

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.717 OF 2016

(Kamalkunj Cooperative Housing Society Limited
vs.
Shankar Pundlik Thool and others)

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Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

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Court's or Judge's Orders

CORAM : Z.A. HAQ, J.

DATE : 5th FEBRUARY, 2016.

Heard Shri S.V. Sirpurkar, learned Advocate for the
petitioner.

The petitioner-society has filed an appeal before the District Court challenging the judgment and decree passed by the Trial Court and as there is delay in filing the appeal, the petitioner filed an application praying for condonation of delay. Before the hearing of this application, the respondents have filed an application praying that the appellant be directed to make himself available for cross-examination. The learned District Judge, by the impugned order, has accepted the request of the respondents and has directed the appellant to make himself available for cross-examination. The petitioner, being aggrieved by this order, has filed this petition.

Shri S.V. Sirpurkar, learned Advocate for the petitioner has submitted that Order XLI Rule 3-A read with Order XIX Rule 1 of the Code of Civil Procedure does not

empower the Appellate Court to direct the appellant to make himself available for cross-examination while deciding the application praying for condonation of delay. It is further submitted that Order XIX Rule 1 lays down that the affidavit filed by the party may be read at the time of hearing, and from this it is clear that it does not enable the other side to ask deponent to make himself available for cross-examination. The submission made is misconceived. The provisions of Section 5 of the Limitation Act govern the situation and the Appellate Court will be, in effect, considering the prayer of the appellant for condonation of delay exercising the jurisdiction under Section 5 of the Indian Limitation Act. If the Court is of the opinion that in view of the facts on record, the person who has filed an affidavit in support of the claim for condonation of delay, is required to be cross-examined by the other side, there is no fetter on the power or jurisdiction of the Appellate Court to issue such directions. I see no reason to interfere with the discretion exercised by the Appellate Court judiciously. The impugned order does not suffer from any patent irregularity and illegality. It cannot be said that the Appellate Court has transgressed its jurisdiction.

The petition is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE