

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3259 OF 2016

Shri. Rajendra Ramdas Jagdale

...Petitioner

Versus

Rukmini Sahakari Bank Ltd.,
Pandharpur And Ors.

...Respondentss

....

Mr. P.L. Majgaonkar, i/b. Anil L. Desai, Advocate for the
Petitioner.

Mr.Ujwal R. Agandsurve, Advocate for Respondent No.1

....

CORAM : R. G. KETKAR, J.

DATE : 15th DECEMBER, 2016

P.C.

1. Heard Mr.Majgaonkar, learned Counsel for the
petitioner and Mr.Agandsurve, learned Counsel for respondent
No.1, at length.

2. By this Petition under Article 227 of the Constitution of
India, the petitioner, hereinafter referred to as the 'opponent',
has challenged the judgment and order dated 7.11.2015 passed
by the learned Member, Maharashtra State Co-op. Appellate
Court (Mumbai) Bench Pune (for short, 'Appellate Court') in
Misc. Application No.71/2014. By that order, the Appellate
Court dismissed the application made by the opponent for

condoning the delay of 834 days in filing the appeal.

3. Respondent No.1, hereinafter referred to as the 'disputant', filed dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960 (for short, 'Act') against opponent No.1 Shri Rajendra Ramdas Jagdale, opponent No.2 Shri Eknath Bharat Nagne, opponent No.3 Shri Dagdu Hatiff Mulani for recovery of loan amount of Rs.5 Lakhs. Opponent No.1 is the borrower. Opponents No.2 & 3 are the sureties. The summons of the dispute was duly served on the opponents. The opponents failed to appear despite service. By order dated 9.9.2010, the dispute was ordered to proceed ex parte against them. After considering the evidence adduced by the disputant, award was made on 20.4.2012 holding opponents No.1 to 3 jointly and severally responsible for payment of Rs.6,95,712/-.

4. Aggrieved by this decision, opponent No.1 preferred appeal under Section 97 of the Act on 1.10.2014. As there is delay of 834 days in filing the appeal, he took out Misc. Application No.71/2014 on 1.10.2014 for condoning the delay.

5. By order dated 12.11.2014, the Appellate Court dismissed the application. Aggrieved by that decision, opponent

No.1 instituted Writ Petition No.1285/2015 in this Court. By order dated 10.3.2015, this Court set aside the order dated 12.11.2014 and restored the Misc. Application No.71/2014 to the file of the Appellate Court. After remand, by the impugned order, Appellate Court has dismissed the application. It is against this order, opponent No.1 has instituted present Petition.

6. The matter was heard at length on 1.12.2016. At the request of Mr.Majgaonkar, it was adjourned to 8.12.2016 so as to enable him to take instructions as to within what time opponent No.1 will deposit sum of Rs.10,43,134/- as a condition precedent for setting aside the impugned orders including the order passed by the trial Court and for restoration of the dispute for deciding the same on merits. Upon taking instructions from opponent No.1, Mr. Majgaonkar submitted that opponent NO.1 is not in a position to deposit even the decretal amount, namely, approximately Rs.7 Lakhs.

7. As noted earlier, there is delay of 834 days in filing the appeal. Perusal of the application shows that the only reason given in paragraph-2 was that opponent No.1 was ill and was, therefore, unable to file appeal. Opponent No.1 came to know about the execution only in December, 2013 about passing of

the exparte award. The reasons given in paragraphs-2 to 5 do not constitute sufficient cause for condoning the delay. Undisputedly opponent No.1 and other opponents were duly served with the Summons. Despite that they did not appear in the trial Court. In view of Article 123 of the Limitation Act, the period of limitation will begin from the date of the decree. In the instant case, the award was made on 20.4.2012 and the appeal is instituted on 1.10.2014. In paragraph-11, Appellate Court considered the conduct of opponent No.1 and observed that there was no bonafide on the part of opponent No.1. It was further observed that this is nothing but a delaying tactics on the part of opponent No.1.

8. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. The delay is not explained and the Appellate Court was, therefore, justified in rejecting the application. Hence, the Petition fails and the same is dismissed.

(R. G. KETKAR, J.)