

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 505 OF 2016**

1. Mr. Dayanand L. Naik, son of Mr. Laxman Naik, age 43 years, service, r/o House No. 129/12, Near Laxminarayan Temple, Headland Sada, Vasco-da-Gama, Goa.
 2. Mrs. Sunita D. Naik, wife of Mr. Dayanand L. Naik, Age 42 years, service, r/o House No. 129/12, Near Laxminarayan Temple, Headland Sada, Vasco-da-Gama, Goa.
- ... Petitioners

Versus

Vasco Urban Co-operative Credit Society Ltd., Through its Administrator, having office at: 3, Commerce Centre, Vasco-da-Gama, Goa.

... Respondent

Mr. Thalmann Pradeep Pereira, Advocate for the Petitioners.

Mr. P. Chawdikar, Advocate for the Respondent.

CORAM:- C. V. BHADANG, J.

DATE:- 28th JUNE, 2016.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. The learned Counsel for the respondent waives service.

Heard finally, by consent of the parties.

2. The petitioners are challenging the judgment and order dated 18.12.2015 passed by the Co-operative Appellate Tribunal, Goa in Miscellaneous Application No. 7/2015. By the impugned order, the Co-operative Appellate Tribunal has refused to condone the delay of 108 days in filing an appeal challenging the judgment and the award dated 16.12.2013 passed by the Registrar's Nominee of the Co-operative Societies, South Goa in Misfeasance Case No. 1-204-2012/TS/RCS/VUCCSI/509.

3. The brief facts are that the petitioner no. 1 is working as Clerk with the respondent-Co-operative Credit Society, while the petitioner no. 2, who is the wife of petitioner no. 1 is working as a agent for collecting pigmy deposits for the said Co-operative Credit Society. The aforesaid misfeasance proceedings were started against the

petitioners on the file of the Registrar's Nominee at South Goa, under Section 82 of the Goa Co-operative Societies Act, 2001 (the Act, for short). A perusal of the award passed by the Registrar's Nominee on 16.12.2013 shows that a notice of the said proceedings was sent to the petitioner no. 1 by registered post, which was served, while notice sent to petitioner no. 2 was returned unclaimed, which was held to be good service. The Registrar's Nominee held the petitioners to be jointly and severally liable to pay the sum of Rs.22,88,120/- to the respondent as on 31.03.2010 alongwith interest with effect from 01.04.2010 till settlement of the said dues. The petitioners sought to challenge the same before the Co-operative Appellate Tribunal, by filing an appeal, in which subsequently, an application for condonation of delay was filed as the office of the Co-operative Appellate Tribunal raised an objection that the appeal was barred by limitation. The petitioners contended that they had

not received any notice, as recorded in the impugned order.

4. The Co-operative Appellate Tribunal by the impugned order has found that the notice was served on the petitioner no. 1 and the notice addressed to the petitioner no. 2 was returned unclaimed and thus, there was no reason shown for not filing the appeal in time. The Co-operative Appellate Tribunal found that the petitioners had approached the Co-operative Appellate Tribunal "half heartedly and without bonafides and as such, discretion cannot be exercised in their favour". In the face of such a finding, the application came to be rejected with costs of Rs.2,000/-.

5. The learned Counsel for the petitioners submits that under Section 82(2) of the Act, the Registrar's Nominee is obliged to serve a copy of the decision on the person against whom it is made

in the manner laid down for the service of summons in the Code of Civil Procedure, 1908. He submits that admittedly, such notice alongwith copy of the judgment and order passed by the Registrar's Nominee was served on the petitioners on 03.03.2014 and the appeal having been filed on 02.04.2014 was well within limitation. The learned Counsel points out that the application for condonation of delay was filed by way of abundant caution. He submits that although, the ground specifically based on Section 82(2) of the Act was not taken, in the application, it being a legal ground, the same can be allowed to be raised before this Court. The learned Counsel submits that the petitioners are willing to abide by the condition of payment of appropriate costs, if the delay is condoned. He also submits that in order to show bonafides, the petitioners shall deposit Rs.1,50,000/- with the Co-operative Appellate Tribunal, within one month from today without prejudice to their contentions on merits.

The learned Counsel also pointed out the order sheet of the proceedings before the Registrar's Nominee, to show that the last date in the matter was on 21.09.2013, when the matter was closed for judgment and there was no fixed date given for pronouncement of the judgment.

6. On the contrary, it is submitted by the learned Counsel for the respondent that the petitioners came with a case of non receipt of the notice, when the postal acknowledgment and the envelope (copies of which are annexed to the petition) clearly show that, they were served with the notice of the proceedings. It is submitted that it does not lie in the mouth of the petitioners that they were not aware of the proceedings before the Registrar's Nominee. He submits that the Co-operative Appellate Tribunal has rightly found that the application and the prayer made by the petitioners, lacks bonafides and as such, cannot be

granted.

7. I have given my anxious consideration to the rival circumstances and the submissions made.

8. It is now well settled that normally in the matter of condonation of delay, the Courts adopt a liberal approach. This is more so when the delay is of a short duration. It is well settled that no party stands to gain by approaching the Court late and there is no presumption that the delay in approaching the Court is intentional or deliberate (see **Collector Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, AIR 1983 SC 1353**). A useful reference in this regard may also be made to the decision of the Hon'ble Supreme Court in **Esha Battacharjee Vs. Managing Committee of Raghunathpur Nagar Academy, (2013) 12 SCC 646**).

9. In the present case, I find from the roznama

of the proceedings that the last date in the proceedings was on 21.09.2013 and thereafter, no date was fixed for pronouncement of the judgment. The record further shows that the notice as required under Section 82(2) of the Act alongwith the copy of the award was served on the petitioners only on 03.03.2014 and the appeal came to be filed within a month thereof i.e. on 02.04.2014.

10. In that view of the matter, the following order is passed:

O R D E R

(a) The petition is allowed.

(b) The impugned order dated 18.12.2015 is hereby set aside.

(c) The delay, if any, in filing the appeal is hereby condoned, subject to payment of costs of Rs.25,000/- within one week from today.

(d) The petitioners undertake to

deposit the said amount directly with the respondent-Co-operative Credit Society.

(e) The deposit of Rs.25,000/- is a condition precedent for condonation of delay.

(f) The petitioners also undertake to deposit an additional sum of Rs.1,50,000/- before the Co-operative Appellate Tribunal within a period of one month from today.

(g) Parties to appear before the Co-operative Appellate Tribunal on 11.07.2016 at 10:30 a.m.

(h) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.