

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 327 OF 2016**

Mr. Agnelo Cristow Fernandes, son of
Cristow Fernandes, 50 years of age,
Resident of H. No. 13, Capxem,
Sanvordem-Goa.

.... Petitioner

Versus

1. VPK Urban Co-operative Credit Society Ltd, Mardol Branch, Through its Branch Manager, Ponda-Goa.
2. The Asst. Registrar of Co-operative Societies, C/o VPK Urban Co-operative Credit Society Ltd., Regional Office, 1st Floor, Sumit Classic Bldg., Opp. Municipal Garden, Ponda-Goa.
3. Shri Rumaldo Pedro D'Costa, Major of age, Resident of H. No. 42, Capxem, Sanvordem-Goa.
4. Shri Laxmikant Sadashiv Nayak, (deceased through legal representatives)
(a) Smt. Vasanti Laxmikant Nayak, widow of late Laxmikant Nayak, r/o Sonarbhat, Rivona, Sanguem-Goa.
(b) Ms. Gauri Laxmikant Nayak, Major of age, daughter of late Laxmikant Nayak, r/o Sonarbhat, Rivona, Sanguem-Goa.
5. Shri Sachidanand Antaryami Nayak, Major of age, Son of Antaryami Nayak, Resident of H. No. 285,

Vishwambharwadi, Sanvordem-Goa.

6. Shri Sandesh Panglo Vasta, Major of age, son of Panglo Vasta, Resident of H. No. 778, Bagg Chowe Wada, Curchorem-Goa. Respondents

Mr. Ashwin D. Bhobe, Advocate for the Petitioner.

Ms. Neha Kholkar, Additional Government Advocate for Respondent No. 2.

CORAM:- C.V. BHADANG, J.

DATE:- 16th APRIL, 2016.

ORAL ORDER:

Heard the learned Counsel for the petitioner.

2. By this petition, the petitioner is challenging the judgment and award dated 20.04.2011, passed by the Assistant Registrar of Co-operative Societies, by which the petitioner alongwith respondent nos. 3 to 6 have been jointly and severally held liable to pay the respondent no. 1-Society, a sum of Rs.2,97,205/- alongwith interest and costs.

3. The only ground that is raised is that although, a notice of the proceedings was served on the petitioner, the

principal borrower i.e. respondent no. 3 had represented to the petitioner, that respondent no. 3 would contest the proceedings on behalf of the petitioner. It is contended that in such circumstances, the petitioner did not take any steps for putting in appearance and to contest the proceedings before the learned Assistant Registrar. It is also submitted that the respondent no. 1 in execution of the award has started recovery of the amount from the salary of the petitioner, whereupon the petitioner came to know of the passing of the award. The petitioner thereafter sought to challenge the said order before the Co-operative Tribunal by filing an appeal, which was barred by time. In such circumstances, M.C.A. No. 22/2014 was filed for condonation of delay. The Co-operative Tribunal by the judgment and order dated 26.11.2015 has dismissed the application for condonation of delay, which is subject matter of challenge in this petition.

4. I have considered the circumstances and the submissions made. In this case, it is not in dispute that the petitioner was served with the notice of the proceedings before the learned Assistant Registrar and the petitioner had failed to contest the same on the ground that the principal borrower had represented to the petitioner, that the principal borrower would

contest the proceedings on behalf of the petitioner. The Co-operative Tribunal has refused to accept the same *inter-alia* on the ground that the petitioner is a Government Servant and ought to have known that it was for him to have personally contested the proceedings. In that view of the matter, the Co-operative Tribunal has refused to condone the delay. It is trite that the liability of the principal borrower and the guarantor i.e. the petitioner is joint and several. It was for the petitioner to contest the proceedings before the Assistant Registrar and the petitioner cannot now be heard to say that he relied upon the principal borrower and therefore, he did not contest the proceedings. Thus, I do not find that the impugned order exhibits any jurisdiction error so as to warrant interference in exercise of extra ordinary jurisdiction of this Court.

In the result the Writ Petition is hereby rejected.

C.V. BHADANG, J.

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