

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**APPELLATE SIDE CIVIL JURISDICTION****WRIT PETITION NO. 10223 OF 2013**

Mr. Ashok Govind Walunj

....Petitioner.

Vs.

Madhukar Sahadu Gaikar & Ors.

....Respondents.

Mr. Uday P. Warunjikar a/w Mr. Bhushan Deshmukh for the Petitioner.
None for Respondent No.1.

Mr. Shivaji Lanke for Respondent No.2.

Ms. P.S. Cardoz, AGP for Respondent Nos. 3 and 4.

CORAM:- ANOOP V. MOHTA, J.

DATE :- 5 FEBRUARY 2015.

PC:-

Though served, none appeared for Respondent No.1, even after adjourning and listing of the matter today for final disposal as on 29 January 2015, also Respondent No.1 was absent. The learned counsel appearing for the Petitioner has pointed out that a fresh notice was also issued and served upon the advocate for Respondent No.1 on 30 January 2015.

2 The Petitioner has challenged order dated 4 September 2013 passed by the Revisional Authority under Section 154 of the Maharashtra Co-operative Societies Act, 1960 (for short, "the MCS Act"), whereby allowing the Application, order dated 24 January 2013 passed by the

Divisional Joint Registrar of condonation of delay in filing the Appeal by the Petitioner was rejected, that resulted into conclusion of order dated 24 May 2010. There is a statutory provision/Appeal available against such order.

3 Section 154 of the MCS Act provides 60 days limitation. However, power is also provided to condone the delay, if the case is made out. The Divisional Joint Registrar, after considering the rival contentions of the parties, had exercised discretion in favour of the Petitioner and condone the delay. This also means the opportunity was given to the Petitioner to make out his case by condoning the delay.

4 After going through the order so passed, I am inclined to observe that there is no perversity in the order, which the Revisional Authority by impugned order interfered with and set it aside-that resulted into the dismissal of the Appeal filed by the Petitioner. Even otherwise, the basic order is dated 24 May 2010. The Appeal was preferred on 1 October 2010 with sufficient reason. Therefore, by reasoned order, the delay so condoned, in my view, the Revisional Authority ought not to have interfered with.

5 Therefore, in the interest of justice and to give equal opportunity to all the parties, I am inclined to set aside order dated 4

September 2013 with further direction to the Authority to decide the Revision Application again in accordance with law by considering the basic principle of Section 154 of the MCS Act and the Limitation Act, including the Revisional Authority's power to set aside such order for want of it's legality and/or perversity, as declared by this Court in various Judgments.

6 In the result, the following order.

ORDER

- a) Impugned order dated 4 January 2013, is quashed and set aside.
- b) The Revision Application is restored back for re-hearing, by giving opportunity to all the parties in accordance with law and the same be disposed of as early as possible, preferably within 3 months from today.
- c) All points are kept open.
- d) The Writ Petition is disposed of, with liberty.

(ANOOP V. MOHTA, J.)