

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (L) NO. 219 OF 2017
WITH
NOTICE OF MOTION (L) NO. 1193 OF 2017
WITH
NOTICE OF MOTION (L) NO. 1445 OF 2017
IN
NOTICE OF MOTION NO. 1205 OF 2015
IN
SUIT NO. 812 OF 2014**

Mrs. Aanagha Keddar Gorakshakar ...Appellants
VS.

Ahura Developers Pvt. Ltd. And Ors. ...Respondents

Mr. Shishir Joshi i/by Priti Joshi and Bhakti Jugal for the appellant.

Mr. Shripad Murthy for respondent nos.3, 5, 6 and 10.

Mr. Janak Dwarkadas, Sr. counsel a/w Mr. Kamal Khata a/w Deepa Bisht i/by Tushar Goradia for respondent no. 1.

Mr. Girish Godbole a/w Mr. H.S. Raythattha i/by RMG law Associates for respondent no. 2.

**CORAM : SHANTANU KEMKAR &
M.S. SONAK, JJ.
JULY 19, 2017**

P.C.:

Not on board. Taken on production board in view of the urgency.

2. Notice of Motion seeking condonation of delay of 24 days in filing the appeal is allowed by condoning the delay.

3. Challenging the order dated 7.4.2017 passed by the learned Single Judge of this Court in Notice of Motion No. 1205 of 2015 filed in the suit No. 812 of 2014, defendant no. 2 has filed this appeal.

4. By the impugned order, the learned Single Judge has decided the preliminary issue by holding that the suit filed by the plaintiff against the defendants including defendant no. 2 is within limitation.

5. Learned counsel for the appellants submits that while deciding the said Notice of Motion, the learned Single Judge has not taken into consideration the letter dated 30.12.2010 as also letter dated 12.3.2011 written by defendant no. 2 denying to perform the agreement and to assert the ownership rights over the plot in question. In the circumstances, according to him, the suit at the latest ought to have been filed before 11.3.2014. He submits that this aspect of the matter has not been considered and therefore, the order is liable to be set aside.

6. On the other hand, learned counsel for the respondents/plaintiffs have supported the impugned order. He argued that all the contentions including the aforesaid letters, are taken into consideration as is revealed from paragraph 10 of the impugned order.

7. Having considered the submissions made by the learned counsel for the parties and perused the impugned order, we find that at least *prima facie*, it cannot be said that the letters dated 30.12.2010 and 12.3.2011 have been ignored. Besides, the learned Single Judge has adverted to the supplementary agreement dated 29.4.2014 entered into between the society, of which, the appellant is admittedly a member and to hold that the suit is within the prescribed period of limitation.

8. in view of the aforesaid, we do not deem it appropriate to entertain the appeal, at this stage and go into the issue of limitation raised by the appellant, who is only one of the defendants in the suit. Entertaining the appeal and thereafter granting any stay on further proceedings in the suit only qua the present applicant i.e. defendant no. 2 may hinder the overall progress of the suit. Further, if the appeal, is ultimately decided against the appellant, there will be serious difficulty for the appellant to catch up with the proceedings in the suit, which would have in the meantime, progressed qua the remaining defendants.

9. We are therefore of the considered opinion that instead of entertaining this appeal at this stage, it would be appropriate to reserve liberty to the appellant to challenge the impugned order and the finding of limitation recorded therein in any appeal which the appellant may choose to institute, in case, the suit itself is decided against the appellant on merits. In case, the suit is decided in favour of the appellant on merits, then possibly, no occasion might arise to challenge the impugned order. Further, if such decree is challenged by the respondents – plaintiffs, the appellant, will also have the liberty of instituting cross objection or cross appeal as the case may be with regard to the impugned order. Reserving all such liberties to the appellant, should, any such occasion arise, we deem it appropriate not to entertain the present appeal at this stage.

10. With the aforesaid observations and liberty, we dispose of this appeal. The pending notices of motion in this appeal, do not survive and

the same are also disposed of accordingly.

(M.S. SONAK, J.)

(SHANTANU S. KEMKAR, J.)