

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

**INTERIM APPLICATION NO. 2376 OF 2023
IN
SUIT NO. 1325 OF 2018**

Jawid Hasan Laiq ...Applicant
vs.
Mumbai Housing and Area Development
Board and 4 Ors. ...Respondents

**ALONGWITH
INTERIM APPLICATION NO. 2377 OF 2023
IN
SUIT NO. 1325 OF 2018
(Serial No. 18)**

Jawid Hasan Laiq ...Applicant
vs.
Mumbai Housing and Area Development
Board and 4 Ors. ...Respondents

**ALONGWITH
INTERIM APPLICATION (L) NO. 22879 OF 2023
IN
SUIT NO. 1325 OF 2018**

Jewel Nursing Home ...Applicant
vs.
Jawid Hasan Laiq and 4 Ors. ...Respondents

Mr. Amrut Joshi a/w Mr. Sheikh Yusuf Ali i/by Advani and Co. -
Advocate for the Applicant/Plaintiff in IA 2376 of 2023 and IA 2377
of 2023

Ms. Sayali Apte i/by Mr. P. G. Lad - Advocate for the Defendant No.
1.

Mr. Vaibhav Joglekar, Senior Advocate a/w Mr. Yatin R. Shah and Mr.

Vipul Makwana – Advocate for Defendant No. 2 and for Applicant in IAL 22879 of 2023

Mrs. Jinal Mehta and Ms. Anamika Tiwari i/by Mehta and Co. - Advocate for Defendant Nos. 3 and 4.

Ms. Bharti Bhogesara i/by Mr. Sanjay Mishtra – Advocate for Defendant Nos. 5a to 5d

CORAM : S. M. MODAK, J.

DATE : 21st AUGUST, 2023

P.C. :-

1. Heard learned Advocate Mr. Amrut Joshi for the Applicant/Plaintiff and learned Advocate Ms. Sayali Apte for the defendant no. 1, also heard learned Senior Advocate Shri Vaibhav Joglekar, for defendant no. 2 and also heard learned Advocate Mrs. Jinal Mehta for defendant nos. 3 and 4 and learned advocate Ms. Bharti Bhogesara for the proposed LRs of deceased defendant no. 5.

2. Learned Prothonotary as per Order dated 21/08/2019 was pleased to observe that suit will be dismissed if steps are not taken to serve defendant nos. 1, 2 and 5. For some reason or other steps were not taken but in fact defendant nos. 1 and 2 have already put in appearance. It is pleaded in para no. 7 of the Interim Application no. 2377 of 2023 and is also the contention of the learned Senior Advocate Shri Joglekar, for defendant no. 2 and

learned Advocate for defendant no. 1. By this Interim Application No. 2377 of 2023, the plaintiff is asking for setting aside the said order and condoning the delay.

3. Interim Application (L) No. 22879 of 2023, not on board and taken on board. It is filed on behalf of the defendant no. 2, thereby praying for condonation of delay in filing written statement on behalf of the defendant no. 2. In fact it is submitted that unless and until the order of the learned Prothonotary will be set aside, there is no occasion for defendant no. 2 to file written statement. Whereas defendant no. 1 is seeking liberty to file the application to grant a permission to file written statement.

4. There is one more Interim Application No. 2376 of 2023 filed on behalf of the plaintiff for setting aside the abatement against defendant no. 5 and for condoning the delay. The plaintiff relied upon the copy of the letter dated 04/06/2019 written by one Ali Sajjad Razzaqi at page no. 11 of that application. Date of death of the Khalid Mahmood Razzaqi is 17/02/2019. Let death certificate be annexed.

5. Learned Advocate for the legal representatives of defendant no. 5 wants to file Vakalatnama and also wants to file

death certificate. Once there is appearance on behalf of the defendant nos. 1 and 2 suit cannot be dismissed for not taking steps. The Order needs to be set aside alongwith delay condonation.

6. At the same time, it is true that the period of filing of the written statement starts from appearance of the parties. It is true that order is passed by learned Prothonotary, inadvertently, and that is coming in the way of defendant nos. 1 and 2 to file written statement. So instead of going into technicalities, let defendant no. 2 may be allowed to file written statement.

7. In view of that following order is passed:-

ORDER

- (i) Interim Application No. 2377 of 2023 is allowed in terms of prayer clauses 'a' and 'b'.
- (ii) Interim Application (L) No. 22879 of 2023 is allowed in terms of prayer clause 'a'.
- (iii) Interim Application No. 2376 of 2023 will be decided once the legal representatives of defendant no. 5 file Vakalatnama alongwith death certificate.

8. There is an objection about description of defendant no. 1. Defendant no. 1 is described as Mumbai Housing and Area

Development Board Unit of Maharashtra Housing and Area Development Authority, instead of Unit of Maharashtra Housing and Area Development Authority and MHADA separately. There is oral prayer to carry out an amendment on behalf of the plaintiff. So also defendant no. 2 is described as Jewel Nursing home instead of Jewel Nursing Home and Polyclinic and this is pleaded in para no. 6 of the written statement sought to be filed. There is oral prayer to carry out amendment. Let all these amendments be carried out within 14 days. Re-verification is dispensed with. Once the defendant no. 1 will file an application for written statement, it will be decided.

9. Matter be kept on **25th September, 2023.**

[S. M. MODAK, J.]