

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

INTERIM APPLICATION NO.829 OF 2025

IN

APPEAL (L) NO.36931 OF 2024

WITH

INTERIM APPLICATION (L) NO.37037 OF 2024

IN

APPEAL (L) NO.36931 OF 2024

ALONG WITH

APPEAL (L) NO.36931 OF 2024

Neil John Creado & Others

.. Applicants.

In the matter between

Neil John Creado & Others

.. Appellants.

Versus

Silver Beach Victor

Cooperative Society Ltd., & Another

.. Respondents

Adv. S. S. Nikam, for the Applicants/ Appellants.

Adv. Shamima Taly with Sehyr Taly i/b. S. Mahomedbhai & Co., for Respondent No.1.

CORAM: B. P. COLABAWALLA &

FIRDOSH P. POONIWALLA, JJ.

DATE: MARCH 21, 2025

P. C.

1. This is an application for condonation of delay of 397 days in filing the above Appeal. Though, we are not fully satisfied with the explanation, we here by condoned the delay.

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2. With the consent of the parties, we have also taken up Appeal for hearing.

3. What is impugned in the present Appeal is the Order dated 16th February, 2023. For the sake of convenience and since it is a short order, the same is reproduced hereunder:-

“PC:

NOTICE OF MOTION NO.766 OF 2008

1) *Heard the learned Counsel for the plaintiff and the learned Counsel for the defendant Nos. 2 to 6.*

2) *On 3rd March, 2008, this Court had passed the following order:-*

“ Counsel appearing on behalf of Defendants 2 to 6 states that the aforesaid Defendants shall not create any third party rights in respect of the demised land except by way of giving the same on leave and license basis as was done in the past. This submission is made by Defendants 2 to 6 in terms of the earlier statement dated 4th May, 2007 recorded in the order passed by Hon’ble Mr. Justice A. M. Khanwilkar in Notice of Motion No.722 of 2007. In view of the aforesaid statement, no further application for ad-interim relief has been made at this stage.

The Notice of Motion is made returnable on 9th June, 2008. Parties shall complete their pleadings in the meantime.”

3) *The Motion is pending since the year 2008.*

4) *The learned Counsel for the plaintiff makes a grievance that the defendant Nos. 2 to 6 have acted in breach of the aforesaid statement and, despite repeated requests, the defendant Nos. 2 to 6 have not furnished the information regarding the licensees, who are inducted in the suit premises by the defendant Nos. 2 to 6.*

5) Having regard to the time which has elapsed and nature of the statement made on behalf of the defendant Nos. 2 to 6, it would be expedient to make the Motion absolute in the aforesaid terms.

6) The defendant Nos. 2 to 6 shall file an affidavit indicating the identity of the licensees, who have been inducted in the suit premises since the date of the aforesaid order.

7) In case new licensees are inducted, in future, the defendant Nos. 2 to 6 shall intimate the same to the plaintiff and also place the said fact on the record of the Court.

8) The Notice of Motion stands disposed.

9) List on 27th March, 2023 for framing of issues.

10) The parties shall exchange and circulate the draft issues.”

4. Initially, though Defendant Nos. 2 to 6 (the Appellants before us) have filed an Interim Application to recall the aforesaid Order, the same was withdrawn on 4th November, 2023 with liberty to take out appropriate proceedings as available to the Applicant and in accordance with law. It is pursuant to that liberty, the present Appeal is filed.

5. After hearing the learned Counsel appearing on behalf of the Appellants as well as the learned Counsel appearing on behalf of Respondent No.1, we find that there is no reason to interfere with the Order passed by this Court on 16th February, 2023. As can be seen from this Order, all that it does

is to direct that Defendant Nos. 2 to 6 (Appellants) to furnish the identity of the licensees who have been inducted in the suit premises since the Order dated 3rd March, 2008. It further directs that in case new licensees are inducted in the future, Defendant Nos. 2 to 6 shall intimate the same to the Plaintiff and also place the said facts on the record of this Court. We do not see anything wrong in the aforesaid directions given in the impugned order.

6. In these circumstances, we find no merit in the Appeal. The Appeal is accordingly dismissed. However, there shall be no order as to costs.

7. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]