

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 144 OF 2017
IN
REVIEW APPLICATION (L) NO.28332 OF 2016
IN
WRIT PETITION NO.6495 OF 2015**

Shakuntala Arvind Gokhale & Ors **..Applicants**

In the matter between

M/s. Bal Enterprises **..Petitioner**

Vs.

District Deputy Registrar of Co-op Societies & Ors **..Respondents**

Mr. Bharat Joshi for the Applicants/ Review Petitioners

Mr. Akash Jain i/b RVJ Associates for the Respondent No.1

Mr. Nikhil Jaykar i/b Mr. Dinesh Rane for the Respondent No.2

**CORAM : R. M. SAVANT, J.
DATE : 10th NOVEMBER, 2017**

P.C.

1 The above Civil Application has been filed seeking condonation of delay of 360 days in filing the above Review Application. The above Review Application has been filed seeking review of the order dated 12-8-2015 passed by this Court in the above Writ Petition No.6495 of 2015. By the said order, the above Writ Petition came to be dismissed and resultantly the order dated 18-3-2015 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Mumbai allowing the application for deemed

conveyance filed by the Respondent No.2 herein i.e. Gurukul Co-operative Housing Society, came to be confirmed.

2 It is required to be noted that the Applicants /Review Petitioners were parties to the said Writ Petition No.6495 of 2015 as Respondents. The condonation of delay in filing the above Review Application is sought on the ground that the Applicants / Review Petitioners herein who are the owners of the land in question i.e. land bearing CTS No.1312 (part), 1313 and 1313(1 to 9) of village Vile Parle (East) Mumbai 400057 admeasuring 1015.86 sq.mtrs. were having no notice of the said Writ Petition No. 6495 of 2015 and therefore did not participate in the proceedings at the time of the adjudication of the said Writ Petition and the said Writ Petition resultantly came to be dismissed in their absence. The review of the said order dated 12-8-2015 passed in the said Writ Petition No.6495 of 2015 is also sought on the same ground.

3 It is the case of the Applicants/Review Petitioners that they had filed their own Petition being Writ Petition No.9598 of 2016 challenging the said order dated 18-3-2015 passed by the Competent Authority and District Deputy Registrar,Co-operative Societies, Mumbai. The said Writ Petition had come up for hearing as to admission before a Learned Single Judge of this Court on which occasion the factum of the Writ Petition filed by the Respondent herein (M/s Bal Enterprises) i.e. Writ Petition No.6495 of 2015

being dismissed was brought to the notice of the Court upon which the Applicants / Review Petitioners became aware of the order passed in the said Writ Petition No.6495 of 2015. Having regard to the grounds on which the condonation of delay is sought as also the review of the order in the Review Application, the adjudication of the application for condonation of delay would obviously impact the decision in the Review Application. This Court therefore deemed it appropriate to consider the ground / grounds on which the review is sought. As indicated above, the ground on which review is sought is that the Petitioners were not aware of the said Writ Petition No.6495 of 2015 filed by the Respondent, that they became aware of the said Petition being filed and dismissed only in the year 2016 when their Petition was listed before another Single Judge of this Court R. M. Borde J., on which day it was informed to the said Court that the Writ Petition filed by the Respondent has already been dismissed on 12-8-2015. The Learned Single Judge accordingly granted liberty to the Applicants / Review Petitioners to take recourse against the order dismissing the said Writ Petition No.6495 of 2015.

4 In reply to the application for condonation of delay, an affidavit has been filed by the Respondent-Bal Enterprises (Petitioner in Writ Petition No.6495 of 2015 and a reply has also been filed by the Respondent No.2 i.e. Gurukul Co-operative Housing Society Ltd. dealing with the justification given for the delay. Suffice it would be to state that the Respondents have contested

the fact as regards the Applicants/Review Petitioners becoming aware of the filing of the said Writ Petition No.6495 of 2015 and its dismissal in the year 2016. To the affidavit filed by the Respondent Bal Enterprises, is annexed the affidavit of service of one Anand Khade clerk in the office of the advocates for the Respondent M/s. R.V. J. Associates. In paragraph 3 of the said affidavit of service which has been affirmed on 22-7-2015 it has been mentioned that the advocates notice dated 9-7-2015 of the said Writ Petition along with enclosures thereto were served upon the Respondent No.3 i.e. Rupa C. Gokhale for and on behalf of the Respondent Nos.3 to 9. A perusal of the said advocates notice dated 9-7-2015 indicates that in so far as addressees from 3 to 9 i.e. the Gokhale's are concerned their first address is of their family property being Gokhale Bungalow, Gokhale Wadi, Ram Mandir Road, Vile Parle (East). The second address mentioned in respect of the addressee No.5 Smt Shubhangi Pradeep Modak is of Nasik, in respect of the addressee No.6 the second address is of Vile Parle (E) and in respect of the addressee Nos.7 to 9 the second address is of Anheri (E). In so far as the addressee Nos.3 and 4 are concerned, they are not the Applicants/Review Petitioners. The Applicants/Review Petitioners are only the addressee's Nos.5 to 9. The said advocates notice dated 9-7-2015 bears the signature of the addressee No.4 Rupa Chintaman Gokhale, who has received it on 9-7-2015 as per the said affidavit of service.

5 On behalf of the Applicants/Review Petitioners, the said fact is sought to be contested on the ground that the address of the addressee Nos.5 to 9 i.e. the Applicants / Review Petitioners is not of the Gokhale Bungalow but the address is of Nasik, Vile Parle and Andheri (E) Mumbai. The said fact of the receipt of the notice by the Applicants/Review Petitioners is also sought to be contested on the ground that the addressee Nos.3 and 4 Sandhya Gokhale and Rupa Gokhale are not on good terms with the addressee Nos.5 to 9 i.e. Shubhangi Modak to Mandar Gokhale. The veracity of the said case would therefore have to be tested. As indicated above the Applicants / Review Petitioners have filed their own Petition being Writ Petition No.9598 of 2016. In the cause title of the said Writ Petition the address of the Applicants / Review Petitioners is the same first address as mentioned in the notice dated 9-7-2015 namely Gokhale Bungalow, Gokhale Wadi, Ram Mandir Road, Vile Parle (E). It is significant to note that in paragraph 2 of the said Writ Petition the Applicants / Review Petitioners have mentioned that the Respondent Nos.1 and 2 i.e. Rupa / Sandhya Gokhale are legal heirs and representative of Mr. Chintamani S. Gokhale, the co-owners who died intestate and are presently residing at the address mentioned in the cause title along with the Petitioners. The factum of the address appearing in the cause title of the said Writ Petition being the same as the address mentioned in the advocates notice dated 9-7-2015, as also the averments made in paragraph 2, dents the case of the Applicants /Review Petitioners that Rupa could not have received the notice on

behalf of the Applicants / Review Petitioners. The said case is now sought to be set up by the Applicants / Review Petitioners for obvious reasons. It is also required to be borne in mind that the said Rupa C Gokhale has the same interest in the property as the Applicants / Review Petitioners.

6 The next fact which is required to be taken into consideration is the fact that it is an undisputed position that the Applicants / Review Petitioners had participated in the proceedings relating to the application for deemed conveyance made by the Respondent No.2 society before the Competent Authority and District Deputy Registrar, Co-operative Societies, Mumbai. Whilst participating in the said proceedings they had filed their replies etc. to the said Application. Hence knowledge of the decision in the said proceedings rendered by the Competent Authority and District Deputy Registrar, Co-operative Societies, Mumbai, would have to be imputed to the Applicants / Review Petitioners. Though the Application was allowed by the order dated 18-3-2015, the Applicants / Review Petitioners did not show any urgency in challenging the said order, though the said order granting deemed conveyance was prejudicial to their interest. The Petitioners filed their Writ Petition only on 30-3-2016 i.e. a good one year after passing of the order by the Competent Authority and District Deputy Registrar, Co-operative Societies, Mumbai. In juxtaposition thereto the Respondent – Bal Enterprises in whose favour rights for development were created by the Applicants / Review

Petitioners had immediately challenged the said order by filing the said Writ Petition No.6495 of 2015. Apart from the delay in filing the Writ Petition, the Petitioners did not find it necessary to move the said Writ Petition for admission though they were faced with an order of deemed conveyance passed by the Competent Authority and District Deputy Registrar,Co-operative Societies, Mumbai. This conduct on the part of the Petitioners, in my view is a pointer to the fact that the Applicants / Review Petitioners were always aware of the challenge raised by the Respondent – Bal Enterprises to the said order dated 18-3-2015 passed by the Competent Authority and District Deputy Registrar,Co-operative Societies, Mumbai as they must have received the notice of the said Writ Petition which was accepted by Rupa C Gokhale or had information of the said Writ Petition No.6495 of 2015 and therefore the challenge now raised by them is obviously an after thought.

7 The above Review Application also contains averments in paragraph 13 wherein the allegations of collusion between the Respondent – Bal Enterprises and the Respondent No.2 Society in the matter of not placing the facts before this Court as regards the pending Suit, have been made. In the said context, it is required to be noted that this Court in its order dated 12-8-2015 dismissing the said Writ Petition No.6495 of 2015 has specifically recorded the contentions raised on behalf of the Petitioners in the said Writ Petition the Respondent-Bal Enterprises, that in view of the pendency of the

Suit, the Competent Authority and District Deputy Registrar, Co-operative Societies, Mumbai ought not to have passed the order of deemed conveyance. This court has specifically rejected the said contention on the ground that the Suit may take its own time to get resolved and it cannot be expected that the Respondent No.2 society has to wait till the dispute between the owner and the developer gets resolved. Following such a course of action would result in negation of the objects of the MOFA. Hence there is no substance in the allegations that the factum of pendency of the Suit was not brought to the notice of this court.

8 It is sought to be contended on behalf of the Applicants / Review Petitioners by the Learned Counsel Mr. Joshi that the order of deemed conveyance be made subject to the result of the said Suit. It is required to be noted that the Respondent – Bal Enterprises has filed the Suit in question for specific performance of the Development Agreement entered into between the Respondent and the owners i.e. now the Applicants / Review Petitioners. It is on account of the said agreement that the construction of the building has been caused in which the flats which have been sold to the members of the Respondent No.2 society are situated. Hence both the Applicants / Review Petitioners as well as the Respondent No.2 are obliged to comply with the provisions of MOFA as the Applicants / Review Petitioners can be said to have caused the construction by entering into an agreement with the Respondent

developer. The Applicants / Review Petitioners therefore qualify to be the promoters within the meaning of Section 2(c) of the MOFA and therefore any which way i.e. either the Suit being decreed or dismissed, the same would have no impact on the right of the Respondent No.2 society to deemed conveyance.

9 In my view therefore, there is no merit in the above Review Application, hence even if the delay is condoned, no relief can be granted to the Applicants / Review Petitioners in the Review Application. The Civil Application as well as the Review Application is accordingly dismissed.

[R.M.SAVANT, J]