

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 3827 OF 2024
IN
SUIT NO. 326 OF 2023

Bombay Taximens Co-Operative Housing Society
Limited

...Applicant/
Plaintiff

Versus

Pashah Begum Busheri And Ors.

...Defendants/
Respondents

WITH
INTERIM APPLICATION NO. 2747 OF 2023
IN
SUIT NO. 326 OF 2023

Mr. Chetan Kapadia, *a/w Gauri Meshta, Vidisha Rohira, Zahid Butt, i/b LJ Law, for the Applicant in IA/3827/24 & for Defendant No.1 in S/326/23.*

Mr. Hasan Mushabber, *i/b Negandhi Shah & Himayatullah, for Defendant No.2.*

Mr. Karl Tamboly, *a/w Agnel Carneiro, Smith Colaco, Tushar Cooper, i/b Mulla & Craigie Blunt & Caroe, for Applicant in IA/2747/23, for Respondent in 3827/24 & for Plaintiffs in S/236/2023.*

CORAM : SOMASEKHAR SUNDARESAN, J.
DATE : NOVEMBER 13, 2025

ORDER :

1. This is an Application invoking Order VII Rule 9 of the Civil Procedure Code, 1908. Mr. Chetan Kapadia, Learned Senior Advocate on behalf of the Applicant (Original Defendant) would submit that the

plaint as drafted would clearly show that it is barred by limitation. He would submit that the fundamental prayers are prayer clauses (a) and (b). A without-prejudice prayer in prayer clause (e) has been a mechanism of clever drafting, he would submit, in order to somehow attract the provisions of Article 65 of the Limitation Act, 1963 (“***the Limitation Act***”), whereas the applicable provision is Article 58 of the Limitation Act.

2. According to him the suit is hopelessly barred by limitation inasmuch as the Plaintiff has all along clearly asserted that the Plaintiff is in possession of the suit property and only seeks a declaration that the suit property is indeed his. Towards this end, Mr. Kapadia would submit that a public notice issued by the Defendant-Applicant in January 15, 2013 was reacted to by another public notice by the Plaintiff on January 18, 2013, which would show that the cause of action to seek a declaratory relief commenced there and then in January 2013.

3. Therefore, he would submit, the claim that an inspection conducted on August 7, 2022 led to discovery of the infringement of rights over the suit property that is in legal possession of the Plaintiff rings hollow because there was nothing to discover in 2022, when the trading of public notices in January 2013 demonstrates that the

limitation clock had started ticking. He would also point to a notice dated June 22, 2018 issued on behalf of the Plaintiff which would indicate that even in 2018 the assertions contained therein (Page 292) would indicate that the suit is barred by limitation. He relies upon three judgements:- *Dahiben v. Arvinbhai Kalyanji Bhanusali*¹, , *State of Punjab v. Balkaran Singh*², and *Sree Surya Developers & Promoters v. N. Sailesh Prasad*³.

4. Liberty to the Defendant-Applicant to file a short note summarizing the submissions before the next date. To enable Mr. Tamboly to respond on behalf of the original Plaintiff, stand over to ***November 18, 2025*** under the caption “***Part Heard***”.

5. 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.]

¹ (2020) 7 SCC 366

² (2006) 12 SCC 709

³ (2022) 5 SCC 736.

