

Santosh

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

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**INTERIM APPLICATION NO. 5264 OF 2022
IN
SUIT NO. 1096 OF 2009**

Samartha Development Corporation ...Applicant/Ori.
Deft.5

In the matter between

Byramjee Jeejeebhoy Private Limited ...Plaintiff

Versus

Oshiwara Land Development Company
Private Limited & ors. ...Defendants

**WITH
INTERIM APPLICATION NO. 5266 OF 2022
IN
SUIT NO. 1096 OF 2009**

Apna Ghar Co-operative ...Applicant/Ori.
Deft.5

In the matter between

Byramjee Jeejeebhoy Private Limited ...Plaintiff

Versus

Oshiwara Land Development Company
Private Limited & ors. ...Defendants

Mr. Darshit K. Jain, i/b Divya Jain, for the Plaintiff.

Ms. Disha Mehta, i/b Bilawala & Co., for Defendant no.1 in
Suit and for Respondent no.1 in IAs.

Mr. Sailesh Mahimtura, a/w Akshay Pawar and Danish
Qureshi, i/b Kunal Bhanage, for Defendant nos.5 & 6.

CORAM: N. J. JAMADAR, J.

DATED : 9th JANUARY, 2023

Oral Order:-

1. These applications are preferred seeking condonation of delay in filing the written statement on behalf of defendant nos.5 and 6, who came to be impleaded as party defendants to the suit pursuant to the order dated 25th October, 2013. The plaintiff took out Notice of Motion No.31 of 2014 seeking interim reliefs against defendant nos.5 and 6 as well.

2. When the said Notice of Motion No.31 of 2014 alongwith Interim Application No.866 of 2019 for amendment in the plaint, came to be listed before the Court on 1st April, 2021, purportedly, with the consent of the parties, the following order was passed:

“3. Accordingly, the interim application is disposed of in terms of the following order:

(i) The plaintiff is permitted to amend the plaint in terms of schedule of propose amendment annexed as Exhibit-A to the interim application. Amendment to be carried out within four weeks. The amended copy of the plaint to be served on the defendants.

(ii) It is made clear that the amendment is allowed subject to all objections of the Defendants concerning limitation as well as scandalous nature of some of the averments, which are sought to be introduced in the plaint by way of the amendment. All rights and contentions of the parties on merits in that behalf are kept open.

(iii) The Defendants to file their comprehensive written statement to the amended plaint within four weeks of service of the amended plaint.

(iv) Liberty to the Plaintiff to apply for other reliefs claimed in the interim application, that is to say, reliefs besides the prayer for amendment, by a separate application. The Court is informed that some of these reliefs may already form part of Notice of Motion No.31/2014 pending before this Court. Be that as it may, what this liberty means is that the Plaintiff is

not forbidden from urging the grounds in the interim application or the reliefs sought in the interim application by reason of this court disposing of the interim application in terms of prayer Clause (a).”

3. In these applications, it is averred that the plaintiff does not carry out the amendment in the plaint in terms of the aforesaid order within the stipulated period and, eventually, with the permission of the Court, the amendment was carried out on 15th September, 2021 and its copies served on the defendants on 23rd September, 2021. The defendants contend that the defendants could not file the written statement within the stipulated period of four weeks from the date of the service of the amended plaint as time was consumed in obtaining instructions and drafting and finalizing the written statement.

4. An affidavit-in-reply is filed on behalf of the plaintiff contesting the prayer for condonation of delay.

5. Heard the learned Counsel for the parties.

6. The learned Counsel for the plaintiff submitted that there was no written statement to the unamended plaint though the defendants were impleaded by an order dated 25th October, 2013. The written statement proposed to be filed on behalf of defendant nos.5 and 6 travels beyond the amended plaint and, therefore,

the delay does not deserve to be condoned. Secondly, there is no explanation for the delay.

7. From the perusal of the order dated 1st April, 2021, extracted above, it becomes evident that the said order was passed with the consent of the parties. Moreover under Clause (iii), the defendants were permitted to file comprehensive written statement. In this view of the matter, at this stage, it is not open to the plaintiff to make a grievance that the written statement now proposed to be filed ought to be restricted to the amended plaint.

8. It seems to be a case of *pari delicto*. There was delay on the part of the plaintiff as well in amending the plaint and serving copies of the amended plaint on the defendants in terms of the order dated 1st April, 2021. In any event, to advance the cause of substantive justice and decide the suit on merits, I am inclined to condone the delay in filing the written statement.

9. Hence, the applications stand allowed in terms of prayer Clause (a).

10. The defendants shall file the written statement in the Registry on or before 12th January, 2023 and serve copies on the plaintiff.
11. Applications stand disposed.
12. The parties shall complete discovery and inspection and circulate and exchange the draft issues.
13. List the suit on 13th February, 2023.

[N. J. JAMADAR, J.]