

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO.1066 OF 2015

Mr.Vishwas Pandurang Shinde	...	...Petitioner
v/s.		
Manisha Mahal Co-op.Hsg.Society Ltd.		
And ors.		...Respondents
	...	
Mr.A.A.Siddiquie i/b A.A.Siddiquie & Associates for the Petitioner.		
None for the Respondents.		
	...	

CORAM : A.A. SAYED, J.**DATED : 16 JUNE 2015****P.C.**

The challenge in this Petition is to the judgment and order dated 9 July 2014 of the Maharashtra State Co-operative Appellate Court dismissing the Appeal of the Petitioner seeking condoning the delay in filing the Review Petition for reviewing the order of the Co-operative Appellate Court confirming the Award of Co-operative Court. In the impugned judgment the Appellate Court has observed that the filing of the Petition for review of the judgment of the Co-operative Appellate Court does not appear to be bonafide and in good faith. The Co-operative Appellate Court has further held that the delay of 558 days in filing the Review Petition has not been satisfactorily explained.

2. I have heard the learned Counsel for the Petitioner. Considering the facts & circumstances of the case, I am not inclined to exercise the writ jurisdiction of this Court to interfere with the discretion exercised by the Maharashtra State Co-operative Appellate Court in declining to condone the delay. Even otherwise, it is seen that the Co-operative Court in the first instance had disposed of the Dispute Application of the Petitioner finally by order dated 29 March 2012, the operative part whereof reads as under:

“1) Dispute of the disputant is partly allowed with costs.

2) Opponent nos.2 to 5 are directed to quit, vacate and hand over vacant and peaceful possession of the disputed flat No.102, situated on 1st floor, in the building of disputant society within 2 months from the date of this order. If opponents failed to hand over the possession of flat No.102 within 2 months then disputant society is at liberty to take the possession of flat No.102 from the opponent nos. 2 to 5.

3) After taking possession of flat No.102 from opponent nos.2 to 5 the society may hand over the possession of flat No.102 to the opponent no.1.

4) Disputant is entitle to recover an amount of Rs.19,21,801/- alongwith interest @ Rs.6% p.a. with effect from 1-1-2010 till actual realization of entire amount from opponent nos.1 and 2 jointly and severally.

5) Opponents are hereby restrained by an order of perpetual injunction from creating any third party right or interest by any means in the disputed flat No.102 till handing over possession to the society.

6) Award be prepared accordingly.

7) Deposit amount be credited to Government.

8) Pronounced in open court.”

3. The aforesaid order was challenged in Appeal before the Co-operative Appellate Court, which came to be dismissed by the judgment and order dated 9 October 2012. The Petitioner, thereafter, filed Writ Petition No.1573 of 2013, which is pending in this Court. The final judgments and orders passed by the Co-operative Court and the Co-operative Appellate Court are thus subject matter of challenge before this Court in the pending Writ Petition No.1573 of 2013. The interim order passed in this Writ Petition directing the Petitioner to pay 50% of the principal amount subject to which there would be a stay to the order of the Appellate Co-operative Court was challenged in the Supreme Court by filing a SLP, which came to be withdrawn by the Petitioner. The Review Petition against the interim order of this Court was also dismissed.

4. In these circumstances, since the order of the Appellate Co-operative Court is the subject matter of challenge in Writ Petition No.1573 of 2013, which is pending in this Court, wherein interim order has been passed (and even the SLP has been rejected), the Appellate Co-operative Court has rightly dismissed the Review Petition. The judgments relied upon are on different facts and are not applicable to the facts of the present case.

5. For the aforesaid reasons, the exercise of writ jurisdiction of this Court under Article 226 of the Constitution is not warranted to interfere with the impugned order. The Petition is accordingly dismissed. No order as to costs.

(A.A. SAYED, J.)

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