to be passed. This court has observed in the said order that the nomination form is blank on the reverse and though the thumb impression of the said Dulcine appears on the back of the nomination form, the same has not been attested by any witnesses.

5 The Learned Counsel for the Applicant Mrs. Khan states that the

nomination which is in possession of the Applicant has the acknowledgement of the society and the rubber stamp, however in all other respects it is the same hence the only distinguishing factor between the nomination form produced by the office bearer of the Respondent No.3 society and the copy of the nomination form alleged to be in possession of the Applicant is that the copy of nomination form in possession of the Review Petitioner bears the acknowledgement of the society. The copy of the nomination with the Review Petitioner would obviously bear the stamp of acknowledgement.

6 It is required to be noted that the Applicant is the husband of the original Respondent No.4, who was represented in this Court by an Advocate in the said Writ Petition. No such contention was raised nor any such form with acknowledgement was produced before this Court whilst this court was dealing with the said Writ Petition. No inspection of the documents of the society were sought whilst the office bearer of the society was present in Court. All these contentions as regards the copy of the nomination form are now sought to be taken in the above Review Petition long after the order dated 8-7-2014 was passed by this Court. In my view therefore, the said contention cannot be accepted. The said contention does not give rise to any of the grounds mentioned in Order 47 on the basis of which the order dated 8-7-2014 can be reviewed. It is also required to be noted that in respect of the fact that the nomination was not acted upon by the society as no Resolution has been

passed by the Managing Committee of the society accepting the nomination and making an entry of the same in the record of the society, the Review Petition is conspicuously silent. Hence both on the ground of sufficient cause not being shown and also on the ground that there is no merit in the Review Petition, the above Civil Application is rejected.

[R.M.SAVANT, J]