

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [APPLN] NO.71 OF 2015

GOD'S GIFT CO-OPERATIVE HOUSING SOCIETY LTD. ...Applicant.
V/S
THE STATE OF MAHARASHTRA AND ORS. ...Respondents.

WITH
CRIMINAL APPLICATION [ALP] NO. 517 OF 2015

....
Ms. Mallika A. Ingale, Advocate for the Applicant.
Mr. M.G. Shukla, Advocate for Respondent Nos.2 and 3.
Mrs. Anamika Malhotra, APP, for the State.
....

CORAM : A. R. JOSHI, J.

DATE : 20th NOVEMBER, 2015

P.C.

1. Heard rival submissions on this application for condonation of delay of 278 days in preferring application for leave to file appeal.

2. The delay is caused due to the procedural aspects as the complaint of the original complainant, a co-operative housing society, was dismissed on 12.2.2014 by the M.M. Court for non-appearance of the complainant and his Advocate. According to the complainant, present applicant, though the

matter was earlier entrusted to the Advocate sometime in December, 2013, earlier Advocate withdrew from the proceedings and as such new Advocate was appointed. Inadvertently the matter was not followed up by the office bearers of the complainant society and in fact on 9.10.2013 it so happened that the complainant and its Advocate remained absent and the matter was adjourned to 4.12.2013. However, on that date the learned trial Court was on leave. Thereafter the matter was adjourned on 12.2.2014. On that date the order of dismissal of the complaint under Section 256 of Cr.P.C. was passed.

3. It is submitted on behalf of the applicant/complainant that subsequently enquiry was made with the Advocate on record and through him it was revealed in October, 2014 that the complaint was earlier dismissed in February, 2014. As such, application for certified copy was made and the certified copy was obtained in November, 2014 and then present application for condonation of delay was filed in January, 2015.

4. During the arguments, it is revealed that at some point of time during pendency of the complaint which is for taking action against the respondent-builder under the provisions of

the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 [for short hereinafter referred to as “MOFA”] and specifically for the offences under Sections 11 and 13 read with Rule 9 of MOFA, there were some talks of negotiations. However, the negotiations were frustrated. It is further revealed that the proceedings before the Consumer Forum were also taken by the present applicant-society and certain directions were passed by the Consumer Forum giving some compensation. That order has been challenged by both the sides. Present respondent builder challenged the order as it was against him for giving compensation to the society. The society challenged the order on the ground that the compensation is inadequate. Said challenge is still pending before the appropriate Consumer Forum at the State Level. As such, the dispute between the parties is still pending.

5. Learned Counsel for the applicant society placed reliance on the ratio of the authority in the case of **Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others** reported in **AIR 1987 SC 1353**. She submitted that

considering the special circumstances of the case, the Court may require to adopt liberal approach in deciding the matter of condonation of delay. So far as the present case is concerned, the special circumstances do warrant consideration as the complainant is not an individual but is a co-operative housing society representing interest of its all members against the respondent builder. Definitely there are certain procedural aspects for moving the Court of law by a society thus requiring to pass various resolutions and giving authorization to the office bearers to prosecute the matter in a Court. As such, the efforts required to be taken by the office bearers of a co-operative housing society are different than the efforts of an individual where decision making is only by an individual. In case of litigation initiated by a society the decision making is dependent upon various factors including views of all members of the society.

6. Apart from the above, another factual position is required to be considered that earlier Advocate of the complainant society withdrew himself and another Advocate was required to have been appointed. Though for earlier six

occasions prior to appointment of the new Advocate, the earlier Advocate and the representative of the complainant society remained absent, subsequently on 8.5.2013, 28.6.2013 and 16.8.2013 the Advocate of the complainant was present as this factual position can be ascertained from the Roznama. Only on 9.10.2013 the complainant and the Advocate were absent. However, the Court was on leave on 4.12.2013 and thus it was adjourned to 12.2.2014 and on this date the order of dismissal was passed.

7. Considering the above circumstances, in the opinion of this Court the delay of 278 days in filing application for leave to file appeal is required to be allowed and hence the application for condonation of delay being application No. 71 of 2015 is hereby allowed and disposed of. Office to number application for leave to file appeal, forthwith.

8. Now coming to the application for leave to file appeal and consequent appeal challenging the acquittal, is required to be considered at this stage itself as the issue involved is only dismissal of the complaint for non-appearance of the complainant and his Advocate. In the considered view of this

Court, this matter need not be required to be kept pending after allowing the application for condonation of delay for further hearing on the application for leave to file appeal and then adjudication of the appeal challenging the acquittal. It is factual position that the acquittal of the respondent is only on account of default on the part of the complainant and the order of acquittal is under Section 256 of Cr.P.C.. The matter has not been dealt on merits and as such it is necessary that the matter is required to be disposed of on merits by the trial Court more so when the dispute between the parties is also pending before the appellate forum of the Consumer Court as discussed earlier.

9. In view of the above factual position, the application for leave to file appeal, which is under Section 378(4) of Cr.P.C., is allowed and disposed of accordingly.

10. Now the appeal, challenging the order of acquittal of the respondent which is dated 12.2.2014, is also being disposed of as said order is passed for non-appearance of the complainant and its Advocate. For the reasons mentioned earlier and as the matter is required to be considered on merits by the trial Court, the appeal is admitted and also allowed with

directions to the trial Court to deal with complaint bearing No.2400203/SW/10 in accordance with law after giving appropriate opportunity to both the parties. The matter is remanded to the concerned M.M. Court to deal with the complaint bearing No.2400203/SW/10 in view of above directions. Needless to mention that the trial Court shall dispose of said complaint as expeditiously as possible otherwise further delay in disposing the matter may also lead to many complications and effective justice may not be given to the parties. Both the parties to appear before the concerned Court on 15.12.2015. With these directions, present matter is disposed of.

(A. R. JOSHI, J.)

Deshmane (PS)