

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.844 OF 2014
IN
REVIEW PETITION ST. NO.141 OF 2014
IN
WRIT PETITION NO.10770 OF 2012**

Ahmed M. Rowjee **..Applicant**
Vs.
The Oval Co-operative Housing Society Ltd **..Respondents**

Ahmed M. Rowjee in person present
Mr. C.P. Deogirakar for the Respondents

CORAM : R. M. SAVANT, J.
DATE : 30th June, 2014

P.C.

1 The above Civil Application has been filed by the Applicant (i.e. the original Petitioner) seeking condonation of delay of more than one year in filing the above Review Petition.

2 By the above Review Petition, the Applicant seeks review of the order dated 14-1-2013 passed by a Learned Single Judge of this Court (B.R.Gavai, J.) by which order the above Writ Petition filed by the Applicant came to be dismissed. The condonation of delay has been sought on the grounds mentioned in the above Civil Application. The principal ground on which the condonation of delay is sought is on account of the illness of the Applicant. In support of the said ground the papers of the Grand Medical College and Sir J.J.Group of Hospitals have been annexed. The said papers to a

lay man disclose that the Applicant is suffering from the ailment of Positional Vertigo (BPPU) and the medicines prescribed from time to time from the year 2011 to 2014 have been annexed to the above Civil Application. The said papers disclose that the Applicant is getting the medicines from the said hospital by sending somebody as the word “proxy” appears on the most of the dates when the medicines have been supplied to the Applicant. It is required to be noted that a Dispute was filed by the society in the Co-operative Court for recovery of maintenance charges from the Applicant. The Applicant had engaged an Advocate whilst the matter was in the Co-operative Court. The Co-operative Court has passed an Award against the Applicant. The Applicant thereafter challenged the said Award by filing an Appeal in the Co-operative Appellate Court, in the Co-operative Appellate Court the Applicant appeared himself and conducted the proceedings from 5-7-2012 to 22-12-2012. The Applicant thereafter filed the above Writ Petition in this court challenging the orders passed by the Co-operative Court and the Co-operative Appellate Court. The above Writ Petition has been dismissed by a Learned Single Judge of this court (B.R.Gavai, J.) on 14-1-2013.

3 To the above Civil Application seeking condonation of delay the Respondent No.1 society has filed two affidavits opposing the condonation of delay. The Respondent No.1 society has questioned the reasons mentioned in the application on the basis of which condonation of delay is sought. It is the case of the Respondent No.1 society that the illness of the Applicant is not such

as to prevent him from filing the proceedings. It is contended on behalf of the Respondent No.1 that though the papers relating to the prescription of medicines for the period 2011 to 2014 have been annexed, it is in fact during the said period that the Applicant was prosecuting the proceedings in the Co-operative Appellate Court and therefore it could not be said that on account of the said illness, the Applicant could not file the proceedings in time.

4 Heard the Applicant Mr. Rowjee in person and Mr. Deogirikar the Learned Counsel appearing on behalf of the Respondent No.1 Society.

5 The Applicant in person would reiterate his case in the application and would contend that it is on account of his illness that he could not file the proceedings in time. The Applicant would contend that the matter is required to be considered on merits rather than being thrown out on the ground of delay.

6 Per contra Mr. Deogirikar would submit that the Respondent No.1 society has been unnecessarily harassed by the Applicant as the issue is about payment of maintenance charges by the Applicant. The Learned Counsel would contend that as set out in the affidavit the illness of the Applicant is not a debilitating one so as to prevent him from filing the proceedings in time. The Learned Counsel would contend that the Applicant has filed one proceeding after another during the period in which he is supposedly unwell. The Learned Counsel would contend that the building of the society is situated across the oval maidan and hence that is also a factor to be taken into consideration. The

Learned Counsel would contend that the Respondent No.1 Society is being unnecessarily vexed.

7 Having heard the party in person and the Learned Counsel for the Respondent No.1, in my view no discretion can be exercised in favour of the Applicant considering the facts and circumstances of the case. As indicated above the case made out by the Applicant for seeking condonation of delay is on account of his illness the papers disclose that the Applicant is suffering from ailment of Positional Vertigo meaning thereby that he may be feeling uncomfortable in a particular body position. The papers annexed to the application if perused closely would indicate that on the most of the dates when the Applicant has collected the medicines, the same have been collected possibly by his representative as the word “proxy” appears in the prescription of various dates. There is merit in the contention urged on behalf of the Respondent No.1 that the illness of the Applicant is not such as to debilitate him from filing the proceedings. This is also substantiated by the fact that the Applicant by appearing in person was prosecuting the Appeal in the Co-operative Appellate Court himself during the period July 2012 to October 2012 for which period also there are prescriptions for medicines from the said J. J. Hospital. Hence it is not as if the Applicant was incapacitated on account of the said illness. Though it is trite that a party should be given an opportunity to prosecute the proceedings on merits rather than being thrown out on technicalities. It is also trite that the prejudice or inconvenience that would be

caused to the other side if the delay is condoned is also a relevant factor to be taken into consideration whilst considering an application for condonation of delay. In the instant case, the application is for condonation of delay is in filing the above Review Petition. The Applicant's substantive proceedings i.e. the above Writ Petition has been dismissed by a Learned Single Judge of this Court on merits, thereby the concurrent finding recorded by the Courts below has been confirmed. It is long after the dismissal that the above Review Petition has been filed. In my view, in the facts and circumstances of the case, discretion cannot be exercised in favour of the Applicant. In that view of the matter, no relief can be granted in favour of the Applicant. The above Civil Application is accordingly rejected.

8 In view of the rejection of the above Civil Application, the Review Petition does not survive and to stand disposed of as such.

[R.M.SAVANT, J]