

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO.12087 OF 2019
IN RAST/28475/2019
WITH
REVIEW APPLICATION (STAMP) No.28475 of 2019
WITH
CIVIL APPLICATION NO.14511 OF 2022

NAMDEO KHUSHALRAO KHADE
VERSUS
NEW HITOPDESH COOPERATIVE HOUSING SOCIETY
THROUGH CHAIRMAN AND OTHERS

...
Advocate for the Applicant : Shri V.D.Salunke
Advocate for Respondent 1 : Shri A.R. Tapse i/by Shri P.S.
Suryawanshi
Advocate for Respondent 3 : Shri K.J. Suryawanshi
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CORAM : RAVINDRA V. GHUGE, J.

DATE :- 19th October, 2023

Per Court :-

1. Delay is of Thirty-Two days. By consent of the parties, **Civil Application No.12087/2019 is allowed.** The delay is condoned and the Review Application is taken up for hearing.

2. It is well settled in the light of *Lily Thomas vs. Union of India, AIR 2000 SC 1650*, *S. Madhusudhan Reddy vs. V. Narayana Reddy and others, 2022 SCC Online SC 1034* and *Pancham Lal Pandey vs. Neeraj Kumar Mishra and others, 2023*

SCC Online SC 143, that a Review Application cannot permit the Applicant to re-argue the entire case. Within this limited contour of the law, a Review Application can be considered only to assess as to whether, any error apparent on the face of the order is pointed out by the Applicant.

3. The issue before the Co-operative Court was as regards the purported wrongful/ fraudulent transfer of Plot No.84 in favour of one Smt.Narmada. There are concurrent findings of the Co-operative Court as well as the Co-operative Appellate Court that the delay on the part of the Petitioner/ Disputant in raising a dispute is around 23 years. It is on such concurrent findings that the Writ Petition was dismissed since the Petitioner could not make out a case which would convince the Court to take a different view.

4. There can be no debate that if a proceeding suffers delay, the concerned Court has to consider the aspect of delay alone and having concluded that the delay would bar the filing of a Complaint or raising of a Dispute, the Court is not required to go into the merits of the claims of the parties. Nevertheless, in the present case, evidence was recorded to the fullest extent before the Co-operative Court on all the issues. Considering the

evidence recorded, the Co-operative Appellate Court has reproduced portions of the statements of the Disputant/ Petitioner before this Court, from paragraph No.10 onwards. The reproduced portions of the evidence indicate that the Petitioner did not possess a receipt of Rs.8,000/- to establish that he had validly become a member of the Society. He could not produce any allotment letter and he admitted that he did not have one. He further admitted that he had no evidence to indicate that Plot No. 84 was allotted to him.

5. Section 92(1)(b) of the Maharashtra Co-operative Societies Act, 1960, reads thus:-

“92. *Limitation:-*

(1) *Notwithstanding anything contained in the Limitation Act, 1963, but subject to the specific provisions made in this Act, the period of limitation in the case of dispute referred to the Co-operative Court under the last preceding section shall-*

(b) *when the dispute is between a society or its committee, and any past committee, any past or present officer, or past or present agent, or past or present servant or the nominee, heir or legal representative of a deceased officer, deceased agent or deceased servant of the society, or a member, or past member, or the nominee, heir or legal representative of a deceased member and when the dispute relates to any act or omission on the part of either party to the dispute, be six years from the date on*

which the act or omission with reference to which the dispute arose, took place;”

6. It is thus obvious from the language used in sub clause (b) that the Dispute should relate to any act or omission on the part of either party to the Dispute and a dispute can be raised within six years from the date such act or omission. This is the period of the limitation.

7. Considering the above, the transfer of Plot No.84 in the name of Smt.Narmada and the lodging of the Dispute by the Disputant on 18.12.2013, would indicate that the delay in any case was of 11 years. If 06 years (limitation period) are to be considered from the date of transfer of Plot No.84 in favour of Smt.Narmada, the delay would have to be counted from 2002 and the Dispute was registered on 18.12.2013, which is more than 11 years.

8. This Court is informed that thereafter, the Plot has changed hands on two occasions after Smt.Narmada transferred it.

9. In these circumstances, neither any error apparent on the face of the record is pointed out by the Petitioner, nor would any purpose be served since the Petitioner has admitted in his

evidence that he had no proof to indicate that he had deposited Rs.8,000/- to become a member of the Society and he did not have any allotment letter to establish that the Society had allotted Plot No.84 to him.

10. In view of the above, **the Review Petition is rejected.**

11. The pending Civil Application No.14511/2022 would not survive and stands disposed off.

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(RAVINDRA V. GHUGE, J.)