

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

**INTERIM APPLICATION NO. 2206 OF 2021
IN
SUIT NO. 723 OF 2018**

M/s. Blackplinth Realtors Pvt. Ltd. ... Applicant/Orig. Plaintiff

Versus

Shivram Co-op. Housing Soc. Ltd. & Ors. ... Defendants/
Respondents

Mr. Hrushi Narvekar i/b Nasir Husain Naik for the Applicants/ Orig. Plaintiff.

Mr. Aalekh H. Chandan, Director of Applicant, present.

Mr. Sagar Patil for M.C.G.M.

CORAM : R.I. CHAGLA, J.

DATED : 4th JANUARY, 2022.

ORDER :

1 Heard the learned Counsel for the Applicant.

2 By this Interim Application, the Applicant is seeking condonation of six days delay in depositing the three bank guarantee with the office of Prothonotary and Senior Master. The Applicant is further seeking order and direction from Prothonotary and Senior Master to accept the deposit of the three bank guarantees.

3 The Applicant states that the Applicant had filed a suit for specific performance of the Development Agreement dated 28.09.2012 and the Supplementary Agreements dated 04.09.2017 and 30.12.2017. During the pendency of the suit, consent terms dated 18.02.2019 were executed and filed between the Applicant i.e. Original Plaintiff and Defendant Nos.1, 2 to 8 and 10 and the Applicant Nos.1, 2, 3, 4 and 6 in Chamber Summons No.103 of 2019 and the Applicant in Chamber Summons No.107 of 2018 in the said Suit and this Court based on the consent terms was pleased to pass a consent decree dated 14.03.2019. It is further stated by the Applicant that the Applicant completed the construction work of the plinth level on 22.10.2020 in all respects for the building to be constructed on plot Nos.1150 and 1106 and, therefore, as per Clause 9 (a) (i) of the said bank guarantee and as per Clause 13 of the said consent terms, an amount of Rs.7 crores i.e. equivalent to the 40% of the total amount of the said bank guarantee was to be released to the Applicant. The Interim Application No.1403 of 2021 was filed by the Applicant in the said Suit for release/return of the said bank guarantee dated 19.12.2019 and for deposit of the balance bank guarantee amount of Rs.10,50,00,000/- within fourteen days of the said bank guarantee being returned to the Applicant.

4 This Court by order dated 28.07.2021 as modified by order dated 02.08.2021 order directed forthwith release of the bank guarantee dated 19.12.2019 and permitted the Applicant to deposit fresh set of bank guarantees corresponding to the phases set out in Clauses 12 and 13 of the said consent term.

5 The Applicant, pursuant to the said order of this Court under praecipe dated 02.08.2021 applied to the Prothonotary and Senior Master for release/return of the said bank guarantee. The Prothonotary and Senior Master listed the praecipe dated 02.08.2021 on 05.08.2021. By order dated 05.08.2021, the Prothonotary and Senior Master directed the release/return of the said bank guarantee to the Applicant. The Applicant has, thereafter, by authority letter dated 06.08.2021 authorised Advocate on record to collect the the bank guarantee dated 19.12.2019. On 06.08.2021, the execution department of this Court returned the original bank guarantee dated 19.12.2019 to the Applicant. Upon receipt of the original bank guarantee, the Applicant by its letter dated 09.08.2021 forward the same to be submitted with their banker with request to cancel the bank guarantee and for issuance of fresh bank guarantees as per order dated 28.07.2021.

6 The Applicant's banker thereafter cancelled the bank guarantee on 16.08.2021 and issued fresh set of three bank guarantees all dated 19.08.2021 which total a sum of Rs.10,50,00,000/- which were the fresh bank guarantees to be deposited by the Applicant with the Prothonotary and Senior Master.

7 The Applicant has further stated that after receipt of the three fresh bank guarantees on 19.08.2021 the Applicant's Kanpur office couriered the same to their office at Mumbai on 24.08.2021. The Applicant's Advocate under covering letter dated 26.08.2021 sought to submit the three bank guarantee with the office of the Prothonotary and Senior Master. However, since there was a delay of six days in depositing the same, the office of Prothonotary and Senior Master directed the Applicant to obtain the order of this Court.

8 The Applicant has submitted that the delay of six days in depositing the said three bank guarantees with the office of Prothonotary and Senior Master which was to be deposited on or before 20.08.2021 in compliance with order dated 28.07.2021, is neither intentional nor willful and neither deliberate. The Applicant further submits that the Applicant has not utilized the amounts under the bank guarantee dated 19.12.2019 as the amount of Rs.17.5 crores came to be credited only on 31.08.2021.

9 In paragraph 12 of the Interim Application, the Applicant has stated that the time of 14 days for depositing the said bank guarantees with the office of Prothonotary and Senior Master were mostly lost in the banking procedures of which there were two bank holidays on account of 'Moharram', three days official mourning on account of death of BJP leader Kalyan Singh with 23.08.2021 as public holiday. The Applicant has filed present Interim Application seeking condonation of delay of six days in depositing the said three bank guarantees with the office of the Prothonotary and Senior Master.

10 Having considered the submissions of the learned Counsel appearing for the Applicant as well as the averments in the Interim Application, I am of the view that a case has been made out for condoning the delay of six days in depositing the said three bank guarantees with the office of the Prothonotary and Senior Master.

11 Hence, the following order :

- i) The delay of six days in depositing the said three bank guarantees with the office of the Prothonotary and Senior Master, is condoned.

ii) The Prothonotary and Senior Master shall accept the deposit of said three bank guarantees which shall be deposited by the Applicant on or before 7th January, 2022.

iii) The Interim Application is disposed of in the above terms.

(R.I. CHAGLA, J.)

Digitally
signed by
WAISHALI
SUSHIL
WAGHMARE
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