

Nikita

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

WRIT PETITION NO.8557 OF 2023

Edburg Harry Arland and Ors. ... Petitioners
V/s.
Shivsagar Co-op. Hsg. Soc. Ltd. and Anr. ... Respondents

Mr. Sudhir V. Sadavarte for the Petitioner.

Mr. Vaibhav R. Gaikwad, a/w Mr. Yash Naik and
Atharva R.B. for Respondent.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 22, 2023

P.C.:

1. Petitioners are original plaintiffs who filed Regular Civil Suit No.952 of 2007, seeking declaration and cancellation of conveyance deed. The Trial Court by judgment and decree dated 25th August 2015, directed execution of conveyance deed dated 4th November 2003, to the extent of share of plaintiff and open space. Aggrieved thereby, the defendant society on 26th July 2016, filed appeal along with the application for condonation of delay. Delay caused was of 340 days. The reason assigned for condonation of delay was that earlier managing committee was not taking affairs of the society diligently. New managing committee was installed by general body on 28th September 2015. It is only upon communication by plaintiff No.1 in April 2016, that

the new managing committee got knowledge of the decree.

2. The Appellate Court by the impugned order, condoned the delay subject to cost of Rs.1,000/-/-. It is well settled that the power of superior Court against positive exercise of jurisdiction in the context of condonation of delay is microscopic unless, exercise of discretion by the Lower Court is perverse. Ordinarily, the Superior Court would not interfere with the positive exercise of jurisdiction. It is also well settled that unless the delay is caused with malafide intention ordinarily, the delay subject to proof of sufficient cause deserves to be condoned. The appellate Court in its discretion has accepted the cause shown by the defendant as sufficient cause, there is no perversity in the approach of the District Court. No interference under Article 227 is called out that however, considering the cause shown in the application. Respondent No.1 needs to be directed to pay costs of Rs.10,000/- to petitioners.

3. The writ petition stands disposed of.

4. The Respondent No.1 shall pay cost of Rs.10,000/- to petitioners.

(AMIT BORKAR, J.)

Note: This order is corrected as per order dated 25/8/2023. Corrections in paragraph No.1 are shown in italicized.