

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 9593 OF 2016
WITH
WRIT PETITION NO. 2265 OF 2016
WITH
WRIT PETITION NO. 5887 OF 2016**

Gajanan Medical, Ahmednagar and Others ..PETITIONERS

VERSUS

The Jamkhed Merchants Co-operative
Bank Ltd., Ahmednagar and Another ..RESPONDENTS

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Mr. V.M. Humbe, Advocate for petitioners.

Mr. G.D. Jain, Advocate for Respondent No.1.

Mr. B.A. Shinde and Mr. S.K. Tambe, A.G.P. for Respondent No.2.

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**CORAM : T.V. NALAWADE, J.
DATED : 28th NOVEMBER, 2016**

ORDER :

1. The first proceeding - Writ Petition No. 9593 of 2016 is filed to challenge the judgment and order in Miscellaneous Civil Application No. 52 of 2014 which was pending before the Co-operative Appellate Tribunal, Mumbai at Aurangabad camp. The proceeding was filed for condonation of delay by present petitioner which was around 1335 days caused in filing appeal against the decision of dispute under Section 91 by respondent – co-operative bank. The Appellate Court imposed some conditions for allowing the application and to challenge those conditions, this proceeding is filed.

2. The submissions made by both sides show that as per the time fixed by the Co-operative Appellate Court, the amount was not deposited but subsequently the amount as mentioned in the order was deposited. Learned Counsel for petitioner made statement that prior to that he had deposited some amount and total amount of Rs.6.78 lakh for repayment of loan of Rs.5 lakh is already deposited and Fixed Deposit of Rs.55,000/- of petitioner can be taken over for repayment of loan. Learned Counsel submitted that due to some difficulties, the petitioner could not make payment in time, the time fixed by the Appellate Court, but opportunity needs to be given to him to challenge the decision which was given ex parte by the Co-operative Court.

3. The Appellate Court has used discretion and has allowed the application filed for condonation of delay though there are aforesaid circumstances. In view of fact that subsequently the amount of Rs.3,00,000/- as directed came to be deposited, this Court holds that opportunity needs to be given to the appellant to go before the Appellate Court to get the decision of appeal on merits. However, this will be subject to the powers of the Appellate Court and it will be open to the Appellate Court to impose further conditions considering the period of around two years which is passed after making of the order by the Appellate Court. Thus there is no possibility of interference in the order made by the

Appellate Court which involves the use of discretion. So Writ Petition No. 9593 of 2016 is disposed of in aforesaid terms. Parties are to appear in the appeal before the Appellate Court on 14th December, 2016.

4. Other two proceedings have arisen out of the orders made by the Special Recovery Officer for execution of award given by the Co-operative Court in favour of the bank. Under the provisions of Section 154, revision is available and so this Court is not expected to entertain the writ petition. In any case, substantive appeal filed by present petitioner is pending before the Appellate Court in which there is scope to pray for stay to the execution of the award.

5. In view of this circumstance, no order can be made in favour of petitioner in the remaining two proceedings. He can make submission for stay before the Appellate Court on 14th December, 2016. It will be open to the Appellate Court to consider the request and the Appellate Court may impose further conditions if the Appellate Court is inclined to grant stay. Till that date only, there will be stay to the execution of award.

6. It will be open to the bank to withdraw the amount, already deposited and also to encash the fixed deposited amount for recovery of the

amount. If any amount is deposited in this Court or Co-operative Court or Appellate Court, that amount is to be given to the bank. In these terms, the Writ Petition Nos. 2265 of 2016 and 5887 of 2016 are disposed of.

(T.V. NALAWADE, J.)

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