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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 1285 OF 2015

Shri Rajendra Ramdas Jagdade Petitioner

vs

Rukmini Sahakari Bank Ltd.,
Pandharpur and ors. Respondents

Mr. Anil Desai i/by Mr. P. D. Purway for the Petitioner
Mr. K. Y. Mandlik for the Respondent No.1.

CORAM: ANOOP V. MOHTA, J.

DATE : March 10, 2015

P.C.:

Rule. Rule is made returnable forthwith. Heard finally by
consent of parties.

2 The Petitioner-original borrower has filed this petition and
thereby challenged order dated 12.11.2014 passed by the
Maharashtra State Cooperative Appellate Court, Mumbai Bench at
Pune, whereby Misc. Application filed by the Petitioner for condoning
the delay of 834 days was rejected. That resulted into confirmation
of an exparte judgment dated 20.04.2012 passed by the Judge,
Cooperative Court at Solapur, whereby the Disputant-Respondent-

Bank's dispute has been allowed and award is passed.

3 I am inclined to remand the matter for re-consideration specifically for the reason that judgment dated 20.04.2012 is an exparte and as the summons, as stated to be not received and, therefore, could not attend the proceedings. Therefore, the delay so caused need to be considered in this background that the party not attended for want of service, subject to details, then the delay of this nature, in no way, can be stated to be intentional and/or with purpose to avoid the proceedings. What is required at this stage is to see that the party should get full opportunity to contest the demand so raised. The possibility of settlement and/or asking for installment before the appropriate Court/forum also cannot be overlooked. The Appellate Authority, in a given case, may consider this aspect and pass order accordingly.

4 The learned Appellate Authority has not considered the specific contention so raised by the Petitioner/opponent with regard to the service of the notice and so also the effect of communication, based upon the legal notice dated 20.04.2012. The service of summons by the executing court and the fact of filing an application

for payment of decretal amount to the learned executing Judge that itself, cannot be the reason to overlook the basic case of non-service and/or non-attendance of the petitioner before the basic forum. The delay is stated to be of 834 days. That need to be taken note of not only from the date of application for grant of time for payment and/or even legal notice of Bank dated 20.04.2012. The averments made in the application for condonation of delay dated 1.10.2014 just cannot be overlooked and ought to have been considered, if necessary, by permitting the petitioner to file additional affidavit and supporting documents, if any. Therefore, in the interest of justice and to give one more opportunity and as the fact of an ex parte judgment is not in dispute, for want of service, the basic burden lies upon the petitioner to prove the case of service and claim amount also.

5 Therefore, for giving an equal opportunity to all the parties, I am inclined to set aside order dated 12.11.2014, with liberty to the petitioner to file an additional affidavit to justify his case. Misc. Application No.71/2014 is restored to file. The Cooperative Appellate Court, Mumbai Bench at Pune to consider the case of petitioner in accordance with law as stated above as early as possible and preferably within three months.

6 Therefore, the following order :

ORDER

- (i) Impugned order dated 12.11.2014 is quashed and set aside.
- (ii) Misc. Application No.71/2014 is restored to file.
- (iii) The learned Appellate Court to rehear the Misc. Application by giving equal opportunity to all the parties.
- (iv) Liberty is granted to the petitioner to file additional affidavit if necessary along with documents, if any.
- (v) The learned Appellate Court to deal with the same in accordance with law as early as possible and preferably within three months.
- (vi) Liberty is granted to the Petitioner to apply for interim relief before the executing Court.
- (vii) The writ petition is allowed accordingly.
- (viii) Rule made absolute accordingly.
- (ix) No costs.

(ANOOP V. MOHTA, J.)