

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

WRIT PETITION NO. 1163 OF 2024

1. Birla Industries Group Charity
Trust and Ors.

....*Petitioners*

: *Versus* :

1. Mr. Omprakash s/o. Ramakant Pathak
and Ors.

....*Respondents*

Mr. Filji Frederick *a/w. Mr. Pranay Patil i/by. FF & Associates, for the Petitioners.*

Mr. Deepak Shukla *a/w. Mr. Satsang J. Tailor i/by. BNS Legal, for the Respondents..*

CORAM : SANDEEP V. MARNE, J.

Dated : 9 September 2024.

P.C. :

1) This petition is filed challenging the order dated 20 October 2023 passed by the Appellate Bench of the Small Causes Court rejecting MARJI Application No.206/2023 filed for condonation of delay of 148 days delay in filing the Misc. Appeal. In that Misc. Appeal, the Petitioners sought to challenge the order dated 30 January 2023 passed by the learned Judge of the Small Causes Court by which the Developer is directed to be added as a party Respondent to the suit. Petitioner No.1/Defendant No.1 was directed to produce the original Development Agreement entered by it with the developer.

2) I have heard the learned counsel appearing for the parties. *Prima-facie*, it appears that the suit is contested between the Plaintiffs and Defendant no.2 with regard to the tenancy rights in respect of the suit premises. Neither Defendant No.1 nor the Developer are concerned with the *inter-se* disputes between the Plaintiffs and Defendant No.2. The only anxiety which the Plaintiff has is about rights flowing through the Development Agreement *qua* the suit premises. The Developer is added as Defendant to the suit and production of Development Agreement is sought for merely ensuring that alternate premises are granted in lieu of the suit premises and who will be entitled to such alternate premises is the contest which is to be determined in the suit. Mr. Frederick, the learned counsel appearing for the Petitioners, after taking instructions makes a statement that Petitioners shall grant Permanent Alternate Accommodation (**PAA**) in lieu of the suit premises in favour of the party in whose favour declaration is made by the Small Causes Court in respect of the tenancy claim. This would put an end to the anxiety of the Plaintiffs with regard to grant of PAA. In a suit filed by the Plaintiffs claiming tenancy rights against Defendant No.2, the landlord need not be made to disclose the entire Development Agreement to the Plaintiffs. Such Development Agreement may contain various clauses which the landlord and the developer may not like to disclose to the individual tenants. Mr. Frederick would submit that individual agreements for grant of Permanent Alternate Accommodation Agreements (**PAAAs**) would be executed with every tenant of the building. As and when such occasion arises for execution of PAAA, it is for the Plaintiffs to take necessary steps to protect their rights.

3) Since Mr. Frederick has clarified that PAAA would be executed in respect of the suit premises, the entire purpose for seeking production of Development Agreement would no longer survive. Mr. Shukla, learned counsel appearing for the Respondents/Original Plaintiffs states that Plaintiffs are satisfied by the statement made by Mr. Frederick about execution of PAAA in respect of the suit premises. Ofcourse the exact person with whom such Agreement is to be executed would depend upon the outcome of the decree that would be passed in the suit. In the light of this position, Mr. Shukla would not insist on production of copy of the Development Agreement. This would put an end to the entire dispute with regard to Direction No.(iii) in the order dated 30 January 2023 which was sought to be challenged before the Appellate Bench by filing Misc. Appeal. Therefore, though the remit of enquiry in the present petition is limited to the issue of condonation of delay, since the entire dispute with regard to production of copy of Development Agreement is being resolved between the parties, in my view, it is not necessary to consider the issue of condonation of delay. Instead a clarification can be issued that the Plaintiffs are no longer insisting on production of copy of Development Agreement on account of assurance given by Defendant No.1 that PAA in lieu of suit premises would be granted. Mr. Frederick makes a further statement that as and when the time arises for execution of PAAA, a notice to that effect shall be given to the Plaintiffs.

4) Accordingly with the consent of the learned counsel appearing for the parties, Direction No.(iii) of the order dated 30 January 2023 passed by the learned Judge of the Small Causes Court is set aside. Since the said direction is being set aside, no cause of

action would survive for the Appellant to file Appeal before the Small Causes Court and it is not necessary to decide the correctness of order dated 20 October 2023 passed by the Appellate Bench. With the above observations, the Writ Petition is **disposed of**.

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[SANDEEP V. MARNE, J.]