

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

CIVIL REVISION APPLICATION NO.1120 OF 2014

1. Smt. Ambubai Balraj Naral	)	
Age: 62 years, Occ: Household	)	
2. Shri Manik Balraj Naral	)	
Age: 29 years, Occ: Service	)	
3. Shri Ravi Balraj Naral	)	
Age: 23 years, Occ: Service	)	
Sl.No.1 to 3 all are resident of 34/3/24B,	)	
New Paccha Peth, Solapur	)	
4. Sou. Mallubai Namdev Bhairi	)	
Age: 37 years, Occ: Household	)	
5. Sou. Rajmani Shriniwas Battul	)	
Age: 33 years, Occ: Household	)	
Resident of New Pachha Peth, Solapur	)	.. Applicants (Original Jt. Debtors)
Versus		
Sabale Waghire and Company	)	
A company registered under the	)	
Indian Companies Act through its Agent	)	
Shri Balasaheb Annasaheb Jagadale	)	
Age: 44 years, Occ. Service.	)	
Resident of 1661/62,	)	
New Paccha Peth, Solapur.	)	.. Respondent (Auction Purchaser)

Mr.Priyal Sarda for the applicants.
Mr.Anant Kulkarni for the respondent.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 29th August 2018
PRONOUNCED ON : 12th September 2018

Judgment :-

. By this civil revision application filed under Section 115 of the Code Procedure Code, 1908, the applicants have impugned the order dated 21st January 2014 passed by the learned 3rd Joint Civil Judge, Senior Division, Solapur in Civil Misc. Application No.306 of 2007 below Exhibit-1 thereby allowing the application filed by the respondent under Order XXI Rule 95 of the Code of Civil Procedure, 1908 (for short “the said Code” in respect of the suit property described therein and directing the applicant to hand over the possession of the said suit property. The applicant no.1 is the original Judgment Debtor and the applicant nos.2 to 5 are the legal heirs of deceased Balraj Ramswami Naral. The suit property is bearing CTS No.10388 having TP 1 final plot No.34/3/24B admeasuring 225 sq.mtrs. situated at New Paccha Peth, Solapur. Some of the relevant facts for the purpose of deciding the said application are as under :-

2. The New Bank of India had filed a recovery suit bearing Special Civil Suit No.331 of 1990 against the applicant no.1 and her late husband Balraj Ramswami Naral and one Vyankatesh Kuchayya Goski. The learned Civil Judge, Senior Division, Solapur passed a decree dated 30th July 1991 in the said suit in favour of the New Bank of India

and has held that the New Bank of India was entitled to recover an amount of Rs.74,904/- from the applicants herein.

3. The said New Bank of India had filed a execution petition i.e. Special Darkhast No.03 of 1992 against the applicants and attached the property which was mortgaged by late Balraj Ramswami Naral. The said property was thereafter put to auction. The respondent participated in the said auction and purchased the said property on 8th September 1999. Thereafter auction sale was confirmed on 16th June 2000. Sale certificate was duly registered in the office of Sub-Registrar, North-II, Solapur at Serial No.3949 of 2007 on 6th August 2007.

4. The respondent, who was the highest bidder in the said auction sale and whose favour the auction sale was confirmed, preferred an application for issuance of a sale certificate in its favour. However, since the executing Court disposed of the said special darkhast application filed by the said bank in view of the claim of the bank having been fully satisfied, the said application preferred by the respondent for issuance of sale certificate could not be entertained. It is the case of the respondent that thereafter the records of the said special darkhast application were not traceable for some time. The applicants had

challenged the order of confirmation of sale in favour of the respondent before the learned Civil Judge, Senior Division, Solapur in Civil Misc. Application No.326 of 1999. The respondent herein was impleaded as party-respondent to the said application. The said application was pending for about 7 years. After disposal of the said proceedings, the sale certificate was issued on 9th July 2007 in favour of the respondent which was registered on 6th August 2007.

5. On 17th September 2007, the respondent filed an application bearing Civil Misc. Application No.306 of 2007 under Order XXI Rule 95 of the said Code in the Court of learned 3rd Joint Civil Judge, Senior Division, Solapur inter alia praying for an order and direction against the applicants to hand over possession of the suit property.

6. By an order dated 21st January 2014, the learned 3rd Civil Judge, Senior Division, Solapur passed an order below Exhibit-1 allowing the said Civil Misc. Application No.306 of 2007 filed by the respondent under Order XXI Rule 95 of the said Code directing the applicants to hand over possession of the suit property described in paragraph 1 of the said application to the respondent herein.

7. The said order dated 21st January 2014 passed by the learned 3rd Civil Judge, Senior Division, Solapur is impugned by the applicants in this civil revision application filed under Section 115 of the said Code.

8. Learned counsel for the applicants submits that the suit property was admittedly auctioned by the New Bank of India on 8th September 1999. On 16th June 2000, the said auction sale was confirmed. The application for possession under Order XXI Rule 95 of the said Code has been filed by the respondent on 17th September 2007. It is submitted that Article 134 of the Limitation Act, 1963 was applicable to the said application filed under Order XXI Rule 95 of the said Code and since the said application was not filed within one year from the date of confirmation of sale which was admittedly confirmed on 16th June 2000, the application for possession was barred by law of limitation. In support of this submission, learned counsel for the applicants placed reliance on the judgment of the Supreme Court in the case of **Balkrishnan Vs. Malaiyandi Konar, AIR 2006 SC 1458** and in particular paragraphs 14 to 16 thereof.

9. Learned counsel for the respondent, on the other hand, submits that the suit property was admittedly sold in auction by the

New Bank of India The respondent had participated in the said auction and was the highest bidder and was declared as successful bidder on 8th September 1999. The said auction sale was confirmed on 16th June 2000. The applicants filed an application on 7th October 1999 inter alia praying for setting aside the said auction sale and also for seeking stay of the confirmation of sale. The respondent has already paid the entire consideration in accordance with the terms and conditions of sale. On 16th June 2000, the learned Civil Judge, Senior Division, Solapur confirmed the sale on 8th September 1999 and further directed that an amount of Rs.1,40,692.46 out of the sale proceeds of Rs.3,40,000/- would be paid to the decree holder.

10. It is submitted by the learned counsel for the respondent that the respondent thereafter filed an application (Day Application No.70 of 2000) on 11th September 2000 inter alia praying for issuance of certificate of sale in respect of the said property. The applicants challenged the confirmation of sale in favour of the respondent before the learned Civil Judge, Senior Division, Solapur by filing Civil Misc. Application No.326 of 1999. The respondent was impleaded as party respondent to the said application. It is submitted that the applicants took about 7 years in various Court in prosecuting various applications including Civil Misc.

Application No.326 of 1999. On 9th July 2007, a sale certificate came to be issued. In the meanwhile, the husband of the applicant no.1 and the father of the applicant nos.2 to 5 died on 14th December 2003.

11. It is submitted by the respondent that immediately upon getting the sale confirmation certificate on 6th August 2007, on 17th September 2007, the respondent made an application under Order XXI Rule 95 of the said Code inter alia praying for possession of the said property. The applicants did not file any reply in the said application filed by the respondent and even did not appear before the executing Court. The executing Court after considering the documents on record allowed the said application dated 17th September 2007.

12. Learned counsel for the respondent distinguished the judgment of the Supreme Court in the case of ***Balkrishnan Vs. Malaiyandi Konar (supra)*** on the ground that no application was filed by the judgment debtor in that matter challenging the auction sale or the said confirmation sale certificate or was pending whereas in this case, various applications were pending for a period of 7 years and thus the time taken in defending those proceedings by the respondent shall be excluded.

13. Learned counsel placed reliance on the judgment of the Supreme Court in the case of ***United Finance Corporation Vs.M.S.M. Haneefa (dead) through L.Rs., 2017 (4) Mh.L.J. 656*** and in particular paragraphs 2, 6, 9 to 13 and 15 to 17 thereof in support of the submission that in this judgment of the Supreme Court, the Hon'ble Supreme Court has considered the judgment in the another case taking identical view taken in the case of ***Balkrishnan Vs. Malaiyandi Konar (supra)*** relied upon by the applicants and has distinguished the said judgment and has taken a view that in view of pendency of various proceedings under Section 47 of the said Code, the application filed under Order XXI Rule 95 of the said Code not within a period of one year from the date of confirmation of sale was not barred by law of limitation.

14. It is submitted by the learned counsel that the applicants have in any event already sold the property on 3rd April 2012 in favour of one Mr.Ashok Yanganti for consideration of Rs.4,50,000/- by executing a registered sale deed and thus has no locus to file this civil revision application challenging the order passed by the executing Court under Order XXI Rule 95 of the said Code. He submits that a third party i.e. Mr.Ashok Yanganti has already preferred Civil Misc. Application No.355 of 2014 before the learned Civil Judge, Senior Division, Solapur

and has also filed a suit inter alia praying for declaration in Regular Civil Suit No.744 of 2014. Learned counsel placed reliance on various documents in support of the aforesaid submissions forming part of the compilation of documents forming part of the documents filed before this Court.

15. It is submitted by the learned counsel that though the respondent had preferred an application for issuance of sale certificate in Special Darkhast No.3 of 1999 immediately, the said darkhast application itself was disposed of by the executing Court without deciding the application filed by the respondent. The respondent had applied for certified copy of the record of the said proceedings which was not traceable. The applicants have admitted these facts in paragraph 2 of the civil revision application. He submits that the issue of limitation is a mixed question of fact and law. Since the applicants did not file any reply to the application filed by the respondent under Order XXI Rule 95 of the said Code, the applicants cannot be allowed to raise a plea of limitation for the first time in this civil revision application.

REASONS AND CONCLUSIONS :-

16. It is not in dispute that the applicant no.1, her late husband Balraj Ramswami Naral and one Mr.Vyankatesh Kuchayya Goski were

the defendants in the suit filed by the New Bank of India (Special Civil Suit No.331 of 1990) inter alia praying for recovery of an amount of Rs.74,904/- with interest. The said suit was admittedly decreed by an order dated 30th July 1991. The said New Bank of India had filed Special Darkhast No.03 of 1992 against those defendants including the applicant no.1. The property of the applicants was put to auction. The respondent had participated in the said auction and was the highest bidder. The sale was confirmed on 16th June 2000.

17. The respondent had applied for issuance of sale certificate immediately. The executing Court, however, disposed of the said darkhast application itself in view of the claim of the decree holder having been satisfied and did not dispose of the said application filed by the respondent. It is an undisputed position that the applicants had challenged the order of confirmation of sale in favour of the respondent before the learned Civil Judge, Senior Division, Solapur by filing Civil Misc. Application No.326 of 1999 and had impleaded the respondent herein as a party in the Civil suit. In the meanwhile, on 14th December 2003, the husband of the applicant no.1 who was the father of the applicant nos.2 to 5 died. The applicants had also filed an application inter alia praying for setting aside the auction sale and seeking stay from issuing

any sale confirmation certificate in favour of the respondent.

18. A perusal of the roznama produced before this Court forming part of the compilation of the documents clearly indicates that the said proceeding were pending for about 7 years and were adjourned from time to time on one or the other grounds and mainly on the request of the applicants. It is not in dispute that the sale certificate was ultimately issued on 9th July 2007 and was registered on 6th August 2007. The respondent applied for possession under Order XXI Rule 95 of the said Code on 17th September 2007. Unless the sale certificate would have been issued, the respondent could not have applied for recovery of possession under Order XXI Rule 95 of the said Code.

19. It is not in dispute that the respondent had already paid the entire consideration amount in compliance with the terms and conditions of auction sale of the property in question. For more than 19 years, the respondent has not been put in possession of the suit property though he has already paid the entire consideration.

20. It is not in dispute by the applicants that during the pendency of various proceedings filed by the applicants, on 3rd April 2012

the applicants have already executed a registered sale deed in favour of Mr.Ashok Yanganti for consideration of Rs.4,50,000/-. In my view, the applicants thus have no locus to challenge the order passed under Order XXI Rule 95 of the Code in favour of the respondent on that ground also. The said Mr.Ashok Yanganti has already filed various proceedings relying upon the said registered sale deed in his favour.

21. It is an admitted position that the applicants did not file any affidavit-in-reply to the application filed by the respondent under Order XXI Rule 95 of the said Code. The respondent had remained absent before the executing Court inspite of service of the application filed by the respondent. The executing Court has thus considered the entire record and has rightly passed an order directing the applicants to hand over possession of the property in question to the respondent who was the successful auction purchaser.

22. In my view, issue of limitation raised by the applicants in this civil revision application for the first time is a mixed question of fact and law. The said issue could not have been raised for the first time in the civil revision application. Be that as it may, it is not in dispute that the applicants had challenged the auction sale and applied for stay of

issuance of the sale confirmation certificate. The said application was pending for about 7 years. The executing Court disposed of the entire darkhast application without disposing of the application filed by the respondent for issuance of sale certificate. It is not in dispute that the papers and proceedings of the executing Court were not traceable. The sale certificate ultimately was issued on 6th August 2007. The application under Order XXI Rule 95 was made by the respondent on 17th September 2007. The said application remained pending till the impugned order dated 21st January 2014 came to be passed by the learned 3rd Joint Civil Judge, Senior Division, Solapur.

23. In my view, the applicants not having appeared before the executing Court and having filed various proceedings impugning auction sale and for seeking stay from issuance of sale confirmation certificate which proceedings were pending for last several years, cannot be allowed to raise a plea of limitation at this stage on the ground that the application was not made within one year from the date of confirmation of sale certificate.

24. The Hon'ble Supreme Court in the case of ***United Finance Corporation (supra)*** has considered the similar facts and after adverting

to the provisions of Section 15(1) of the Limitation Act, Order XXI Rule 95 and Section 47 of the said Code and has held that since various proceedings were pending impugning the auction sale, in Article 134 of the Limitation Act, the legislature has consciously adopted the expression “when the sale becomes absolute” and not when the sale was confirmed. The Hon'ble Supreme Court has considered the fact that various proceedings challenging the applications were pending and finally ended with issuance of sale certificate. The application filed under Order XXI Rule 95 of the said Code by the auction purchaser was thus held not barred by law of limitation. In my view, the principles of law laid down by the Hon'ble Supreme Court in the case of ***United Finance Corporation (supra)*** squarely apply to the facts of this case. The facts before the Hon'ble Supreme Court and the facts before this Court at hand are identical. I am respectfully bound by the said judgment of the Supreme Court in the case of ***United Finance Corporation (supra)***.

25. In so far as the judgment of the Supreme Court in the case of ***Balkrishnan Vs. Malaiyandi Konar (supra)*** relied upon by the learned counsel for the applicants is concerned, the identical view taken by the Hon'ble Supreme Court in the case of ***Ganpat Singh (dead) by Lrs. Vs. Kailash Shankar & Ors., (1987) 3 SCC 146*** and various other judgment

have been considered by the Hon'ble Supreme Court in the case of ***United Finance Corporation (supra)*** and has distinguished those judgments. In my view, the said judgment of the Hon'ble Supreme Court in the case of ***Balkrishnan Vs. Malaiyandi Konar (supra)*** thus would not assist the case of the applicants.

26. After perusing the record and the reasons recorded by the learned 3rd Joint Civil Judge, Senior Division, Solapur in Civil Misc. Application No.306 of 2007, I do not find any infirmity in the impugned order dated 21st January 2014 and 4th August 2014 passed by the executing Court.

27. I therefore pass the following order :-

(i) Civil revision application is totally devoid of merit and is accordingly dismissed with costs quantified at Rs.50,000/- which shall be paid by the applicants to the respondent within two weeks from today.

R.D. DHANUKA, J.