

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

**CIVIL APPLICATION NO.459 OF 2019**

**IN**

**WRIT PETITION NO.1017 OF 1991**

**WITH**

**INTERIM APPLICATION NO. 30024 OF 2022**

Loveline M.Kapoor

.. Applicants

**In the Matter Between**

Roopmahal Co-operative Housing Society & Ors.      Petitioners

Versus

Loveline M. Kapoor & Ors.

.. Respondents

**WITH**

**WRIT PETITION NO.2977 OF 2020**

**WITH**

**INTERIM APPLICATION NO. 17650 OF 2022**

**WITH**

**INTERIM APPLICATION NO. 30052 OF 2022**

**WITH**

**INTERIM APPLICATION NO. 30110 OF 2022**

Lovelin M. Kapoor,

Petitioner/

.. Applicant

Versus

Roopmahal Co-operative Housing Society & Ors.      Respondents

**WITH**

**FIRST APPEAL NO.1153 OF 2015**

Bhagwansingh

.. Appellant

Versus

Daman Chavla and Ors.

.. Respondents

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- Mr. Ajay Panicker i/b Ajay Law Associates for Petitioner in WP No.1017/1991, Respondent in WP No.2977/2020.
- Ms. Shraddha Kadam i/b. M/s. C. K. Legal for Appellant in FA No.1153/2015 and Respondent No.2 in WP No.2977/2020.
- Mr. Shreeganesh Khaire for Respondent No.1(A) in IA No.30024/2022, CAW No.459/2019, IA No.17650/2022 and IA No.30052/2022

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**CORAM : MILIND N. JADHAV, J.**

**DATE : DECEMBER 15, 2022.**

**P.C.:**

1. Heard Mr. Ajay Panicker i/b Ajay Law Associates for Petitioner in WP No.1017/1991, Respondent in WP No.2977/2020; Ms. Shraddha Kadam i/b. M/s. C. K. Legal for Appellant in FA No.1153/2015 and Respondent No.2 in WP No.2977/2020 and Mr. Shreeganesh Khaire for Respondent No.1(A) in IA No.30024/2022, CAW No.459/2019, IA No.17650/2022 and IA No.30052/2022.

**Order in Interim Application No. 17650 of 2022:-**

2. Perused the Interim Application No. 17650 of 2022.

2.1. In paragraph No. 2(vi) of the Application, it is stated that during the hearing and final disposal of Suit No.4193 of 1982, it was informed by Respondent No.2 that Respondent No. 3 - Shobha B. Saini has expired on 22.08.2005 and therefore Suit No.4193 of 1982 was amended.

2.2. Fact attributable to demise of Respondent No.3 as stated above is the only averment in the Application. That apart, the delay of 5552 days as stated in paragraph No.6 of the Application is not explained in the Application.

2.3. Mr. Khaire submitted that the averments made with respect to the suit proceedings and its continuity before the learned Trial Court itself are the reasons for the delay in taking out the present Application. However in his usual fairness he admitted that it is not stated in so many words. He therefore submitted that Applicant should not be non-suited for such reason. I agree with the submission of Mr. Khaire. However since the delay which *prima facie* is substantial, needs to be explained. The Applicant deserves to be given an opportunity. In that view of the matter and at the profused request of Mr. Khaire, Interim Application No.17650 of 2022 is allowed to be withdrawn with the liberty to the Applicant to file an appropriate Application explaining the delay for seeking condonation and thereafter bringing the legal heirs on record.

2.4. All contentions of the parties are expressly kept open.

2.5. With the above directions Interim Application No. 17650 of 2022 stands disposed.

**Order in Interim Application No. 30052 of 2022:-**

3. In so far as the Interim Application No. 30052 of 2022 is concerned, the same seeks impleadment of legal heirs as proper and necessary party.

3.1. Mr. Khaire fairly pointed out that the said Application would

be a consequence of the outcome of Interim Application No. 17650 of 2022 once the delay is condoned by this Court.

3.2. In that view of matter, Interim Application No. 30052 of 2022 is also allowed to be withdrawn with specific liberty to file fresh Application in accordance with law.

3.3. All contentions of the parties are expressly kept open.

3.4. Interim Application No.30052 of 2022 is disposed.

**Order in Interim Application No. 30110 of 2022:-**

4. Interim Application No. 30110 of 2022 is not listed on today's board. On mentioning by the learned Advocates, by consent, the same is taken on board and heard.

4.1. Prayer in the Application is for impleadment of legal heirs in Interim Application No. 17650 of 2020.

4.2. As Interim Application No. 17650 of 2022 is disposed of, nothing survives in Interim Application No. 30110 of 2022 and the same is accordingly disposed of. All contentions of the parties are expressly kept open.

**Order in Civil Application No. 459 of 2019:-**

5. This Civil Application is filed by Applicant (Respondent No.1) in Writ Petition No. 1017 of 1991. Applicant has sought restoration of Writ Petition No. 1017 of 1991.

5.1. Perusal of order dated 22.12.2018 reveals that, the original Petitioner i.e. Society mentioned the matter before the Court and sought leave of the Court to withdraw the Writ Petition, as the Petitioner did not want to prosecute the same. The Writ Petition was dismissed as withdrawn and rule was discharged.

5.2. Perusal of order dated 07.01.2019 reveals that, the Writ Petition which was withdrawn with the leave of Court was wrongly listed on board on that date.

5.3. Applicant (Original Respondent No. 1 - A), one of the legal heir of original Respondent No. 1 seeks setting aside of the above two orders namely 22.12.2018 and 07.01.2019.

5.4. Mr. Khaire, learned Advocate of Applicant has vehemently argued that despite rule having been granted in Writ Petition No. 1017 by this Court and pendency of the interim order dated 18.03.1991, the withdrawal of the petition by the society substantially affects the right of the Applicant; that without notice to Applicant, the Petition is withdrawn behind her back causing immense prejudice to her. Hence, the order of withdrawal of Petition should be set aside and the petition be restored.

5.5. At the outset, after hearing the above submission of Mr. Khaire and before proceeding further I called upon Mr. Panickar, learned Advocate for Petitioner – Society to inform me whether,

pendency of the interim order dated 18.03.1991 during the interregnum and the subsequent withdrawn of the Petition, would affect the right of the Applicant. Mr. Panickar submitted that the interim order date 18.03.1991 stands fully complied with and has worked itself out in its entirety. The Applicant is not at all prejudiced. Hence, the Petitioner – Society has withdrawn the Petition as nothing would survive in respect of the relief sought by the Society in the Petition. That the only relief that was challenged was to the decretal amount, which was directed to be deposited in its entirety in this Court by the interim order. He submitted that the society deposited the entire amount which was under challenge along with interest in the court. That Respondent No. 1 (Applicant's predecessor) has withdrawn the entire amount deposited in December, 1991. Initially, Respondent No. 1 was directed to give Bank Guarantee as security for withdrawal. Bank Guarantee was given. Today there is no Bank Guarantee in subsistence. That Petitioner society has no grievance any longer against Respondent No. 1. Hence, the Petition was withdrawn. He fairly submitted that on 07.01.2019, Petition appeared on board inadvertently despite it being withdrawn on 22.12.2018. Hence, that order is inconsequential.

**5.6.** In response to Mr. Panickar's submissions, Mr. Khaire vehemently opposed the same and contended that Petitioner – Society have fraudulently withdrawn the said Petition without settling the

claim of the Applicant. Hence it needs to be noted that Applicant is Respondent No. 1A i.e. one of the legal heir of deceased Respondent No. 1. I have repeatedly asked Mr. Khaire to inform me whether the facts stated by Mr. Panickar were incorrect or otherwise and if according to him, there is any misrepresentation of facts. Initially, Mr. Khaire refused to answer the above question put by me and insisted that court should allow him to argue the matter and consider the claim of Respondent No. 1 in respect of the subject shop which was at the root of the controversy. However, Mr. Khaire later informed me that there was no misstatement of facts by the Petitioner, but still according to him there is deprivation of right of the Applicant due to certain subsequent facts and therefore withdrawal of the Petition behind her back was a fraudulent act on behalf of the Society.

5.7. After perusing the reliefs in Writ Petition No. 1017 of 1991, interim orders dated 18.03.1991 and 14.06.2018 and the subsequent orders passed in Civil Application No. 1560 of 2010 dated 31.03.2012, it is clear that there is no prejudice whatsoever caused to the Respondents on withdrawal of the Petition. There is no fraud whatsoever as alleged by Mr. Khaire. Despite the above position, Mr. Khaire has refused to listen to the court and insisted on making submission to oppose withdrawal of the petition. There is no substance in Mr. Khaire's submissions. If Applicant is aggrieved, she can take recourse to law and file appropriate proceedings as available

to her, in accordance with law.

5.8. All contentions of the parties are expressly kept open.

5.9. In view of the above observations and findings, Civil Application No. 459 of 2019 is dismissed.

**Order in Interim Application No. 30024 of 2022:-**

6. In view of dismissal of Civil Application No. 459 of 2019, nothing further survives in Interim Application No. 30024 of 2022. The same is accordingly disposed of.

7. Writ Petition No.2977 of 2020 and First Appeal No.1153 of 2015 are directed to be listed as per their turn.

[ MILIND N. JADHAV, J. ]

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by RAVINDRA  
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