

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1502 OF 2016  
IN  
REVIEW PETITION NO. 91 OF 2016  
IN  
WRIT PETITION NO. 3952 OF 2015

Sea Face Park Co-operative Housing  
Society Ltd.

.. Petitioner

vs.

State of Maharashtra and ors.

.. Respondents

Mr. Siddhesh Bhole a/w. Ms Gauri Vaidya for the Petitioner.

Ms Vaishali Nimbalkar, AGP for Respondent Nos.1 to 3.

Mr. Sujit K. Bhattacharya a/w. Mr. Nitin G. Raut for Respondent Nos.  
4 and 5.

**CORAM : M. S. SONAK, J.**

**DATE : 15 JULY 2016.**

**P.C. :-**

1] This is an application seeking condonation of delay of 65 days in instituting a review petition against the order dated 24 February 2016.

2] Mr. Siddhesh Bhole, learned counsel for the petitioner-society, submits that the petitioner had instituted a special leave petition against the order dated 24 February 2016. The same was dismissed as withdrawn, since the petitioner-society desired to file a review petition before this Court. The order disposing of the special leave petition was made on 18 April 2016 and the review petition has

been instituted soon thereafter, i.e., 29 April 2016. Mr. Bhole submitted that the petitioner - society were bonafide in pursuing their remedies against the order dated 24 February 2016 before the Hon'ble Supreme Court and no sooner, the special leave petition was disposed of, they have instituted the review petition. Mr. Bhole submitted that this constitutes sufficient cause.

3] Mr. S.K. Bhattacharya, learned counsel for respondent Nos.4 and 5, has referred to the affidavit in reply filed on behalf of respondent Nos.4 and 5 and submitted that this is not a case where any sufficient cause has been disclosed in the application seeking condonation of delay. Mr. Bhattacharya pointed out that initially no application for condonation of delay had been filed alongwith this review petition. Such application was itself filed after further delay of about 21 days. Relying upon the decision of the Hon'ble Supreme Court in case of *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd. - 1962 AIR 361* and the decision of this Court in case of *Nivruti G. Ahire Vs. The State of Maharashtra - 2007 (109) Bom L.R. 1302*, Mr. Bhole submitted with vehemence that delay cannot be condoned unless sufficient cause is shown. Mr. Bhole further submitted that even where sufficient causes were shown,

applicant cannot insist upon condonation of delay as a matter of right. Mr. Bhole submitted that it is always in the discretion of the Court whether or not condone the delay and in exercise of such discretion, the Court is bound to consider the conduct of the applicant seeking condonation of delay.

4] Having considered the submissions made by the learned counsel for the parties and upon perusal of the record, in my judgment, sufficient cause has been shown for condonation of delay of 65 days in instituting the review petition. As noted earlier, the petitioner-society instituted a special leave petition against the order dated 24 February 2016, to the extent, the said order had denied the petitioner-society interim reliefs.

5] The special leave petition was disposed of by the Hon'ble Supreme Court on 18 April 2016, by making the following order:

*“Upon hearing the counsel the Court made the following*

*ORDER*

*The special leave petition is dismissed as withdrawn.*

*Mr. C.U. Singh, learned senior counsel appearing for the petitioner submitted that no notice was received by the petitioner Society under Section 79-A of the Act and that it proposes to seek review of the order impugned. We only give liberty to the petitioner to take such steps, as may be advised in accordance with law.”*

6] Soon thereafter, i.e., within hardly ten days from the date of dismissal of special leave petition, the petitioner - society had instituted the review petition.

7] In paragraph '6' of the affidavit in reply filed by respondent No.4, the deponent has made reference to the conduct of the petitioner society by way of circulation of letters in the context of mentioning of the matter before this Court from time to time. In my judgment, such conduct is not sufficient to exercise discretion against the petitioner - society. The delay, in the present case, is hardly of 65 days. It is not as if the petitioner society had taken no steps whatsoever within this period of 65 days. The petitioner Society had approached the Hon'ble Supreme Court and within hardly ten to eleven days from the date of dismissal of the SLP by the Hon'ble Supreme Court, the review petition has been instituted. This, in my judgment, constitutes sufficient cause for condonation of delay. The decisions, upon which reliance has been placed by Mr. Bhattacharya, do not assist the case of respondent Nos.4 and 5, considering the facts and circumstances of the present case.

8] Accordingly, the delay of 65 days in institution of civil review petition is condoned. In the facts and circumstances of the present case, the petitioner - society are directed to pay costs of Rs.7,500/- to respondent Nos. 4 and 5. Such costs to be paid within a period of two weeks from today. The respondent No.5 will receive the said costs on behalf of himself and his son , i.e., respondent No.4.

9] Civil Application is disposed of in aforesaid terms.

**(M. S. SONAK, J.)**

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