

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3904 OF 2016

Gotiram P. Phulsundar

.. Petitioner

vs.

Chairman, Dhanlaxmi Nagari

Sahakari Patsanstha Maryadit and ors.

.. Respondents

Mr. Sachin S. Padaye i/b Girish R. Agrawal for the Petitioner.

Mr. Pravarthak Pathak for Respondent No.1.

Ms Vaishali Nimbalkar, AGP for Respondent No.4-State.

CORAM : M. S. SONAK, J.

DATE : 20 JUNE 2016.

P.C. :-

1] Heard Mr. Sachin Padaye, learned counsel for the petitioner, Mr. Pravarthak Pathak, learned counsel for respondent No.1 and Ms. Vaishali Nimbalkar, learned AGP for respondent No.4.

2] Mr. Sachin Padaye, learned counsel for the petitioner, seeks to delete respondent Nos.2 and 3 from array of the respondents, as their presence is not necessary for the purposes of deciding this petition. Leave is granted. Necessary amendment to be carried out forthwith.

3] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

4] Mr. Sachin Padaye, learned counsel for the petitioner, has submitted that there is no consideration whatsoever of the cause shown by the petitioner whilst making the impugned order refusing to condone the delay of 274 days in instituting revision application. He submits that the petitioner was not a party to the proceedings in which the order impugned in the revision application came to be made. The revision application has been instituted from the date of knowledge of such order. In such circumstances, there was sufficient cause for condonation of delay of 274 days in instituting the revision application.

5] Mr. Pravarthak Pathak, learned counsel for the respondent no.1, has submitted that the petitioner failed to produce any material whatsoever in support of the contentions set out in the application seeking condonation of delay. In these circumstances, Mr. Pathak submitted that the impugned order was rightly made by the revisional authority and there is no case made out to interfere with the same.

6] Having heard the learned counsel for the parties and perused the material on record, as also the impugned order, I am satisfied

that the purported cause indicated in the application seeking condonation of delay has not been taken into consideration whilst making the impugned order. At this stage, it is quite premature to observe as to whether the cause shown is genuine or whether the same is sufficient in the facts and circumstances of the present case. However, if the impugned order is perused, it is seen that there is no consideration whatsoever of the cause shown. The impugned order proceeds on the basis that the petitioner has admitted that the delay of 274 days. Thereafter the impugned order makes reference to a citation and states that the said citation is applicable to the facts and circumstances of the present case. There is no discussion whatsoever as to the cause shown by the petitioner and the reasons for non-acceptance of such cause. Further, from the record it is not quite clear as to whether respondent No.1 had filed any reply contesting the cause shown in application seeking condonation of delay.

7] Considering the aforesaid aspect, the impugned order dated 1 February 2016 is hereby set aside. The matter is, however, remanded to the Divisional Joint Registrar Cooperative Society, Nashik for reconsideration of the petitioner's application for condonation of

delay, in accordance with law and on its own merits. In case respondent No.1 has not already filed a reply and seeks to file a reply, respondent No.1 is granted liberty to do so. Such reply, however, to be filed within fifteen days from today.

8] It is made clear that the observations in this order are only *prima facie*, and for the purposes of emphasizing that there has been no consideration of cause shown. The revisional authority need not be influenced by such observations and the application for condonation of delay may be disposed of afresh, in accordance with law and on the basis of the materials, which the parties may place on record.

9] The parties to appear before the revisional authority on 7 July 2016 at 3.00 p.m. and produce an authenticated copy of this order.

10] The application for condonation of delay to be disposed of as expeditiously as possible and in any case within a period of eight weeks from today. Until the application for condonation of delay and in case delay is condoned, the application for stay is decided by the

revision authority, the ad-interim relief granted by this Court shall operate.

11] All contentions of all parties are kept open.

12] Rule is made absolute to the aforesaid extent. There shall however, be no order as to costs.

13] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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