

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

**REVIEW PETITION NO.04 OF 2023
IN
APPEAL FROM ORDER (STAMP) NO.26163 OF 2023.**

Iftikar Mehmud Maste & Ors.	 Petitioner
Versus	
Kulbir Singh, Chief Promoter of Gurudarshan Chs. & Ors.	 Respondent

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***Dr. Uday P. Warunjikar**, a/w. Mr. Aditya P. Kharkar for Peitioner.*

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CORAM : SANDEEP V. MARNE, J.

DATE : 08 JANUARY 2024.

P. C.:

This petition is filed seeking review of Order dated 30 October 2023 by which Appeal from Order (Stamp) No.26163 of 2023 is rejected.

2. Dr. Warunjikar, the learned counsel appearing for Review Petitioners would submit that the Appeal from Order was listed on 03 October 2023 for Orders when this Court was expected to hear and decide the Interim Application No.15794 of 2023 for condonation of delay of 100 days in filing the Appeal. That instead of restricting its

decision on the Interim Application No.15794 of 2023, this Court has erroneously gone into the merits of the Appeal. He would submit that this is an error is apparent on the face record.

3. So far as the merits of the Order dated 03 October 2023 is concerned, Dr. Warunjikar would submit that this Court has glossed over the fact that the Deed of Confirmation executed by Defendant No.2 in favour of Defendant No.1 is not signed by the Defendant No.2. That the Plaintiffs were not aware about the execution of the Deed of Confirmation dated 05 March 2003 and became aware of the same only when mutation entry based on the said Deed was certified in the year 2021. He would submit that the Suit was immediately filed thereafter and therefore the Plaintiffs are entitled for temporary injunction to restrain the Defendants from obstructing possession of the Plaintiffs over suit property and from carrying out any construction thereon.

4. I have considered the submissions canvassed by Dr. Warunjikar.

5. So far as issue of Interim Application No.15794 of 2024 being listed for orders on 03 October 2023 is concerned, it is observed that listing of Interim Application for condonation of delay cannot preclude the Court from considering the merits of the Appeal after condoning delay. The learned counsel who appeared on 03 October 2023 canvassed submissions on merits, which are considered by this Court while rejecting Appeal on 03 October 2023. The only possible

error is about non reflection of the Order in Interim Application No.15794 of 2023 for condonation of delay. The fact that this Court went into the merits of the Appeal would obviously mean that this Court has condoned the delay. However it appears that the Order passed in Interim Application No.15794 of 2023 condoning delay of 100 days in filing Appeal has not been reflected anywhere. This can be the only possible error in the Order dated 03 October 2023.

6. In that view of the matter, it is clarified that the delay in filing the Appeal is condoned by allowing the Application No.15794 of 2023.

7. So far as the various grounds sought to be urged on merits, it must be observed that none of them warrant consideration under exercise of a review jurisdiction by this Court. The points of Defendant Nos.2 not signing the Confirmation Deed and certification of mutation entry were not canvassed when the Appeal was argued on 03 October 2023. Even if the said points were to be argued on 03 October 2023, the same would not have any effect on the decision of this Court. It has come on record that at the time of execution of Deed of Confirmation, various amounts have been paid to various parties, including Plaintiffs. It appears that Plaintiffs had executed power of attorney in favour of Defendant No.2 on 01 August 2001 on the basis of which, Deed of Confirmation dated 05 March 2003 has been executed by Defendant No.2 in favour of Defendant No.1. Perusal of written statement filed by Defendant No.3 would indicate that Plaintiff No.1 had signed the sale deed as a witness.

8. This Court has declined to interfere in the Order rejecting temporary injunction on account of passage of substantial period from the date of execution of Deed of Confirmation dated 05 March 2003. From averments made in various pleadings, it *prima facie* appears that Plaintiffs had knowledge about the execution of Deed of Confirmation at the relevant time. The relief of temporary injunction is discretionary in nature and can be denied if the Court arrives at a conclusion that Plaintiffs have not moved the Court immediately after accrual of the cause of action.

9. I therefore do not find any error apparent on the face of record in the Order under review except the one as indicated above. The Order dated 03 October 2023 thus, stands corrected only to the extent of allowing Interim Application No.15794 of 2023 by condoning the delay in filing the Appeal. Except the above correction, no merit is found in the Review Petition, which is rejected without any order as to costs.

SANDEEP V. MARNE, J.

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