

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD**

WRIT PETITION NO.6877 OF 2013

Gandhinagar Co-operative  
Housing Society Ltd.,  
through its Chairman,  
Shri Ramdas Hari Patil,  
Age 57 years, Occu.Chairman,  
Having office at Shahada,  
Taluka Shahada, Dist.Nandurbar

..Petitioner

Versus

Nirmala Manilal Bhavsar,  
Age Major, Occu.Nil  
R/o Old post Galli,  
Near Jain Mandir, Shahada,  
Taluka Shahada, Dist.Nandurbar

..Respondent

Mr Shrikant S.Patil, Advocate for petitioner  
Mr V.A.Pawar and Mr P.B.Salunke, Advocates for respondent No.1

**CORAM : N.W. SAMBRE, J.**

**DATE : 10th March 2015**

**PER COURT**

1. This petition is by opponent in Dispute No.N-95/2013 initiated before the Co-operative Court, Jalgaon.
2. According to petitioner-opponent, in reply to the dispute, an objection was raised about tenability of dispute, as same was barred by limitation. Disputant as such, filed an application Exh.37 for condonation of delay which came to be allowed by the learned Judge, Co-operative Court, Jalgaon by an order dated 22<sup>nd</sup> February 2012 ordering condonation of delay caused in filing the dispute subject to payment of costs of Rs.1,000/-.

3. The appeal preferred against the said order passed below Exh.37, an application for condonation of delay, before the Maharashtra State Co-operative Court, Mumbai, Bench at Aurangabad vide Revision No.14 of 2012 suffered fate of dismissal by an order dated 12<sup>th</sup> July 2012.

4. Learned Counsel for the petitioner-society which is opponent in dispute, while questioning the legality and validity of the order passed by the Co-operative Court and the Co-operative Appellate Court in revision, would urge that there was no sufficient cause established before the Co-operative Court in support of the cause for condonation of delay. He would urge that the dispute was filed in 2003 whereas the membership of husband of the disputant was terminated in 1983. He would urge that there was constructive knowledge about the said decision of the society to the husband of the disputant, so also the disputant and as such, the dispute was time barred. According to him, the dispute as such, was not tenable and prayed for quashing of both the orders.

5. While countering the above referred submissions, learned Counsel for the respondent-disputant would urge that it is an admitted position that dispute was filed in 2003, however, the cause for filing the dispute and the history of the dispute was very much looked into by the Co-operative Court while passing the order on 22<sup>nd</sup> February 2012, below Exh.37, an application for condonation of delay. He would further urge that the Co-operative Court addressed itself on the point as regards the issue of constructive knowledge to the disputant or her

husband and has noticed that admittedly, there was no communication either to the husband of the disputant or to the disputant as regards the termination of his membership. He would further urge that the disputant is not required to explain the delay subsequent to filing of the dispute, however, so far as the delay caused prior to filing of the dispute was very much explained and was appreciated by the learned Co-operative Court. In support thereof, he has invited my attention to paragraph 15 of the order passed by the learned Co-operative Court and the observations made by the learned Co-operative appellate Court. According to him, once the Court below having exercised its discretion ordered condonation of delay, this Court should be slow of interfering in its extra-ordinary jurisdiction.

6. After having considered the rival contentions of the parties, it is required to be noted that admittedly, there was no communication to the husband of the disputant or to the disputant as regards cancellation of membership of the husband of disputant in the year 1983. In view thereof, the burden lies on the petitioner to demonstrate that there was constructive knowledge to the disputant or her husband as regards termination of his membership.

7. From the perusal of observations made by learned Co-operative Court in Paragraphs 14 and 15 of the order passed below Exh.37 condoning the delay, it is noticed that the petitioner has come out with a case of delay of seven years in filing the dispute. The learned Co-operative Court, while dealing with the said issue noticed that the husband of the disputant expired on 16<sup>th</sup> September 1992 and

according to said Court, it is not required that the dispute has to be filed within the period of six years, as contemplated under Section 92 of the Maharashtra Co-operative Societies Act from the date of death of husband i.e. 16<sup>th</sup> September 1992. In my opinion, the Co-operative Court was right in arriving at a finding that the death of the husband of the disputant was not the cause, however, the cause was issuance of notice by the petitioner-society.

8. The Co-operative Court and the Co-operative appellate Court have given due weightage to the conduct of the parties, particularly the disputant and the fact about non-communication of the resolution to the disputant, terminating membership of husband of the disputant.

9. In revision, the Co-operative appellate Court has at length considered the submissions of the rival parties and noted that the view taken by the learned Co-operative Court is a correct view.

10. While assailing the above referred orders also, no material perversity which goes to the root of the matter is brought to the notice of this Court so as to exercise extra-ordinary jurisdiction.

11. While parting with the present matter, it is required to be noted that the Co-operative Court has allowed the application Exh.37 for condonation of delay by saddling costs of Rs.1,000/- which in my opinion, is meager.

12. As such, the order dated 22<sup>nd</sup> February 2012, passed by the Judge, Co-operative Court, Jalgaon below Exh.37, is modified to the extent of payment of costs and it is ordered that the respondent-disputant shall pay costs of Rs.5,000/- (Rs.Five thousand) to the petitioner-society within period of four weeks from today. The payment of costs of Rs.5,000/- to be deposited in the Co-operative Court, Jalgaon.

13. The observations made herein are prima facie in nature, confined to issue of condonation of delay.

14. Petition stands disposed of in above terms.

**( N.W. SAMBRE, J.)**

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