

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8677 OF 2024

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Ekveera Cooperative Housing Society Ltd

... Petitioner

Vs.

Sharda Construction and Ors

.. Respondents

Mr. R.D. Soni a/w. *Ms. Sumedha Dhopate, Ms. Mudita Pawar and Ms. Mihika Save, for Petitioner.*

Mr. Ashok M. Saraogi a/w. *Kavya Smriti, for Respondent No. 1.*

Mr. D.A. Athavale, *for Respondent Nos. 3 to 5-CIDCO.*

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : August 12, 2025

Order :

1. This Writ Petition challenges an order dated April 25, 2024 refusing to permit the Petitioner to deposit a sum of Rs. 10,62,500/- along with interest @ 12% per annum computed from February 23, 2005 until the date of the deposit, as permitted by a Learned Single Judge of this Court in disposal of an Appeal from Order No. 617 of 2013 with Civil Application No. 889 of 2013 by an order dated August 23, 2013. The deposit that had been permitted was meant to secure Respondent No. 1 subject to which the Petitioner would be entitled to redevelop its property.

2. It is common ground that after August 23, 2013, no deposit was made pursuant to the enabling liberty given by the Learned Single Judge of this Court. Only recently an application to deposit of approximately Rs. 36 Lakhs was moved pursuant to the said order dated August 23, 2013.

3. Meanwhile, the Petitioner-Society had secured a lease deed in its favour on April 9, 2025 and possession is now with the Petitioner-Society. The background to the proceedings which led to the permission to make the deposit was that the Petitioner-Society was purported to have entered into a Development Agreement with Respondent No. 1 to develop the property, which was said to be in conflict with the terms on which CIDCO has provided the land to the Petitioner-Society.

4. In these circumstances, taking into account of competing interests of the parties, the Learned Single Judge was pleased to pass the following order in Appeal from Order No. 617 of 2013 on August 23, 2013:

15 The impugned order of the learned Civil Judge, Junior Division, Panvel dated 14.08.2012 is set aside and substituted by the following order :

The plaintiff shall not be entitled to interim reliefs as prayed. Defendant No.1 shall not be entitled to enter into any development agreement with

defendant No.2 or any other party in breach of the NOC of CIDCO dated 17.08.2009 or the Agreement to Lease of CIDCO dated 20.11.2009.

However upon defendant No.1 depositing in Court Rs.10,62,500/- together with interest @ 12% p.a. thereon from 23.02.2005 until the date of deposit, the defendant No.1 housing society shall be entitled to enter into any agreement with any contractor to construct a building of 21 residential flats for self occupation of the 21 members of defendant No.1 society in accordance with law

5. Acting upon this ten years later, the Petitioner had moved the Civil Judge, Senior Division, Panvel proposing to make the deposit so directed. The deposit would secure Respondent No. 1 and the Petitioner could proceed further within redevelopment work. Meanwhile, CIDCO and the Petitioner-Society have resolved their issues. The restrictions on alienation that CIDCO complained were being violated, are no longer applicable, and the Petitioner-Society has obtained clear possession in its favour.

6. The Impugned Order returns a specific finding in law that the time limit to avail of the leeway given by the Learned Single Judge would be

covered by the Article 137 of the Limitation Act, 1963 and that such deposit ought to have been made within a period of three years from that order. Purely as a matter of law, the issue would be covered by delays and laches rather than by strict rules of limitation.

7. It is noteworthy that the Learned Single Judge of this Court had indeed provided for interest at the rate of 12% pe annum until the date of deposit, which could also be seen as an *indicia* of being an enabling direction, time being given for making of the deposit, the compensation for such time also being provided at the rate of 12% per annum.

8. Having heard Learned Counsel for the parties, since the deposit would secure Respondent No. 1, it would be in the fitness of things to permit the Petitioner to make a deposit. The finding that Article 137 of the Limitation Act would apply is untenable since no time limit had been fixed, and instead an interest component had been provided for. However, it is equally true that there has been a long delay in using the liberty granted. Therefore, adjusting for equities, it is directed that the deposit permitted may be made, but in the sum of Rs. 1.5 Crores, which deposit shall be made within a period of six weeks from today.

9. If such deposit is made, Learned Civil Judge Senior Division would accept such deposit to be made with that Court's Registry and deal with the Suit as expeditiously as his roster would permit.
10. Nothing contained in this order is meant to pronounce upon the relative merits of either party in the suit proceedings. The directions issued hereby are without prejudice to the Respondent No. 1's contention in the Suit about his case for specific performance in the purported agreement with the Petitioner-Society.
11. ***Finally disposed of*** in the above terms.
12. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]