

**(1997) 03 KAR CK 0062**  
**In the Karnataka High Court**  
**Case No : First Appeal No. 526 of 1992,**

|                                                             |            |
|-------------------------------------------------------------|------------|
| Defence Colony Co-operative Housing Society Ltd., Bangalore | APPELLANT  |
| Vs                                                          |            |
| Lt. Col. B.J. Shantharaj and another                        | RESPONDENT |

**Date of Decision :** 31-03-1997

**Acts Referred:**

**Citation :** AIR 1998 Kar 20

**Hon'ble Judges :** Chidananda Ullal, J

**Bench :** Single Bench

**Advocate :** M. Raviparakash, for the Appellant; Urval M. Ramanand, Respondent No. 1, for the Respondent

**Final Decision :** Allowed

## Judgement

Chidananda Ullal, J.—The instant appeal is filed to challenge the order on I.A.I, dated 8-10-1992 passed in O.S. No. 751/1987 by the VII Additional City Civil Judge (CCH No. 13), Bangalore, whereby the said Additional City Civil Judge had dismissed the suit of the appellant.

2. I heard the learned counsel for the appellant, Sri M. Raviprakash and the learned counsel appearing for the respondent, Sri Urval M. Ramanand. I have perused the case records including the case records of the Court below and further certain case papers pertaining to the dispute incase No. JRB/MIS. Dispute No. 38/76-77 before the Deputy Registrar of Co-operative Societies, Bangalore District, Bangalore City and copy of the final order came to be passed in Appeal No. 668/78 dated 12-8-1980 on the file of the Karnataka Appellate Tribunal, Bangalore and order dated 16-10-1984 in W.P.No. 18024/1980 of this Court, made available to me by both sides to the appeal to assist me to understand the background of the case morefully.

3. The facts in brief leading to the above appeal before this Court are as follows:

That the Appellant-Society herein at the first instance had raised a dispute in No. JRB/MIS.38/ 76-77 under S. 70(I) of the Karnataka Co-operative Societies Act to

cancel the allotment and sale deed executed on 2-1-1976 by the Ex-Officio President of the Appellant-Society in respect of site No. 1, in Binnamangala Layout, now known as "Defence Colony" II Stage, Indiranagar, a private layout formed by the Appellant-Society for the benefit of its members. The said dispute was decided in favour of the Appellant-Society at the first instance in passing an award by the Deputy Registrar of Co-operative Societies, Bangalore District, Bangalore by his order dated 15-7-1978, whereby it was declared that the allotment made in favour of the respondent herein was illegal and unauthorised and the ownership of the said site would vest in the Appellant-Society. It is thereafter the respondent had filed an Appeal in No. 668/78 before the Karnataka Appellate Tribunal, Bangalore, (hereinafter referred to in brief as KAT) to challenge the above award and the KAT by passing an order on 12-8-1980 held that the respondent was not a member of the Appellant-Society and as such the very dispute raised as against the respondent before the Deputy Registrar of Co-operative Societies was not maintainable and on that score the KAT had dismissed the very dispute. It should be noted in this context that in the appeal of the respondent before KAT the KAT passed the above order for the reason that the Respondent herein for the first time raised the plea that he was never a member of the Appellant-Society at any point of time.

As against that, the Appellant-Society herein had filed a writ petition before this Court in WP No. 18024/80 to challenge the above said order passed by the KAT and this Court by its order dated 16-8-1984 quashed both the orders passed by the Deputy Registrar of Co-operative Societies, Bangalore District, Bangalore, in Dispute No. JRB/MIS.38/76-77 and further the order referred, to above passed by the KAT. The order came to be passed in the above said writ petition reads as follows :

"In the result, this writ petition is allowed. Impugned order of Appellate Tribunal as well as the order made by the Arbitrator are hereby quashed. Matter remitted to Joint Registrar of Cooperative Societies to get the dispute adjudicated afresh, in accordance with law. Rule made absolute."

This Court in passing the said order remitted the matter to the Dy. Registrar of Co-operative Societies to get dispute adjudicated upon afresh in accordance with law.

Whereupon yet another round of proceedings in the dispute was commenced before the Deputy Registrar of Co-operative Societies, Bangalore with issue of notices to the parties. It is at that stage, the appellant-society herein had filed OS No. 751/1987 as against the respondents before the VII Additional City Civil Judge, Bangalore (hereinafter referred to as for convenience as "City Civil Judge") for a judgment and decree in their favour as against the defendant to declare that the sale deed executed by the Honorary President of the Appellant-Society in favour of the respondent by registered document No. 2956/ 95-96 as illegal and void and further the consequential reliefs. The prayers in the said suit read as follows :

"(a) Declaring that the sale deed executed by the second defendant in favour of the first defendant dated 2-1-76 (two-one-seventy six) registered as document No. 2956 (twenty-nine fifty six) of 1975-76 (nineteen seventy five-seventy six) at pages 216 to 222 (two-one-six to two-two-two) of Volume No. 1896 (eighteen ninety six) of Book I, in the Office of the Sub-Registrar, Shivajinagar, Bangalore, under the original of Document-I, as illegal, void and without jurisdiction and not binding on the plaintiff;

(b) and for consequential relief of cancellation of the said sale deed by a judgment and decree;

(c) and for consequential relief of directing the first defendant to deliver vacant possession of the plaint schedule property;

(d) and for a permanent injunction restraining the first defendant from alienating or transferring the plaint schedule property bearing site No. 1 (one), to any other person or persons;

(e) for costs of the suit;

and pass such other orders as this Hon"ble Court might deem meet in the circumstances of the case."

In filing the suit with the above prayers the Appellant-Society herein had also resorted to I.A.I. filed under Ss. 5 and 14 of the Limitation Act with a prayer that the delay of 8 years 45 days in filing the suit be condoned on the ground that the Appellant-Society was prosecuting its case before the Co-operative Court. KAT and before this Court bona fide as stated above. It is further averred that the case rendered itself in the wrong forum with raising of anew plea by the respondent for the first time before the KAT at the appellate stage and that the same was filed with bona fide mistake as to the jurisdiction and that the newly elected office bearers of the Appellant-Society filed the above suit for declaration and cancellation of the sale deed in favour of the Respondent after taking necessary legal advice and a resolution thereto in the general body of the Appellant-Society. In the affidavit accompanying IAI, the Appellant-Society further stated therein that the filing of the suit was the only remedy in the situation and that in view of the fact that the same would have been filed within three years from the date of execution of the sale deed, there was a delay of 8 years 45 days in resorting to the suit and the said delay was for the bona fide belief that the Co-operative Court was having jurisdiction and further for the reason that they were prosecuting their case in different Forums with all diligence. Therefore, they prayed that the said delay of 8 years 45 days in resorting to the suit be condoned by the learned City Civil Judge.

That the respondent herein did not choose to file any objection statement as against the above I.A. The Appellant-Society herein had adduced their side of the evidence in support of what were averred in the accompanying affidavit of the said I.A.I. The respondent had also examined himself to deny the claim of the

Appellant-Society; that the learned City Civil Judge having heard both sides and on appreciation of the evidence on record adduced by both sides in support of IAI, passed the impugned order, whereby he had rejected the said I.A. and in the process he had further dismissed the suit of the Appellant-Society. It is as against the said order and pursuant decree to dismiss the suit, the Appellant-Society filed the above appeal.

4. The learned counsel for the appellant, Sri Raviprakash, had taken me through the history of the litigation firstly before the Deputy Registrar of Co-operative Societies, secondly before the KAT, thirdly before this Court, then over again before the deputy Registrar of Co-operative Societies and before the City Civil Judge. At the outset, he submitted that when the Administrator was appointed to the Management of the Appellant-Society, he had at the first instance raised a dispute before the Joint Registrar of Cooperative Societies who in turn referred the dispute to the Deputy Registrar of Co-operative Societies and the said dispute as stated above was decided in favour of the Appellant-Society in passing an award in their favour. That when the said dispute was pending before the Deputy Registrar of Cooperative Societies, the respondent herein had never raised the point that he was not a member of the Appellant-Society and as such the appeal was not maintainable and that it is for that reason the dispute was decided as if there was no contention of that sort and it is for the first time the respondent had raised such an issue only before the KAT in his appeal No. 668/1978 and when the said order dated 12-8-1980 passed in the appeal was challenged by the Appellant-Society in the Writ Petition in WP No. 18024/90 before this Court, this Court by its order thereon dated 16-10-1984 quashed both the orders of the Deputy Registrar of Co-operative Societies as well as the order passed by the KAT in the appeal preferred by the respondent and remanded the matter to decide the dispute afresh. He further pointed out that when such an issue was to be decided by the Deputy Registrar of Co-operative Societies afresh in the dispute, the Appellant-Society anticipated naturally that the said dispute would fail for want of jurisdiction on that fundamental issue of non-membership of the respondent in the Appellant-Society, and therefore, the Appellant-Society resorted to suit before the City Civil Judge by filing an I.A. under Ss. 5 and 14 of the Limitation Act, praying therein that the delay of 8 years 45 days in resorting to the said suit be condoned. Sri Raviprakash, further argued that the Appellant-Society had clearly averred in the affidavit accompanying the I.A.I, in the suit before the learned City Civil Judge that the Appellant-Society were prosecuting their case for cancellation of the allotment and the sale deed with bona fide belief that the Co-operative Court was having jurisdiction and that it is only at the later stage when the appeal was pending before the KAT on raising the issue of membership by the Appellant-Society they came to know of that fact for the first time and that the Appellant-Society was therefore made known for the first time with regard to the very jurisdiction of the Deputy Registrar of Co-operative Societies to entertain the dispute. While taking me through the affidavit accompanying I.A.I., Sri

Raviprakash submitted that the Appellant-Society had made out a very clear case for condonation of delay of 8 years 45 days in resorting to the suit before the learned City Civil Judge. He had also brought to my notice that the Respondent who was vehemently opposing the claim of the Appellant-Society and further the suit before the learned city Civil judge didn't choose to file any objection statement as against I.A.I. According to him, by the said conduct the respondent didn't oppose that application of the Appellant-Society at all. Therefore, he submitted that the learned City Civil Judge would have naturally allowed that application by condoning the delay in filing the suit. Alternatively, he argued that when the Appellant-Society had adduced cogent evidence by examining PW. I, the Secretary of the Society, in support of the case that was made out in IAI, there was not good reason for the learned City Civil Judge to reject IAI.

5. While, taking me through the impugned order, Sri Raviprakash pointed out that the learned City Civil Judge had rejected IAI of the Appellant-Society mainly on the ground that the Appellant-Society had resorted to the suit without withdrawing the dispute raised by the Appellant-Society before the Deputy Registrar of Cooperative Societies. In other words to say that the learned City Civil Judge had found fault with the Appellant-Society in resorting to the suit while the dispute was very much pending on the file of the Deputy Registrar of Co-operative Societies. Sri Raviprakash further pointed out that in passing the impugned order, the learned City Civil Judge observed that as per provision of S. 14 of the Limitation Act, the suit in question would have been instituted by the Appellant-Society only after withdrawal of the suit pending on the file of the Deputy Registrar of Co-operative Societies. Sri Raviprakash by pointing out at paras (10) and (11) of the impugned order, submitted that the learned City Civil Judge had observed therein, wrongly that it was not in dispute between the parties that the respondent was not the member of the Appellant-Society and that it would not have raised the dispute before the Deputy Registrar of Co-operative Societies on the basis of wrong legal advice and he further submitted that it is because of that the learned City Civil Judge had observed therein further that there was no valid ground to invoke Ss. 5 and 14 of the Limitation Act to seek time to prosecute the said proceedings and further that the proceedings before the Deputy Registrar initiated and prosecuted by the Appellant-Society could be said as one with due diligence and good faith. Sri Raviprakash vehemently argued that the learned City Civil Judge was totally erroneous in observing that there was no dispute between the parties as to the membership of the Respondent in the Appellant-Society, as pointed out above, for the Respondent never took up such a contention as to his

membership and point of the jurisdiction in the matter of entertaining the dispute at any point of time till the said dispute was decided in favour of the Appellant-Society by passing an award there to in favour of the Appellant-Society and that it is for the first time, the Respondent had raised such a plea only in his appeal before the KAT. Therefore, Sri Raviprakash submitted that the learned City Civil Judge has totally misled himself by misunderstanding the facts of the case. Sri

Raviprakash also argued that no part of S. 14 of the Limitation Act contemplates that a case filed earlier to be withdrawn before instituting the fresh suit. In support of such a contention by him, he had cited before me the reported decision in *Mt. Ram Pati Kunwar Vs. Phool Singh and Others*, Sri Raviprakash had drawn my attention to what was observed in page 10. With regard to the said proposition of law, he canvassed before me. The same reads as follows:

".....In the case before us the plaintiff did not withdraw her suit with liberty to bring a fresh one and the plaint filed in the Revenue Court was the self-same plaint which she had previously filed in the Civil Court. We are clearly of opinion that the class of cases to which reference has been made above is wholly inapplicable and that S. 14 of the Indian Limitation Act, is not inapplicable on that ground.

The learned District Judge seems to be of opinion that S. 14 of the Indian Limitation Act is applicable "only to cases where the previous suit was dismissed by the Court itself, because it was unable to entertain it." There is nothing in S. 14 which warrants the proposition of law laid down by the learned District Judge. It clearly provides that "In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain it," The important question to decide is whether the plaintiff prosecuted another civil proceeding in good faith. It is perfectly immaterial whether such proceeding ended in an order of dismissal or in some other order showing that the Court refused to entertain it. Cases are easily conceivable in which a party may be in doubt as to whether suit should be instituted in a Civil or Revenue Court. If a suit is honestly and with due care and caution instituted in one of such courts but at a subsequent stage it is found that a wrong forum had been chosen it cannot be doubted that if an admission to that effect be made and the Court which has no jurisdiction returns the plaint for presentation to the proper Court, S. 14 of the Indian Limitation Act which is couched in comprehensive terms will be applicable. If the section be so restricted as to apply only to cases in which a previous suit is dismissed, it will cease to apply to a familiar class of cases in which plaints are returned without the suit being dismissed for presentation to the proper Court. We are clearly of opinion that S. 14 is not so limited and that, if the plaintiff instituted the suit in good faith in the Court of the Munsif of Fatehpur she is entitled to the benefit of S. 14."

On the said point canvassed by *Sadayatan Pande Vs. (Firm) Ram Chandra Gopal*. The said decision is with regard to provision under Order 23. Rule 2 of CPC and with regard to S. 14(1) of the Limitation Act. With reference to the said two provisions, it was held by the Allahabad High Court as follows :

"When a suit is withdrawn by the plaintiff under Order XXIII, rule 1 of the Civil

Procedure Code, with liberty to file a fresh suit, then in computing the limitation for such fresh suit the plaintiff is not entitled to the benefit of S. 14(1) of the Limitation Act, namely to an exclusion of the time occupied by the first suit : that section is inapplicable in view of the provisions of Order XXIII, Rule 2. Under Order XXIII Rule 2 the existence of the previous suit must altogether be ignored and must not be taken into account in considering whether the subsequent suit is or is not barred by limitation.

Order XXIII, Rules 1 and 2 apply to cases where the plaintiff voluntarily withdraws the suit and asks for permission to file a fresh suit; whereas S. 14 of the Limitation Act applies to a case where the Court by its own order has terminated the suit and has struck off the case from its file. There is no conflict between the two provisions.

The words, "is unable to entertain it", in S. 14 of the Limitation Act do not merely mean that the Court has expressed its mind that the suit is defective, but must mean that the Court has passed an order terminating the suit or proceeding on the ground of the existence of a defect of the kind mentioned in the section "

6. The second decision cited above by him is with regard to the termination of a defective suit and liberty to resort to a fresh suit on the very same cause of action. Hence, I do not think, the same is of assistance to the case in hand.

7. Sri Raviprakash next relied upon Vijay Kumar Rampal and Others Vs. Diwan Devi and Others, In the said decision, the Supreme Court held that the expression "good faith" as referred to under S. 14 of the Limitation Act qualifies prosecuting of a case in the court having no jurisdiction. In the said decision, the Supreme Court held as follows (para 3):

"Section 14 provides for exclusion of time of proceeding bona fide in Court without jurisdiction. In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding against the defendant shall be excluded where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which from a defect of jurisdiction is unable to entertain it. The expression "good faith" qualifies prosecuting the proceeding in the Court which ultimately is found to have no jurisdiction."

8. The other decision, Sri Raviprakash cited before me is Zafar Khan and Others Vs. Board of Revenue, U.P. and Others, The said decision is with reference to the expression, "cause of like nature" as it appeared in S. 14 of the Limitation Act. In paras (11) and (14) thereof the Supreme Court held as follows :

"In order to attract the application of S. 14(1), the parties seeking its benefit must satisfy the Court that : (i) the party as the plaintiff was prosecuting another civil proceeding with due diligence : (ii) that the earlier proceeding and the later proceeding relate to the same matter in issue and (iii) the former proceeding was being prosecuted in good faith in a Court which, from defect of jurisdiction or

other cause of a like nature, is unable to entertain it. When the expression in S. 14 as a whole reads "from defect of jurisdiction or, other cause of a like nature is unable to entertain it", the expression "cause of a like nature" will have to be read ejusdem generis with the expression "defect of jurisdiction". So construed the expression "other cause of a like nature" must be so interpreted as to convey something analogous to the preceding words "from defect of jurisdiction" Prima facie it appears that there must be some preliminary objection which if it succeeds, the Court would be incompetent to entertain the proceeding on merits, such defect could be said to be "of the like nature" as defect of jurisdiction. Conversely if the party seeking benefit of the provision of S. 14 failed in the earlier proceeding on merits and not on defect of jurisdiction or other cause of a like nature, it would not be entitled to the benefit of S. 14".

9. Sri Raviprakash also argued that the exclusion of time as provided for under S. 14 of the Limitation Act is only declaratory and not remedial and in support of such an argument, he had cited a decision in AIR 1995 Madh Pra 222, wherein it was held that the exclusion of time provided for in Ss. 14, 31, 64 and 65 of the Limitation Act are declaratory and not remedial and therefore the time spent in pursuing the case in Court having no jurisdiction is liable to be excluded.

10. The next point Sri Raviprakash argued in support of the case of the Appellant-Society is that the learned City Civil Judge was more influenced by Explanation "A" below sub-sec. 3 of S. 14 of the Limitation Act, wherein it is stated that for the purpose of S. 14 in excluding the time during which the former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall be counted. He further argued that by the said explanation, the learned City Civil Judge had construed that the Civil proceeding that was initiated in the wrong forum had to be ended and that when the same did not end there could not be an institution of the second suit for the same cause of action. Sri Raviprakash in this context argued that if one reads S. 14 of the Limitation Act one does not get an impression that the civil proceedings initiated before the first Court had to be put an end to, to resort to the second suit, for according to him, the Explanation below a statutory provision is only by way of clarification to the main provision of law and as such the same cannot control the provision itself. In support of his argument, the learned counsel cited before me the following three decisions they are: Aphali Pharmaceuticals Ltd. Vs. State of Maharashtra and Others, and Dattatraya Govind Mahajan and Others Vs. State of Maharashtra and Another,

11. In AIR 1991 SC 1806 on the point of interpretation of statutes, the Supreme Court held in head note "B" and "D" as follows :

"(B) Interpretation of Statutes - Legislative intent - Resort to interpretative process in order to unfold it - Not permissible when language of statute is unambiguous.

As long as there is no ambiguity in the statutory language resort to any

interpretative process to unfold the legislative intent becomes impermissible. The supposed intention of the legislature cannot then be appealed to Whittle down the statutory language which is otherwise unambiguous. If the intendment is not in the words used it is nowhere else. The need for interpretation arises when the words used in the statute are, on their own terms, ambivalent and do not manifest the intention of the Legislature.

(D) Interpretation of Statutes - Explanation added to statutory provision-Purpose and intentments are determined by its own words.

An "Explanation", generally speaking is intended to explain the meaning of certain phrases and expressions contained in a statutory provision. There is no general theory as to the effect and intentment of an explanation except that the purposes and intentment of the "Explanation" are determined by its own words. An Explanation, depending on its language, might supply or take away something from the contents of a provision. It is also true that an Explanation may be introduced by way of abundant-caution in order to clear any mental cob-webs surrounding the meaning of a statutory provision spun by interpretative errors and to place what the legislature considers to be the true meaning beyond controversy or doubt. Hypothetically, such can be the possible purpose of an "explanation" cannot be doubted."

12. In Aphali Pharmaceuticals Ltd. Vs. State of Maharashtra and Others, with regard to the Explanation below the provision, the Supreme Court held as follows :

"An explanation is different in nature from a proviso for a proviso excepts, excludes or restricts while an explanation explains or clarifies. Such explanation or clarification may be in respect of matters whose meaning is implicit and not explicit in the main section itself. Therefore there was no difference between the Schedule and the Explanation I : the latter has not amended the Schedule by either deleting item 3(i) or by adding or including Ayurvedic preparations in item 1."

13: In Dattatraya Govind Mahajan and Others Vs. State of Maharashtra and Another, with reference to the interpretation of statutes, explanation and construction, the Supreme Court held as follows :

"Per Bhagwati J. (for himself and on behalf of Ray C.J. Beg and Shinghal JJ.): It is true that the orthodox function of an explanation is to explain the meaning and effect of the main provision to which it is an explanation and to clear up any doubt or ambiguity in it. But ultimately it is the intention of the legislature which is paramount and mere use of a label cannot control or deflect such intention.

14. Therefore, Sri Raviprakash submitted that the termination of the earlier civil proceedings was not a must for instituting the second suit with an I.A. under S. 14 of the Limitation Act to condone the delay in resorting to the second suit.

15. Sri Raviprakash had also cited before me the following decisions in support of

his argument. They are : Mt. Ram Pati Kunwar Vs. Phool Singh and Others, (2): AIR 1932 All 377,(3) AIR 1933 75 (Privy Council) Sadayatan Pande Vs. (Firm) Ram Chandra Gopal (5) Deputy Collector, Northern Sub-Division, Panaji Vs. Comunidade of Bambolim, Rajiv Lochan Pandey Vs. Madan Gopal Sharma and Others, Madhavrao Narayanrao Patwardhan Vs. Ramkrishna Govind Bhanu and Others,

16. I have carefully gone through the above decisions referred to in para (15) supra. It appears to me that except in decision at Sl. No. 9 the other decisions are not that relevant to the issues involved in the instant appeal. Therefore, I have chosen to advert only to the said decision in Madhavrao Narayanrao Patwardhan Vs. Ramkrishna Govind Bhanu and Others, In that decision the Hon"ble Supreme Court held as follows :

"In considering the question whether in instituting the previous suit and carrying on the proceedings in the wrong Court the plaintiff had acted in good faith it is wrong to apply the definition of good faith contained in the General Clauses Act. Since the Limitation Act itself contains its own definition the question should be examined in the light of that definition, that is to say whether the plaintiff acted with due care and attention."

The burden of bringing his case within the section lay on the plaintiff. When he did not satisfy the initial burden which lay upon him the burden did not shift to the defendant to show the contrary."

17. While summing up the argument of Sri Raviprakash, he submitted that if the impugned order and judgment are viewed from any angle, the same are not justifiable in law. Therefore, he prayed mat the same be set aside by allowing the appeal. He further prayed to allow I.A. No. I and to restore the suit of the Appellant-Society.

18. The learned counsel appearing for the Respondent, Sri Urval Ramanand, argued that the Appellant-Society had resorted to the dispute at the first instance with mala fide intention to harass the respondent. He further argued that no doubt the respondent had raised the issue of membership of the respondent for the first time before the KAT in his Appeal preferred by him to challenge the award passed by the Deputy Registrar of co-operative Societies in deciding the dispute in favour of the Appellant-Society, but, according to him, the Appellant-Society would have resorted to the suit before the learned City Civil Judge at least at the Appellate stage before the KAT, for the Appellant-Society was made known at that relevant point of time that the Co-operative Court had no jurisdiction to entertain the dispute. Sri Urval also argued that instead of resorting to the suit at that relevant point of time before the learned City Civil Judge, for the reasons best known to the Appellant-Society, they have challenged the order passed in the appeal by the KAT in a writ petition to get the matter remanded to the Co-operative Court to decide the dispute afresh with reference to the above contention of the respondent as to his membership. Hence Sri Urval

argued that there was no diligence what soever on the part of the Appellant-Society in resorting to the suit before the learned City Civil Judge as late as on 12-2-1989 with an inordinate delay of 8 years 45 days. He further argued that the case of the Appellant-Society mainly falls under Section 59 of the Limitation Act, for what they had sought for before the Co-operative Court as well as the Civil Court was for cancellation of the registered deed of sale, and further to declare the same as null and void and obviously, the suit had to be resorted to by the Appellant-Society within 3 years from the date of execution of the deed of sale. He further argued that according to the showing of the Appellant-Society itself, the suit was barred by time and as such it was late for the Appellant-Society to resort to suit for want of diligence in prosecuting their case before a wrong forum in the Co-operative Court. By adverting to para (5) of the plaint that the Appellant-Society had claimed that they were in possession of the suit schedule property. Sri Uryal argued that it was fallacious on the part of the Appellant-Society to so claim, for in the suit they also sought for possession of the suit property. In other words, according to him, it is as good as blowing hot and cold by the Appellant-Society to say that they were in possession of the suit schedule property in one breath and to claim possession from the hands of the respondent in setting out the prayer in the suit in another.

19. Sri Uryal next argued that the best course open to the Appellant-Society was to take return of the case from the Co-operative Court, if not, literally at least by taking permission from time to resort to the suit before the City Civil Court and then to file the second suit as against the respondent. According to Sri Uryal, having not recourse to that by the Appellant-Society before the Cooperative Court, would not have resorted to the suit before the learned City Civil Judge or in other words what he had canvassed before me is that when the dispute raised by the Appellant-Society before the Co-operative Court was very much pending on the file, they would not have resorted to the second suit before the learned City Civil Judge, such an argument is canvassed by Sri Uryal, for according to him under, Explanation (a) below sub-section 3 of Section 14 of the Limitation Act, is very clear that the day, on which that proceeding was initiated and the day on which it ended shall be counted in computing the period of litigation for the purpose of exclusion. Therefore, he argued that as long as the proceedings that was initiated by the Appellant-Society before the Cooperative Court at the first instance did not terminate as on the date of institution of the second suit, the question of resorting to that suit did not arise at all, and therefore, according to him the very institution of the second suit on the face of pendency of the civil proceedings pending on the file of the Co-operative Court was totally unimaginable and therefore, according to him, the learned City Civil Judge had rightly rejected I.A.I. of the Appellant-Society u/s 14 of the Limitation Act and in the process dismissed the suit of the Appellant-Society. Therefore, his submission is that there is nothing for the Appellant-Society to complain before this Court in resorting to the instant appeal.

20. Sri Uryal next argued that the burden of proving good faith on the part of the

Appellant-Society in the matter of prosecuting the civil proceedings before the Co-operative Court was totally rested on the Appellant-Society. According to him, it is that burden they failed, to discharge; before the Court below. In support of the argument. of Sri Urval, he had cited before me the decision reported in Madhavrao Narayanrao Patwardhan Vs. Ramkrishna Govind Bhanu and Others, to the point that the burden as to bona fide prosecution in good faith of the civil proceedings was on the party seeking relief u/s 14 of the Limitation Act. He had also cited the decisions reported in Gurdit Singh and Others Vs. Munsha Singh and Others, on the point that to resort to Section 14 of the Limitation Act, the three conditions, firstly that there was diligence, secondly that civil proceedings instituted earlier was in good faith and thirdly that both the proceedings are based on the same cause of action must be present. The next decision, he relied upon is AIR 1981 Patna 219 to the effect that in a suit when the main relief was for cancellation of deed of sale, the suit is covered by Article 59 of the Limitation Act and not Article 13 of the Limitation Act and that the time prescribed under Article 59 of the Limitation Act is 3 years. The next two decisions cited by Sri Urval are AIR 1970 Mys 318 and Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others, In AIR 1970 Mys. 318, this Court held as follows :

"The proceedings referred to in Section 14 are proceedings dealt with under the CPC in a Court exercising general civil jurisdiction to which alone provisions of Limitation Act apply. Further, the other proceedings referred to therein must be proceedings which relate to the same matter in issue and by taking which the party bona fide believes that he might secure the relief which is under consideration."

The other decision reported in Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others, , is with regard to setting aside of abatement and condonation of delay in filing the application for setting aside abatement and that being so, I do not think the above decisions cited are of any bearing to decide the instant appeal.

21. The last decision that was cited by Sri Urval is AIR 1967 Mys. 247. The said decision is to the effect that no deduction of time could be claimed in the case when the suit was barred. I do not think this decision is of any assistance, for it is not the case of the either side that the second suit was resorted to by the Appellant-Society after withdrawing the first civil proceeding pending before the Co-operative Court. In conclusion, Sri Urval submitted that the impugned order and the decree were correctly passed by the learned City Civil Judge and there is no error in it and as such the same are not called for to be interfered with by this Court in the instant appeal. He therefore prayed that the appeal be dismissed.

22. Having heard both sides, the questions that arise for my consideration are as follows :

(1) Whether the Appellant-Society was prosecuting the earlier "civil proceedings" firstly in raising the dispute before the Co-operative Court, secondly in appeal

before the KAT, thirdly before this Court in a writ petition and lastly once again before the Co-operative Court on remand, in good faith and with due diligence of their case for cancellation of the deed of sale executed by the Honorary President of the Appellant-Society in the name of the Respondent ?

(2) Whether the Appellant-Society could resort to the second suit on the face of and during the course of pendency of the Civil proceedings in the form of the dispute before the Co-operative Court ?

(3) Whether the Appellant-Society made out a case for condonation of delay of 8 years 45 days in resorting to the second suit before the learned City Civil Judge ?

23. Now I proceed to decide herebelow the above three points in its order:

Reg, point No. (1): As could be made out in the record, it is clear that the Appellant-Society herein had at the first instance raised a dispute before the Joint Registrar of Co-operative Societies, Bangalore, for declaration that allotment of suit schedule site No. 1 in favour of the respondent herein was illegal and also for declaration that the pursuant sale deed registered on 2-1-1976 in respect of the site in the name of the respondent was null and void. On registration of the said dispute, the learned Joint Registrar of Co-operative Societies, Bangalore, had referred the dispute for disposal to the Deputy Registrar of Co-operative Societies, Bangalore in case No. JRB. MIS. Dispute No. 38/76-77. The said dispute was filed by the Administrator then appointed to manage the affairs of the Appellant-Society. On issue of notice to the respondent herein, he had contested the said case, that the said Deputy Registrar of Cooperative Societies on hearing the dispute passed a considered order on 15-7-1978 in favour of the Appellant-Society and in passing such an order, the learned Deputy Registrar of Co-operative Societies, held that the action of the Honorary President of the Appellant-Society in allotting the subject the site to the Respondent, was bad and further declared the sale deed in question as illegal and unauthorised and further held that the ownership of the said site shall rest with the Appellant-Society. It is as against the said order, the respondent herein had filed an appeal in No. 668-78 before the KAT. and in the said appeal the respondent herein for the first time raised the material question of his not having a membership under the the Appellant-Society and it is because of that contention the KAT had allowed the appeal. The operative portion of the judgment/order dated 12-8-1980 passed by the KAT in appeal No. 668/ 78 reads as follows:

"In view of our findings as above, this appeal has to be allowed.

In the result, the appeal is allowed.

The judgment and the award passed by the learned Deputy Registrar of Co-operative Societies, Bangalore District, Bangalore dated 15-7-1978 in case No. JRB/Mis Dispute No. 38/76 is set aside. The dispute filed by the Administrator before the Joint, Registrar is dismissed. Under the circumstances we direct each

party to bear its own cost.

Dictated to the stenographer typescript edited and then pronounced in the open Court on this the 12th day of August 1980."

As could be made out from the above judgment of the KAT, it is clear that the dispute raised by the Appellant-Society before the Joint Registrar of Co-operative Societies was dismissed. The Appellant-Society herein at that point of time thought it fit inevitable to challenge the said judgment/order of the KAT before this Court by filing writ petition in No. 18024/80. The said writ petition of the Appellant-Society was allowed by this Court on 16-10-1984 observing that the Appellant-Society without being given an opportunity either to establish or disprove the issue of the membership raised for the first time by the respondent in appeal, the dispute of the Appellant-Society was dismissed by the KAT. Hence this Court quashed the above judgment of the KAT and further the award passed by the Deputy Registrar of Co-operative Societies, in the original dispute and further remitted the matter back to the Deputy Registrar of Co-operative Societies to adjudicate the dispute afresh in accordance with law, as could be seen therein this Court while so quashing had observed that an order made without providing an opportunity to the appellant-Society to establish whether the respondent was a member or non-member was opposed to the principles of natural justice and therefore could not sustain in law and therefore liable to be quashed.

24. It is thus after the remittance of the matter to the Deputy Registrar of Co-operative Societies, the dispute originally raised by the Appellant-Society was back to the square to be readjudicated upon. It is at that stage, it was found out by the Appellant-Society that the respondent was not a member of the Appellant-Society, and therefore, the dispute would render itself as one without jurisdiction. By that time, as could be made out from the records, the Appellant-Society was restored back to the elected office bearers of the Society and the elected office bearers very earnestly took legal advice as to how the matter had to be proceeded with and on the basis of the legal advice the Appellant-Society had resorted to the suit before the Court below by filing alongwith an I. A. under Sections 5 and 14 of the Limitation Act setting out therein that there was delay of 8 years 45 days in instituting the suit and the reasons thereto were bona fide prosecuting the civil proceedings as against the respondent before the Joint Registrar of Co-operative Societies and the Deputy Registrar of Co-operative Societies at the first instance by the Administrator appointed to the Appellant-Society then in raising a dispute u/s 70 of the Co-operative Societies Act, thereafter before the KAT at the second and thereafter before this Court before this Court in the form of writ petition etc. In the light of the above history of the litigation between the parties with regard to the subject site one thing is glaring that when the dispute was raised by the Appellant-Society as against the respondent, it was represented by its Administrator and further that the same was finally disposed of by the Deputy Registrar of Co-operative Societies in

culminating with an order and award in favour of the Appellant-Society and that the respondent herein had never raised a plea with regard to his membership of the Appellant-Society. As a matter of fact when the proceedings had commenced and ended with an award as against the respondent in the dispute, the entire proceedings therein gone on with clear understanding between the parties that the respondent was a member of the Appellant-Society and that it is in that capacity he was allotted with the subject site by the Honorary President of the Appellant-Society, of course illegally. As could be made out from the above discussion, it is for the first time the respondent-herein had raised bogie of his membership when his appeal was pending before the KAT and it is thereafter when the appeal had gone against the respondent, it was lot of the Appellant-Society to come up before this Court in a writ petition to challenge the judgment in the appeal on the ground that that new plea raised in the appeal for the first time was decided by the KAT to their peril without giving them any opportunity. Here one should not forget the conduct of respondent in not disclosing at the earlier opportunity before the learned Deputy Registrar of Co-operative Societies when the very dispute raised by the Appellant-Society was pending that he was not a member of the Appellant-Society and the very dispute was not maintainable. By that conduct, one thing is crystal clear that he was also playing hide and seek game not only with the Appellant-Society but also with the very Cooperative Court, quite possible that he wanted to play safe by holding the card of membership very close to his chest to save the site for himself knowing fully well that being a non-member in the Appellant-Society, he was having no right to have the site allotted by the Appellant-Society at all. Therefore suffice it say that by that conduct, the respondent contributed to larger extent in prosecution of that civil proceedings by the Appellant-Society before the wrong forum. How the point is whether he be allowed to take advantage of his own wrong, in my considered view, he should not be, or else it would tantamount to add bonus to him. to which he is not at all entitled to when we see his above conduct. Let apart he having contributed larger share for prosecution of the proceedings before the wrong forum by the Appellant-Society, he cannot now turn right about and say that the Appellant-Society was not prosecuting their case diligently and in good faith as set out in Section J 4 of the Limitation Act. This is like a devil quoting the scripture, I add in lighter vein, it therefore appears to me that such a contention is not at all available to the respondent.

25. If the entire history of the above litigation between the parties is reckoned and seen in its proper perspective, in my considered view it can be said that the proceedings at, every stage were prosecuted by the Appellant-Society with due care and diligence as if they were serious through out to take the same to its logical end. In fact they did it with one solitary purpose in securing back the suit schedule site for the purpose of putting up a community centre for common good of all the residents in the layout, the reason being that the subject site was a corner site and well suited for civil amenities. I may call it a relentless struggle put up by them to save the suit schedule site. If the above bundle of facts are tested

by the touch stone of decisions relied upon by the learned counsel for the Appellant-Society in *Vijay Kumar Rampal and Others Vs. Diwan Devi and Others*, *Zafar Khan and Others Vs. Board of Revenue, U.P. and Others*, *Madhavrao Narayanrao Patwardhan Vs. Ramkrishna Govind Bhanu and Others*, and *Phoolchand (deceased by Lrs.) and Others Vs. Shankerlal (through Lrs.) and Others*, referred to above, one can say with certainty that the Appellant-Society was prosecuting the above civil proceedings as against the respondent in the matter of recovery of the subject site right from the day one in good faith and diligence with all sincerity of purpose.

Therefore, I answer and hold the point No. 1 in favour of the Appellant-Society.

26. Reg, point No. (2): The argument of the learned counsel for the Appellant-Society in this regard is that the Appellant-Society had to resort to the suit before the learned City Civil Judge immediately after the remittance of the matter to the Deputy Registrar of Co-operative Societies in passing the order in writ petition No. 18024/80 by this Court and that the same was on confirmation by them that the respondent was in fact was not a member of the Appellant-Society and therefore, the Joint Registrar of Co-operative Societies would not have the jurisdiction to entertain the dispute and that it is for that reason the elected office bearers of the Appellant-Society very promptly took legal advice and filed the suit before the learned City Civil Judge together, with I.A.I, with prayer to condone the delay of 8 years 45 days in resorting to the suit. He further argued that the Appellant-Society was all through prosecuting the civil proceedings in good faith and with bona fide belief that the lis between the parties had to be agitated before the Joint Registrar of Co-operative Societies by way of raising a dispute as contemplated u/s 70 of the Karnataka Co-operative Societies Act and that the moment they came to know that the lis by way of the dispute that was pending would naturally fail for want of jurisdiction on the point of membership, they resorted to suit. Sri Raviprakash very vehemently and ably argued with authorities thereto that it was not necessary for the Appellant-Society either to withdraw the dispute or wait till the dispute was finally disposed of by the Deputy Registrar of Co-operative Societies before resorting to the suit before that learned City Civil Judge. According to him, the matter was already delayed for 8 years 45 days at one stretch and that in law there was no necessity for the Appellant-Society either to withdraw the dispute or wait for disposal of the same by the Deputy Registrar of Co-operative Societies. In support of that argument, he had also cited before me a decision in *Mt. Ram Pati Kunwar Vs. Phool Singh and Others*, Having gone through the said decision, I feel that the said decision has got all the application to the instant case in hand, let apart on my own, I could lay my hand on two reported decisions, one in (1944) 48 Cal WN 821 (DB) and another in Madras High Court Reports 1870-71 Vol. 6 page 45. When the first decision is under the Limitation Act, 1908, the other is under the Limitation Act, 1859. In (1944) 48 Cal WN 821 (DB) in the case of *Prasanna Kumar v. Kamarup Co-operative Land Mortgage Bank Ltd.*, the Privy Council held with reference to Section 14 of the Limitation Act, 1908, that in order to have the

benefit of Section 14 of the Limitation Act it was not necessary that the Court in which a proceeding is taken bona fide should positively refuse to entertain the proceeding for defect of jurisdiction and that it is sufficient if the Court as a matter of fact has no jurisdiction even though the Court mistakenly might have entertained the proceeding.

27. In the above decision, the Privy Council held as follows :

"In order to have the benefit of Section 14 of the Limitation Act it is not necessary that the Court in which a proceeding is taken bona fide should positively refuse to entertain the proceedings for defect of jurisdiction. It is sufficient if the Court as a matter of fact has no jurisdiction even though the Court mistakenly may have entertained the proceeding."

28. In Madras High Court Reports 1870-71 Vol. 6 page 45, wherein with reference to Section 14 of the Limitation Act, 1859, it was held as follows:

"Held.....

The period during which a suit is pending in a Court not having jurisdiction is to be excluded from the period of limitation provided by Act XIV of 1859, and the fact that the second suit, in bar of which the Act is pleaded, was instituted before the Court not having jurisdiction disposed of the first suit, is immaterial."

29. I have gone-through the provision in Section 14 of 1908 Limitation Act as well as 1859 Limitation Act to find out whether the above decisions hold good even today vis-a-vis provision u/s 14 of the Limitation Act of the year 1963. For comparison and understanding, I quote herebelow the provisions in Section 14 of the above three enactments:

under Limitation Act. 1859 :

"XIV. In computing any period of limitation prescribed by this Act, the time during which the claimant, or any person under whom he claims, shall have been engaged in prosecuting a suit upon the same cause of action against the same defendant, or some person whom he represents, bona fide and with due diligence, in any Court of Judicature which, from defect of jurisdiction or other cause, shall have been unable to decide upon it, or shall have passed a decision which, on appeal, shall have been annulled for any such cause, including the time during which such appeal, if any, has been pending, shall be excluded from such computation."

under Limitation Act. 1908 :

"14. (1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Explanation I. - In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation II. - For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III. - For the purposes of this section a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III.- For the purposes of this section misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction""

under Limitation Act. 1963 :

14. (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in Rule 2 of Order XXIII of the Code of Civil Procedure, 1908, the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under Rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the Court or other cause of a like nature.

Explanation.-For the purpose of this section,

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of cause of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

30, As I see the provisions in all the three enactments i.e. 1859 Limitation Act, 1908 Limitation Act, 1908 Limitation Act and 1963 Limitation Act, with regard to the exclusion of the period during which the suit was pending in the Court not having jurisdiction are substantially the same in fetter and spirit.

31. In that view of the matter, it appears to me that the principle laid down in the above two decisions hold the field even today on the point at controversy in the instant case. As a matter of fact, the principle laid down in the reported decision in Mt. Ram Pati Kunwar Vs. Phool Singh and Others, very well relied upon by learned counsel for the appellant is the principle that was laid down in the above two reported decisions. If that is so, in my considered view, it cannot be said that the Appellant-Society could not have resorted to the second suit during pendency of the civil proceedings in Dispute No. JRB/MIS. 38/76/77 pending on the file of the Joint Registrar of Co-operative Societies. Hence, I answer point No. 2 also in the affirmative and in favour of the Appellant-Society.

32. Regarding point No. 3 : In resorting to I.A.I. along with the suit before the learned City Civil Judge under Sections 5 and 14 of the Limitation Act, 1963 the Appellant-Society had averred in paras 3 and 4 of the affidavit accompanying I.A.I, as follows :

"3. 1 humbly submit that the plaintiff-Society has been prosecuting the case in a wrong forum with regard to the cancellation of the sale deed executed by the second defendant in favour of the first defendant in respect of the property belonging to the plaintiff-Society. I humbly submit that at the time of raising of the dispute No. JRB 38/76-77, an Administrator had been appointed by the Registrar and the said Administrator was in-charge of the affairs of the Plaintiff-Society and in fact he ought to have taken proper and correct legal steps. Now, in view of the order of the Hon''ble High Court in W.P. No. 18024 of 1980, directing the Deputy Registrar to dispose off the matter and decide the question of maintainability of the dispute, which is being prosecuted by the plaintiff for the last 10 years. I submit that the Society was handed over back to the members of the Society in the year 1980, and the then office bearers have continued the dispute on the advice available at that time. Plaintiff submits that the prosecution of the dispute, which is even now pending before a wrong forum is a bona fide mistake and the Plaintiff has been diligent in prosecuting the case even today. Now, the Plaintiff is advised to file this suit for declaration and cancellation of the sale deed in favour of the first defendant, in view of the fact that the first defendant is not a member of the Society, and the only remedy available to the plaintiff is. to file this suit. The plaintiff submits that there is a delay in filing this suit and the same is due to bona fide mistake and unintentional. Plaintiff submits

that a suit ought to have been filed within three years from the date of the execution of the sale deed by the second defendant in favour of the Society. In view of the fact that the administrator had already initiated the dispute, the continuance of the dispute by the members after taking back of the Society, is a bonafide mistake and unintentional. The Plaintiff submits that the first defendant had no entitlement and the second defendant had no power or authority to execute the sale deed in favour of the first defendant in respect of the plaint schedule property.

4. Plaintiff has a good case on merits. In the event the delay of 8 years 45 days is not condoned in filing the suit, the plaintiff will be subjected to irreparable loss and injury, which cannot be equated in terms of money. Further, I submit that the plaintiff-society is still in physical possession of the schedule site and the first defendant has not exercised any act of ownership except the sale deed on paper under the original of Document-I."

32A. In this regard, I should point out here that the respondent having entered his appearance in the suit before the learned City Civil Judge, he didn't choose to file any objection statement as against the above I.A.I. filed by the Appellant-Society, obviously, it cannot be said that the respondent did oppose or controvert the above averments of the Appellant-Society in their I.A.I. nevertheless, I appreciate that it is the Appellant-Society to make out a case for condonation of delay of 8 years 45 days in resorting to the suit before the learned City Civil Judge by producing cogent and acceptable evidence. As I see, the Appellant-Society had examined the elected Secretary of the Society as P.W. 1 and adduced evidence in support of the said I.A.I. In the evidence, the Secretary, P.W. 1, he had stated that he was the Secretary of the Appellant-Society and that in the year 1975, the second defendant, Brig. D.E. Haryade, M.V.S. retired (since deleted in the suit) took charge as Commander of the Mysore Sub-Area and he became the Ex. Officio President of the Society and he ordered an allotment of the subject site No. 1 to the respondent without consulting the Board of Directors as required under Bye-law No. 43 of the Appellant-Society and that on 2-1-1976 the sale deed was executed by him in favour of the respondent and the same being illegal. That at the first instance, the then Administrator of the Appellant-Society raised the dispute before the Joint Registrar of Co-operative Societies on 2-6-1977 for the purpose of cancellation of the allotment of the site in the name of the respondent. The said witness had also deposed with regard to the seriousness in which 1998 Kant./3 II G-30 the Appellant-Society was pursuing the civil proceedings before the Deputy Registrar of Cooperative Societies and further before the KAT, when the respondent had challenged the award that came to be passed in favour of the Appellan-Society and further before this Court in a writ petition and that when the respondent took up the contention that he was not a member, it was necessary for the Appellant-Society to get it confirmed and that on such a confirmation they had to resort to the suit before the learned City Civil Judge after taking necessary legal opinion and further as per the decision of the general body of the Appellant-Society.

33. It is all the more relevant here to mention that as anticipated by the Appellant-Society their dispute in Dis. No. JRB/MIS. No. 36/76-77 pursuant to remittance of the matter to the Deputy Registrar of Co-operative Societies in allowing WP No. 18024/90 by this Court, the same came to be dismissed on 19-9-1987 as unsustainable vide copy thereof produced by the respondent as at Ex.D1 before the learned City Civil Judge. This was about 7 months later to the suit filed by the Appellant-Society. Hence, if one reckons the whole history of the litigation with regard to the illegal allotment of the site in question in favour of the respondent as discussed above, it can be said that the Appellant-Society was pursuing the litigation bona fide all through till the suit before the learned City Civil Judge was filed along with LA. No. I to condone the delay of 8 years 45 days in resorting to the suit.

34. In view of the above, it appears to me that the Appellant-Society did make out a clear case in their J.A.I, to condone the above delay in resorting to the suit before the learned City Civil judge and therefore, I answer point No. 3 also in the affirmative and in favour of the Appellant-Society.

35. In the light of the above conclusion. I reached on points No. (1) to (3) as above, it appears to me that the impugned orders passed by the learned City Civil Judge in dismissing I.A.I. and further dismissing the suit of the Appellant-Society is totally erroneous and therefore the same is liable to be set aside. In that view of the matter, I pass the following : "

#### ORDER

(i) The impugned order and the decree passed by the learned City Civil Judge now under challenge before this Court are hereby set aside.

(ii) I.A.I, of the Appellant-Society is hereby allowed by condoning the delay of 8 years 45 days in resorting to the suit of the Appellant-Society before the learned City Civil Judge.

(iii) The suit of the Appellant-Society on the file of the learned City Civil Judge stands restored.

(iv) In view of the fact that the matter was being litigated by the parties for long, I feel in the facts and circumstances of the case mat it is just and proper for this Court to give a direction to the learned City Civil Judge to dispose of the suit of the Appellant-Society with a time-frame of six months from the date on which he is communicated with the copy of this order, which I hereby do.

(v) In view of the fact that when the matter was argued by the parties before me, it was brought to my notice that the respondent had put up a structure subsequently, may be after the appeal was disposed of by the KAT, the learned City Civil Judge shall bear in mind to work out equities between the parties to compensate adequately the respondent hereto in respect of the structure in the event the Appellant-Society were to succeed in the suit, for it appears to me that the said structure put up by the respondent as well be made use of by the

Appellant-Society for the purpose of providing civic amenities like recreation club and the like for the common good of the persons residing in the layout and members of the Appellant-Society as the Appellant-Society proposed to do in the site in dispute. The learned City Civil Judge may frame an additional issue in the suit in this regard to decide the same.

36. In this context, I also add a word of caution to the learned City Civil Judge that in deciding the suit by him as directed herein, he should in no way be influenced by the observations herein made one way or other either in favour or against either of the parties touching the merit or demerit of the respective side of the case.

37. The appeal therefore succeeds and accordingly stands allowed.

38. In the peculiar circumstances of the case, I direct that the parties hereto bear respective side of the cost.

39. The office is directed to transmit the copy of this judgment to the learned City Civil Judge at the earliest and on priority basis for compliance.