

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.10223 OF 2015

Mumbai District Central

Co-operative Bank, Ltd.

.. Petitioner

Versus

Lalchand Shardaprasad Yadav

.. Respondent

Shri. Sampatrao Pawar, for the Petitioner.

Shri. Sanjay Maurya i/by M/s. Kumar & Co., for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 27th APRIL, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 18.03.2015 passed by the Learned Member of the Maharashtra State Co-operative Appellate Court, Mumbai, by which order the Appeal filed by the Respondent No.1 herein came to be allowed and resultantly, the delay in filing the application for setting aside the ex-parte decree passed against him came to be condoned.

2. The Petitioner herein had filed dispute being No.CC/I/183/2011 for recovery of the amount against the parties who were arrayed as Respondents amongst whom was the Respondent No.1 herein. The dispute was filed against one M/s. Anmol Co-operative Credit Society and its

directors amongst whom the Respondent No.1 is shown as one of the directors. The dispute came to be decreed by the judgment and order dated 28.12.2012. It is pursuant to the decreeing of the dispute that the Special Recovery Officer issued a notice to the Headmaster of one Satbag Municipal School, wherein the Respondent No.1 is working, to attach his salary to the extent of Rs.10,000/-. It is the case of the Respondent No.1 that it is on receiving the said notice of attachment that the Respondent No.1 became aware of the decreeing of the dispute in favour of the Petitioner. It is the case of the Respondent No.1 that he is not concerned and has not borrowed any amount from the Petitioner. It is further the case of the Petitioner that the Chairman of the said M/s. Anmol Co-operative Credit Society is his friend and it is on account of his friendship that the said Chairman took disadvantage and used the same for obtaining the loan for the said M/s. Anmol Co-operative Credit Society. The Respondent No.1 therefore filed an application for setting aside the Award passed by the Co-operative Court which according to him was passed ex-parte. Since the said application was belated, the Respondent No.1 filed an application for condonation of delay. The Respondent No.1 cited the reasons which have been afore-stated. The said application for condonation of delay was opposed to on behalf of the Petitioner. The Co-operative Court considered the said application and has by its order dated

27.08.2014 rejected the said application as according to the Co-operative Court the Respondent No.1 had not shown sufficient cause for condonation of delay of about 15 months in filing the application for setting aside the ex-parte Award. The Respondent No.1 carried the matter in Appeal under Section 97 of the Maharashtra Co-operative Societies Act. The reasons put forth by the Respondent No.1 commended acceptance to the Co-operative Appellate Court. The Co-operative Appellate Court observed that the Respondent No.1 has shown sufficient cause for not appearing in the dispute and therefore came to a conclusion that the dispute was decided ex-parte against the Appellant. The Co-operative Appellate Court was of the view that the reasons put forth by the Respondent No.1 could not be rejected outright and the matter would have to be decided on merits. The Co-operative Appellate Court accordingly allowed the Appeal by setting aside the order passed by the Co-operative Court rejecting the application for condonation of delay. The Learned Counsel appearing on behalf of the Petitioner would contend that the Respondent No.1 has been changing his stand in so far as the justification for the delay is concerned. The Learned Counsel would contend that in the Lower Court, he has accepted the fact that an advocate was appointed, whereas in the Appellate Court he has sought to lay the blame on the advocate. In my view, the said contention of the Learned

Counsel for the Petitioner cannot be accepted as the record discloses that it has been the consistent case of the Respondent No.1 that he could not participate in the proceedings as he was not aware of the Award passed by the Co-operative Court dated 28.12.2012 as no summons was served upon him. It is further his case that he has not engaged any advocate and that the Vakalatnama on his behalf was a fabricated document. In my view, since the Co-operative Appellate Court deemed it appropriate to condone the delay in filing the application for setting aside the ex-parte decree, this Court does not deem it appropriate to interfere with the discretion exercised by the Co-operative Appellate Court. However, it is made clear that the application for setting aside the delay would be decided on merits and in accordance with law uninfluenced by the observations made by the Co-operative Appellate Court in the impugned order and the order of this Court in the instant Petition. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]