

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 210 OF 2015

Nadeem Akhtarali Kazi
and another .. Petitioners

Versus

Khandesh Urban Co-op. Credit
Society Ltd. Jalgaon .. Respondent

Shri Vinod Patil, Advocate h/f Mrs. S. T. Kazi, Advocate for
Petitioners.

Shri Anant I. Deshmukh, Advocate for Respondent.

**WITH
WRIT PETITION NO. 7875 OF 2015**

Nadeem Akhtarali Kazi
and another .. Petitioners

Versus

Khandesh Urban Co-op. Credit
Society Ltd. Jalgaon .. Respondent

Shri Vinod Patil, Advocate for Petitioners.

Shri Anant I. Deshmukh, Advocate for Respondent.

CORAM : S. V. GANGAPURWALA, J.

DATE : 13TH DECEMBER, 2017.

FINAL ORDER :

. The respondent had filed dispute U/Sec. 91 of the

Maharashtra Co-operative Societies Act for recovery. The dispute was allowed ex-parte. The present petitioners filed an appeal before the Co-operative Appellate Court along with an application for condonation of delay. The application for condonation of delay is allowed on condition that the petitioners deposit 50% of the amount under the award within two months. The petitioners failed to deposit the said amount. The petitioners assailed the order to the extent of directing deposit of 50% of the amount.

2. Mr. Patil, the learned advocate for petitioners submits the principal loan is only Rs. 61,000/-. Exorbitant interest has been charged by the society. Even the decree is passed by charging exorbitant interest. Interest at the rate of 23% per annum is awarded. The petitioners are facing the financial crisis, so also are suffering from various ailments. The condition of deposit of 50% amount be relaxed. The award is ex-parte award.

3. Mr. Deshmukh, the learned advocate for the respondent submits that, the principal amount of Rs. 61,000/- was sanctioned and disbursed in the year 1994. The petitioners did not pay any amount. The petitioners did not appear in the proceeding. The petitioners also did not appear in the execution proceeding and directly approached this Court challenging the notice issued by the Executing Court. According to the learned advocate, the

Appellate Court has condoned the abnormal delay and has taken a liberal approach while directing to deposit 50% of the amount. No error has been committed by the Co-operative Appellate Court.

4. The Co-operative Appellate Court on being satisfied by the reasons given by the petitioners has condoned the delay. The condition imposed was that the petitioners to deposit 50% of the amount. It would appear that, the rate of interest awarded is at the rate of 23% from the date of filing of the dispute. The petitioners have deposited amount of Rs. 3,00,000/- pursuant to the orders of this Court passed in Writ Petition No. 210 of 2015 dated 02.01.2015. The petitioners have shown their bonafides. Considering the reasons given by the petitioners, I am inclined to exercise my discretion in favour of the petitioners. The petitioners shall deposit further amount of Rs. 1,50,000/- with the respondent/society within a period of four (04) weeks from today. On deposit of further amount of Rs. 1,50,000/-, the delay caused in filing the appeal shall be deemed to be condoned.

5. If, the petitioners deposit further amount of Rs. 1,50,000/- within four weeks from today with the respondent/society, then Co-operative Appellate Court shall hear the appeal filed by the petitioners on merits. The deposit of amount is condition precedent. The impugned order is quashed and set aside. The

respondent is entitled to withdraw an amount of Rs. 3,00,000/- deposited by the petitioners along with accrued interest, if any. The cheque shall be issued to the authorized officer of the respondent society.

6. The Co-operative Appellate Court shall endeavour to decide the appeal expeditiously and preferably within a period of six (06) months from the date of deposit of amount by the petitioners. Till the appeal is decided, the respondent/society shall not proceed with the execution proceedings. The writ petitions accordingly are disposed of. No costs.

[S. V. GANGAPURWALA, J.]