

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

**SUIT NO. 4672 OF 2000**

Cooperage Woodhouse Co-op. HSG Society Ltd. .. Plaintiff

Vs.

Ms.Bhansali & Kanungo Builders & Developers

& Ors

.. Defendants

Mr.Jai Chhabria a/w. Mr.Shrinivasan Mudaliar I/b M/s.Federal and  
Rashmikanth for plaintiff.

None for defendants.

**CORAM : K.R.SHRIRAM, J.**

**DATE : 30<sup>TH</sup> AUGUST 2018**

**P.C.**

1 Plaintiff has approached this Court for the following final relief :-

*(a) that this Hon'ble Court be pleased to order and decree the Defendants their servants and agents to take all steps to complete the Plaintiff's title to the Suit property described in Exhibit "B" hereto including applying for and obtaining a no objection certificate from Municipal Corporation of Greater Bombay and / from any other statutory body or authority to convey to the Plaintiffs all the right, title and interest of the Defendants in the land and the building described in Exh."B" hereto, and to further execute a conveyance and all other necessary documents of title relating to the property described in Exhibit "B" hereto which may be in possession or power of the Defendants, and on the failure of the Defendants to do any of the aforesaid Acts this Hon'ble Court be pleased to direct the Prothonotary and Senior Master to execute the document/application in that behalf."*

2 Plaintiff is a co-operative society consisting of 28 flat owners residing in a building known as Woodhouse Apartments (the said building).

Plaintiff is registered under the Maharashtra Co-operative Societies Act,

1960 under Registration No.BOM/W-A/HSG/318 dated 14<sup>th</sup> October 1988. The registration certificate is at Exh.P-1/3. Defendant No.1 has constructed the said building and sold and disposed of the flats in the said building to various individual purchasers after receiving full consideration pursuant to individual Agreement of Sale. Defendant No.1 has constructed the said building pursuant to Agreement for Sale dated 29<sup>th</sup> December 1981 executed by defendant no.2 and one late Rustamji Contractor in favour of defendant no.1. Rustamji Contractor was the husband of defendant no.2. Defendant Nos.2, 3 and 4 are the legal heirs of late Rustamji Contractor and are owners of the land in which the said building stands today. Defendant Nos.2 to 4 have agreed to sell their right, title and interest in the suit premises to defendant No.1. A copy of the Agreement for Sale dated 29<sup>th</sup> December 1981 forms part of Exh.P-1/8.

3 Before we proceed further, it has to be noted that defendant nos.2 to 4 through their counsel made a statement as recorded in paragraph 2 of the order dated 12<sup>th</sup> February 2015 passed by this Court in this suit. The statement reads, *“Counsel on behalf of defendant Nos.2, 3 and 4 makes a statement that they shall execute whatever documents as required of them.....”*

4 Plaintiff-Society was registered on 14<sup>th</sup> October 1988. Thereafter plaintiff held various meetings with defendant No.1 for the purpose of

obtaining a Conveyance from defendant No.1 as required under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA). It is stated that defendant no.1 did not take steps to convey the plot of land/immovable property admeasuring approximately 1525 square yards (the suit property) on which defendant No.1 has constructed the said building. It is stated that plaintiff had various meetings with defendant no.1 to obtain the necessary Conveyance in favour of plaintiff. It is also stated that a meeting was held in or around August 1999 in the office of the Solicitors of defendant no.1 for doing the needful. A letter dated 27<sup>th</sup> September 1999 [Exh.P-1/4] was also addressed by plaintiff to defendant No.1 recording the meeting. Plaintiff also provided draft of the Conveyance Deed to defendant No.1 (Exh.P-1/5). It is the case of plaintiff that defendant no.1 did not execute the necessary Conveyance Deed for reasons that cannot be attributed to plaintiff. In view thereof, plaintiff filed the present suit which was lodged on 21<sup>st</sup> July 2000.

5 Defendant No.1 has filed written statement and has raised three defences, viz., (a) the suit is barred by limitation; (b) many of the original flat purchasers have assigned their interest and the present flat purchasers have accepted such interest without consent of defendant No.1; (c) they

have not failed to abide by statutory duty to execute Conveyance required under Section 11 of the MOFA; and (d) there was some arrangement between the brother of late Rustamji Contractor and one of the Partner of defendant No.1 Lal Laungani which has not been complied with.

It is also necessary to note that in Paragraph 4(a) of the written statement of defendant no.1, it is stated that defendant No.1 had agreed to execute the Conveyance provided certain conditions were met. Defendant No.1 has listed some of those conditions, however, no evidence has been led to show as to why those conditions are material or as to how plaintiff is even concerned with any of those conditions.

6      Thereafter, issues were settled on 15<sup>th</sup> January 2015 and the same read as under :-

**“I S S U E S**

1. *Whether the suit is bared by the Law of Limitation.*
2. *Whether defendant No.1 is bound to execute the conveyance in favour of the plaintiff's society.*
3. *Whether the defendant No.1 has failed and neglected to carry out his statutory obligations.*
4. *What relief, if any, is the plaintiff entitled to?”*

7      Plaintiff filed evidence of one witness Purushottam C. Budhrani (PW-1) and also documents of plaintiff marked as Exh.P-1/2 to Exh.P-1/9

were received in evidence. After filing the written statement, defendant No.1 has not appeared at all in the Court. In fact, in July 2015, M/s. Zaiwalla & Company who were representing defendant no.1 also took a discharge. Defendant No.1 did not cross-examine PW-1 and also did not lead any evidence.

8 Before we proceed further, it will be useful to reproduce Section 11 of MOFA as well as Rule 9 of the Maharashtra Ownership Flats (Regulation of the Promotion, Sale, Management and Transfer) Rules, 1964 which read as under :-

***“11 Promoter to Convey title, etc., and execute documents according to agreement :-***

*"[(1) A promoter shall take all necessary steps to complete his title and convey to the organization of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid, or to an association of flat takers [or apartment owners], his right, title and interest in the land and building and execute all relevant documents therefor in accordance with the agreement executed under section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.*

*(2) It shall be, the duty of the promoter to file with the Competent Authority, within the prescribed period, a copy of the conveyance executed by him under sub section (1).*

*(3) If the promoter fails to execute the conveyance in favour of the co-operative society formed under Section-10, or, as the case may be, the company or the association of apartment owners, as provided by sub section (1), within the prescribed period, the members of such co-operative society or, as the case may be, the company or the association of apartment owners may, make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each*

*individual member of the society or the company or the association, who have purchased the flats and all other relevant documents (including the occupation-certificate, if any), for issuing a certificate that such society, or as the case may be, company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.*

*(4) The Competent Authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue a certificate to the Sub Registrar or any other appropriate Registration Officer under the Registration Act, 1908, certifying that it is a fit case for enforcing unilateral execution of conveyance deed conveying the right, title and interest of the promoter in the land and building in favour of the applicant, as deemed conveyance.*

*(5) On submission by such society or as the case may be, the company or the association of apartment owners, to the Sub Registrar or the concerned appropriate Registration Officer appointed under the Registration Act, 1908, the certificate issued by the Competent Authority along with the unilateral instrument of conveyance, the Sub Registrar or the concerned appropriate Registration Officer shall, notwithstanding anything contained in the Registration Act, 1908, issue summons to the promoter to show cause why such unilateral instrument should not be registered as deemed conveyance and after giving the promoter and the applicants a reasonable opportunity of being heard, may, on being satisfied that it was a fit case for unilateral conveyance, register that instrument as deemed conveyance.]"*

**Rule 9 :- Period for conveyance of title of promoter to organisation of flat-purchasers: -**

*If no period for conveying the title of the promoter to the organisation of the flat-purchasers is agreed upon, the promoter shall (subject to his right to dispose of the remaining flats, if any) execute the conveyance within four months from the date on which the co-operative society or the company is registered or, as the case may be, the association of the flat-takers is duly constituted.*

*[When a promoter has submitted his property to the provisions of the Maharashtra Apartment Ownership Act, 1970 by executing the*

*registering a Declaration as required by section 2 of the Act, and no period for conveying the title of the promoter in respect of an apartment to each apartment-taker is agreed upon, the promoter Shall execute the conveyance or deed of apartment in favour of each apartment-taker within four months from the date the apartment-taker has entered in to possession of his apartment.*

*The Promoter shall file the Competent Authority a copy of the conveyance executed by him under sub-section (1) of section 11 within a period of two months from the date of its execution.”*

9 As regards issue No.1, plaintiff has averred in the plaint in paragraph 20 as under :-

*“20 The Plaintiffs state that the present Suit seeks enforcement of statutory obligations placed upon the Defendants which obligations are continuous. The defendants have breached these statutory obligations and the said breaches continue from day to day, affording to the Plaintiff of Defendant No.1 to execute the conveyance has occurred in the month of October, 1999 when Defendant No.1 failed to respond to the settlement of the Draft Conveyance prepared by the Plaintiffs Solicitors. The Plaintiffs therefore respectfully say and submit that the present Suit is within time and not barred by law of limitation.”*

In the written statement, in paragraph 13, defendant No.1 simply states that the allegations made in paragraph 20 or the reasons set out therein that the suit is filed within limitation is denied and the suit is barred by law of limitation. It has to be noted that in paragraph 20 of the plaint, plaintiff has made a positive averment saying defendants have breached these statutory obligations and the said breaches continue from day to day. According to plaintiff, the obligation of defendant No.1 to execute the conveyance has occurred in the month of October, 1999 when Defendant

No.1 failed to respond to the settlement of the Draft Conveyance prepared by the Plaintiff's Solicitors.

10 Defendant No.1 was bound to state with a specific denial on what date then according to defendant No.1, it had refused to convey the suit property. Moreover, in the evidence of PW-1, it is stated that plaintiff by their letter dated 27<sup>th</sup> September 1999 addressed to defendant no.1 also placed on record the fact that a meeting had taken place between plaintiff and defendant No.1 to obtain necessary conveyance and when the plaintiff has also forwarded a draft conveyance. There is no cross examination of PW-1. Therefore, the submission of plaintiff should be accepted that the suit is within limitation.

11 Moreover, what plaintiff is seeking in this suit is enforcement of statutory obligation placed by defendants which obligations are continuous. It is settled law that breach of provisions of Section 11 of MOFA is a continuous breach and the breach continues to be committed even today. Breach of this statutory obligation, gives continuing cause of action to plaintiff against defendant No.1 and as such there is no question of the suit being barred by limitation. I find support for this view in (1) ***Mr.S.Irani (Sorkhab) Vs. M/s. Dinshaw & Dinshaw & Ors.***<sup>1</sup>, (2)

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1 1998 SCC OnLine Bom. 790

***Madhuvihar Co-op. Housing Society and Ors. Vs. Jayantilal Investments and Ors.*** <sup>2</sup> and (3) ***Smt. Indirabai Baburao Kanade Vs. Matru Chhaya Co-op. Hsg. Soc. Ltd. & Anr.*** <sup>3</sup>. Therefore, the question of suit being barred by Law of Limitation does not arise. Issue No.1 answered accordingly.

12 So far as issue No.2 is concerned, Section 11 of MOFA is very clear. Section 11 provides that a promoter shall take all necessary steps to complete his title and convey to the organization of persons, who take flats, which is registered either as a co-operative society or as a company or others. As mentioned in Section 11, the Promoter has to transfer right, title and interest in the land and building and execute all relevant documents therefor in accordance with the agreement executed under Section 4 and also deliver all documents of title relating to the property which may be in his possession or power. Admittedly plaintiff is a society that is registered as a co-operative society. Defendant No.1 had an obligation therefore, to execute all relevant documents for finding right, title and interest in the land and the said building. Defendant Nos.2 to 4 have agreed to sign. Defendant No.1 has also, in his written statement, agreed that conveyance has to be done but subject to recording such conditions in the Deed of Conveyance. So far as those conditions are concerned, no evidence has

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2 2006 SCC OnLine Bom. 279

3 2016 SCC OnLine Bom. 6075

been led by defendant No.1. Therefore, the only conclusion that can be arrived at is that defendant No.1 was bound to execute the Conveyance in favour of plaintiff-society. In view of this conclusion, issue No.3 also stands answered, i.e., defendant No.1 has failed and neglected to carry out its statutory obligations.

13 The suit stands decreed accordingly in terms of prayer clauses (a), which reads as under :-

*(a) that this Hon'ble Court be pleased to order and decree the Defendants their servants and agents to take all steps to complete the Plaintiffs title to the Suit property described in Exhibit "B" hereto including applying for and obtaining a no objection certificate from Municipal Corporation of Greater Bombay and / from any other statutory body or authority to convey to the Plaintiffs all the right, title and interest of the Defendants in the land and the building described in Exh."B" hereto, and to further execute a conveyance and all other necessary documents of title relating to the property described in Exhibit "B" hereto which may be in possession or power of the Defendants, and on the failure of the Defendants to do any of the aforesaid Acts this Hon'ble Court be pleased to direct the Prothonotary and Senior Master to execute the document/application in that behalf.*

14 Plaintiff is also entitled to costs in the sum of Rs.2 lakhs from defendant No.1.

15 Drawn up decree dispensed with.

16 The suit accordingly disposed.

17 All concerned to act on authenticated copy of this order.

**(K.R. SHRIRAM, J.)**