

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8989 OF 2015

Nandkumar Bhaskaran Nair : Petitioner.
Versus
Vishwas Co-operative Bank Ltd. Nashik
Through its Chief Executive Officer. : Respondent.

Mr. Sandesh Deshpande for the Petitioner.
Mr. Prashant Naik i/by Mr. S R Waghmare for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 14th March 2016

P.C.

1 The above Petition takes exception to the order dated 22/04/2015 passed by the learned President, Maharashtra State Co-operative Appellate Court, Mumbai by which order the Application being M.A.No.70 of 2014 came to be rejected. The said Application was filed by the Applicant i.e. the Petitioner herein for condonation of delay of 3 years and 10 months in filing the Appeal against the order dated 10/01/2011 passed by the Trial Court i.e. the Co-operative Court, Nashik by which order the Dispute being Dispute No.428 of 2005 filed by the Petitioner came to be partly dismissed. The justification for the said delay of 3 years and 10 months was that the Petitioner was suffering from coronary artery disease in support of which the Petitioner has produced medical papers dated 26/06/2012 which papers disclose that the Petitioner was admitted on 26/06/2012 and discharged on 06/07/2012. There are other medical papers/documents of the year 2011, and there is one

certificate dated 18/08/2010 wherein it is stated that the patient needs coronary angiography. The Co-operative Appellate Court considered the said documents and held that the said certificates/documents are of the years 2010, 2011 and 2012, however, there is no certificate of the year 2013 and 2014 to support the Petitioner's case that he was prohibited from moving out of his house to file the proceedings. The Co-operative Appellate Court also adverted to the fact that the Petitioner was also not sure of the exact day or days of delay as at various places the number of days of delay mentioned are different and the Co-operative Appellate Court therefore observed that the petitioner was casual in his approach. The Co-operative Appellate Court therefore held that on the basis of the said vague case of the Petitioner, the said huge delay of 3 years and 10 months could not be condoned and accordingly rejected the said application.

2 It is required to be noted that the Respondent No.1 had initiated proceedings under Section 101 of the Maharashtra Co-operative Societies Act for recovery of dues. The Recovery Certificate was challenged in this Court which challenge failed and during the course of the said challenge, it was also pointed that the Dispute filed by the Petitioner has already been dismissed. Hence the Petitioner's case that he became aware of the order passed by the Co-operative Court only in the year 2014 cannot be accepted. It seems that pursuant to the Recovery Certificate issued under Section 101 of the said Act,

the property of the Petitioner has also been sold and the auction purchaser has subsequently entered into the transaction and it seems that the property is now in the hands of the 4th purchaser. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]