

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CWP No.15104 of 2026****Date of Decision: 31.08.2026**

Om Prakash Thakur

.....Petitioners

Versus

State of Himachal Pradesh & others

... Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.Whether approved for reporting? ¹

For the Petitioner : Mr. Ganesh Barowalia, Advocate.**For the Respondents:** Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocate Generals with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General, for the respondent-State.

Mr. Raman Jamalta, Advocate, for respondent Nos. 6 and 7.

Sandeep Sharma, Judge (oral):

Being aggrieved and dissatisfied with order dated 16.05.2026 (**Annexure P-1**) passed by the Joint Registrar (Marketing) Cooperative Societies, Kasumpti, Shimla, Himachal Pradesh, whereby the appeal having been filed by the petitioner under Section 93 of the H.P. Cooperative Societies Act (**in short 'the Act'**), laying therein challenge to award dated 03.10.2025 passed by learned Arbitrator(Bank) Co-operative Societies, Shimla, came to be dismissed on the ground of limitation, petitioner has approached this

¹ Whether the reporters of the local papers may be allowed to see the judgment?

Court in the instant proceedings filed under Articles 226 and 227 of the Constitution of India, praying therein for following main reliefs:-

- I. Issue an appropriate writ in the nature of certiorari for quashing and setting aside the impugned order dated 16.05.2026 passed by respondent No.3, whereby the statutory appeal preferred by the petitioner under Section 93 of the Himachal Pradesh Co-operative Societies Act, 1968 has been dismissed on the ground of limitation;
- II. Issue an appropriate writ in the nature of certiorari for quashing and setting aside the award dated 03.01.2025 passed by the learned Arbitrator in Arbitration Case No.2536 of 2024;
- III. Issue an appropriate writ in the nature of certiorari for quashing and setting aside the order whereby the petitioner's application under Order IX Rule 7 read with Section 151 of the Code of Civil Procedure came to be dismissed;
- IV. Issue an appropriate writ, order or direction calling for the entire original record of the arbitration proceedings as well as the appellate proceedings for the kind perusal of this Hon'ble Court;
- V. Restore the statutory appeal to its original number by setting aside the impugned appellate order dated 16.05.2026 and remand the matter to respondent No.3 for fresh adjudication after considering paragraph 19 of the Memorandum of Appeal, the application under Section 5 of the Limitation Act, the petitioner's plea under Section 12(2) of the Limitation Act and all other objections raised by the petitioner and thereafter decide the appeal afresh on merits in accordance with law;
- VI. Without prejudice to the aforesaid reliefs, issue an appropriate writ, order or direction holding and declaring that while computing the period of limitation prescribed under Section 93 of the Himachal Pradesh Co-operative Societies Act 1968, the time requisite spent in obtaining the certified copy of the award is liable to be excluded in terms of Section 12(2) of the Limitation Act, 1963 and consequently Section 93 deserves to be read and applied accordingly to the said limited extent.

2. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Ganesh Barowalia, learned counsel representing the petitioner, is that the

Court below, while passing the impugned order, adopted hyper-technical view. He submitted that once, after being pointed out by the Court that there was delay in filing appeal, which otherwise is attempted to be explained in para 19 of the appeal, petitioner had filed separate application under Section 5 of the Limitation Act, it was the bounden duty of the Court below to decide the application at first instance on its own merits, but certainly it could not have straightaway dismissed the appeal on the ground of limitation. Learned counsel for the petitioner further states that reliance placed by the Court below, while passing impugned order, on the judgment passed by Division Bench of this Court in CWP No. 3052 of 2019, is wholly misplaced, because afore order was passed in a situation where no application under Section 5 of the Limitation Act was filed. However, in the instant case, after being pointed out by the Court, such application was filed and same was registered and as such, Court below ought to have decided the same at first instance.

3. While putting in appearance on behalf of the respondent-State and the respondent-bank, Mr. Vishal Panwar, learned Additional Advocate General and Mr. Raman Jamalta, Advocate submit that there is no illegality or infirmity in the impugned order because once appeal was not accompanied by an application under Section 5 of the Limitation Act and since there was a delay in filing the accompanying

appeal, Court below rightly dismissed the appeal on the ground of limitation.

4. Having heard learned counsel for the parties and perused material adduced on record vis-à-vis reasoning assigned in the impugned order passed by learned Joint Registrar (Marketing), Cooperative Societies, this Court finds that at first instance, petitioner herein, while filing the appeal under Section 93 of the Act, laying therein challenge to the award passed by learned Arbitrator exercising powers under Section 72 of the Act, had not filed an application under Section 5 of the Limitation Act, praying therein for condonation of delay in filing the accompanying appeal, but certainly after being pointed out by the Court, such application was filed.

5. True it is that in case there was any delay in filing the appeal, petitioner ought to have filed an application under Section 5 of the Limitation Act, explaining therein delay, but in the instant case, careful perusal of the averments contained in the appeal (available at page No. 83 of the paper book Annexure P-10) reveals that learned counsel for the petitioner attempted to explain the delay in para 19 of the appeal, whereas he ought to have filed separate application under Section 5 of the Limitation Act for condonation of delay. However, after being pointed out by the Court, separate application under Section 5 of the Limitation Act came to be filed, explaining therein

delay, but yet Court below proceeded to dismiss the appeal on the ground of limitation on the ground that no separate application under Section 5 of the Limitation Act was filed.

6. There cannot be any quarrel with the proposition of law that in a situation where an appeal is barred by limitation, the party filing appeal is required to file application under Section 5 of the Limitation Act for condonation of delay along with the appeal, but since in the case at hand, learned counsel representing the petitioner failed to follow such procedure, rather attempted to explain the delay while making specific averments in the grounds of appeal, coupled with the fact that, after being pointing out by the Court, separate application under Section 5 of the Limitation Act was filed, Court below ought not have straightaway dismissed the appeal on the ground of limitation, rather ought to have called for the reply from the non-applicant/ respondent to the application filed under Section 5 of the Limitation Act and thereafter should have proceeded to decide the question of limitation. If the Court was not satisfied with the explanation rendered in the application for condonation of delay, it could have dismissed the application, but in case plausible explanation was rendered on record, the delay was required to be condoned. However, in the instant case, valuable right of filing appeal has been virtually taken away by the Court concerned on the ground

that petitioner failed to file the application for condonation of delay alongwith the appeal, which was admittedly barred by limitation. Had the petitioner, after being pointed out by the Court, not bothered to file the application under Section 5 of the Limitation Act, Court below would have been right in passing the order impugned in the instant proceedings, but once on its own observation separate application under Section 5 of the Limitation Act was filed, appropriate course was to consider the said application ahead of the appeal, whereas in the case at hand, Court below appears to have adopted hyper-technical view, as a result of whereof, great prejudice has been caused to the petitioner, who, on account of sheer negligence of his counsel, who was otherwise responsible for advising his client to file appropriate application under Section 5 of the Limitation Act alongwith the appeal, has lost valuable right to file appeal against the award passed by learned Arbitrator.

7. There cannot be any quarrel with the proposition of law laid down by the Division Bench of this Court in case titled ***The Karot Agriculture Cooperative Society Ltd. vs. State of Himachal Pradesh and others***, but bare perusal of the same clearly reveals that in the case before the Division Bench of this Court, no application under Section 5 of the Limitation Act was filed for condonation of delay. However, in the instant case, an application under Section 5 of

the Limitation Act was filed immediately after being pointed out by the Court concerned.

8. Consequently, in view of the above, this Court finds merit in the present petition and accordingly same is allowed and impugned order dated 16.05.2026 (**Annexure P-1**) is quashed and set aside. The matter is remanded back to the Court of Joint Registrar (Marketing) Cooperative Societies, Kasumpti, Shimla, Himachal Pradesh, to decide the application for condonation of delay at first instance and in case, it is satisfied with the explanation rendered on record for condonation of delay, it shall proceed to hear and decide the main appeal on its own merits in accordance with law.

9. Learned counsel representing the parties undertake to cause the appearance of their respective clients before the court below on **17.09.2026**, enabling it to do the needful expeditiously. Pending applications, if any, also stand disposed of.

**(Sandeep Sharma),
Judge**

August 31, 2026
(shankar)