

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

**WRIT PETITION NO. 3763 OF 2017
WITH
WRIT PETITION NO. 3764 OF 2017**

School View Lakshmi Vani CHS Ltd.

...Petitioner

Versus

Mr.Siddappa Y. Kusugal & Ors.

...Respondents

.....

Mr.Saket Mone a/w. Mr.Subit Chakrabarti i/b. Vidhi Partners for the
Petitioner in both Wps.

Mr.Akshay Pawar i/b. Mr.Kunal Bhanage for Respondent Nos. 1 and 2
in both WP's.

.....

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 25, 2017**

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petitions are heard finally and disposed of at the stage of admission.

2. These petitions are directed against the order dated 28.02.2017 passed by the learned Member, Maharashtra State Co-operative Appellate Court, Mumbai, in Miscellaneous Application No. 8 of 2017 and in Miscellaneous Application No. 12 of 2017. Both these Misc. Applications were filed for condonation of delay in preferring appeals

against the order passed by the learned Co-operative Court No.1, Mumbai, on the point of preliminary issue of jurisdiction in Dispute No. CC/I/90/2015 dated 04.02.2016 and against the order passed below Exhibit 5 in Dispute No. CC/I/90/2015 dated 11.02.2016. There is a delay of nearly 304-315 days in filing both the appeals. The dispute is preferred by respondent nos. 1 and 2 against the society and the builder/developer. The dispute is in respect of allotment of the flats. The application was preferred by the petitioner as well as respondent no.3 i.e. builder/developer before the Co-operative Court on the ground of jurisdiction that the Co-operative Court has no jurisdiction to entertain the dispute filed by the disputants, as the issue pertains to the redevelopment of the property. However, the said issue was decided in favour of the disputant. The said order was challenged by respondent no.3 i.e. the builder/developer before the Maharashtra State Co-operative Court, Mumbai in Appeal No. 17 of 2016, which was dismissed on 21.03.2016. Thereafter, the said order was challenged in Writ Petition No. 6381 of 2016 by respondent no.3 i.e. the builder/developer. This Court has allowed the said Writ Petition by order dated 21.07.2016 and the order passed in the appeal by the Appellate Court is set aside in favour of respondent no.3 i.e. the builder/developer. This Court has also held that the dispute of redevelopment shall lie before the Civil Court and the Co-operative

Court has no jurisdiction to try and entertain the subject matter against respondent no.3 i.e. the builder/developer. However, this Court has passed the order in favour of respondent no.3 i.e. the builder/developer, but no specific order has been passed in respect of the society i.e. petitioner and the disputants. The petitioner society has not challenged the order dated 04.02.2016 passed by the Co-operative Court either before the Appellate Court or before this Court, as there was no order passed in favour of the petitioner society in Writ Petition No. 6381 of 2016 and obviously because the petitioner society was not with the builder/developer. The petitioner society has decided to challenge the order dated 04.02.2016 passed by the Co-operative Court. The petitioner society has filed Writ Petition No. 11710 of 2016 before this Court and the same was allowed to be withdrawn vide order dated 21.12.2016, as the petitioner society realized that the order dated 04.02.2016 was required to be challenged in the appeal and not in the Writ Petition. Thereafter, the petitioner society challenged the said order in appeal and therefore, a delay of 315 days was occurred during this process. The said application was rejected by the Appellate Court. Hence, this Writ Petition.

3. The learned counsel for the petitioner has submitted that the society was in bonafide belief that other respondent i.e. the

builder/developer, who is constructing the building for the society, has challenged the issue of jurisdiction before the Appellate Court and then before this Court. The society did not take any steps independently. However, after passing of the order by this Court, the petitioner society realized that the relief was granted to the builder/developer only and hence, the petitioner society has taken steps. He has further submitted that the delay is not deliberate or intentional, but it is bonafide and therefore, the order passed by the Appellate Court rejecting the application for condonation of delay is to be set aside.

4. The learned counsel for respondent nos. 1 and 2 opposed the petition and has submitted that the petitioner society ought to have challenged the order dated 04.02.2016 passed by the Co-operative Court before the Appellate Court independently within time. He has further submitted that as the order has been passed by this Court against the petitioner society in Writ Petition No. 6381 of 2016 on 21.07.2016, the petitioner society cannot challenge the said order in appeal. He has further submitted that the dispute filed against the builder/developer in respect of development cannot be challenged before the Co-operative Court, as the Civil Court is a proper forum. He has further submitted that the observations made in that order if taken into account, the petitioner society cannot challenge the order of jurisdiction in appeal.

5. Heard submissions. Considering the nature of the dispute between the flat owners on one side and the society and the builder/developer on other side, as the order was challenged by the builder/developer in the appeal and further in Writ Petition, the explanation given by the petitioner that the delay was bonafide and not intentional is accepted. Hence, Writ Petition No.3763 of 2017 is disposed of by allowing the delay of 304 days. The appeal filed against the order dated 04.02.2016 passed by the Co-operative Court, Mumbai, is to be numbered.

6. In Writ Petition No.3764 of 2017, the order passed in Misc. Application No. 12 of 2017 rejecting the application for condonation of delay of 315 days has been challenged. In the said matter, an appeal was filed against the order dated 11.02.2016 passed by the learned Co-operative Court No.1, Mumbai. The dispute was filed by respondent nos. 1 and 2 i.e. the flat owners. The petitioner did not challenge the order dated 11.02.2016. By the said order of the Co-operative Court, the opponent society is restrained from allotting the flats to the members of the society.

7. The learned counsel for the petitioner has submitted that earlier the order of deciding the preliminary issue of jurisdiction was challenged

by other opponent i.e. builder/developer in appeal. The petitioner bonafide believed that as the builder/developer is prosecuting the said matter in appeal, then it is not necessary for the society to take independent proceedings. There are 35 flat owners and after demolition of the building they all are scattered and it is very difficult for the members of the society to gather them at one place. The order of injunction is required to be decided on merits. However, 34 flat owners are sufferer because of this order. The entire building is ready and the allotment is stalled due to the order dated 11.02.2016.

8. The learned counsel for respondent nos.1 and 2 while opposing this application for delay has submitted that vide order dated 11.02.2016 interim relief has granted in favour of the disputants and there is a considerable delay of 10 months in filing appeal, which is not to be condoned.

9. Heard submissions. The building is ready. Apart from the disputants and the society, other flat owners are also stakeholders in the redevelopment project. The issue involved is short. Hence, the delay is condoned and the appeal is to be numbered. The order dated 28.02.2017 passed by the Maharashtra State Co-operative Appellate Court, Mumbai, is hereby set aside. The Appellate Court is directed to

hear both the appeals expeditiously on or before 15.09.2017. The appeals are to be decided on merits.

10. Before parting with this matter, I appreciate the efforts of counsel of both parties who made sincere and painstaking efforts to mediate the matter which unfortunately could be.

11. All contentions of both the parties are kept open.

12. In view thereof, both the Writ Petitions are disposed of.

(MRIDULA BHATKAR, J.)