

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2530 OF 1998

Anant Marotrao Lohkare,
Age 65 years, Occ. Business,
R/o Snehanagar, Parbhani.

..Petitioner

Versus

1. Snehnagar Cooperative Housing
Society Limited, Parbhani, through
it's Chairman Manikrao Shankarrao
Khalikar, Age 60 Years, Occupation
Pensioner, R/o Snehnagar, Nanded.

2. Durgadas Damodharrao
Mohanpurkar, age 24 years,
Occupation Student,
R/o Pawde Galli, Dist. Parbhani.

3. Manik Bapurao Shinde
Age major, Occ. Business
R/o Snehanagar, Parbhani.

..Respondents.

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Advocate for Petitioner : Shri F.K.Patel
h/f Shri P.R.Katneshwarkar

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 06, 2017

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ORAL JUDGMENT :-

1. The petitioner is aggrieved by the order dated 6.5.1998, by which, his Appeal No.30 of 1998 has been rejected by the Maharashtra State Cooperative Appellate Court, Mumbai, Bench at Aurangabad (hereinafter, referred to as the "Appellate Court").

2. I have considered the strenuous submissions of the learned Advocate for the petitioner. Though, Court notice has been served upon the contesting respondent Nos.1 to 3, they have not entered an appearance either in person or through an Advocate.

3. The issue is with regard to a residential immovable property at Plot No.36 in the respondent No.1 / Cooperative Society. As the petitioner owed arrears towards the society, it filed a Dispute No.350 of 1996 before the Cooperative Court, seeking recovery of mesne profits and damages of Rs.96,000/-, eviction of the petitioner and for acquiring the possession of the residential property. The Cooperative Court has specifically recorded in the judgment that though the petitioner was duly served through registered post acknowledgment due, he still chose to remain absent. Contention of the petitioner is that the notice was not properly served. Consequentially, by the judgment dated 30.6.1997, the dispute was allowed.

4. The petitioner preferred an Appeal before the Cooperative Appellate Court on 13.4.1998 after he received a notice on 16.12.1997 in execution proceedings. An application for condonation of delay was filed and by the impugned order, the

same has been rejected.

5. This Court, by order dated 24.6.1998, had admitted the petition and refused ad-interim relief. After hearing the parties on 19.8.1998, interim relief was granted in terms of prayer clause (B). Thus, the impugned order as well as the judgment of the Cooperative Court has been stayed.

6. There is no dispute that the ex-parte judgment of the Cooperative Court is dated 30.6.1997 and the appeal was preferred on 13.4.1998. The limitation period is said to be of two months. The petitioner preferred his Appeal after a delay of 7 months and 13 days. It is stated that the petitioner received the notice in execution proceedings on 16.12.1997 and was not aware about the pending dispute before the Cooperative Court. If the date of knowledge as per the contention of the petitioner is to be accepted, the Appeal was delayed by 2 months.

7. It is settled law that in matters of condonation of delay a liberal view has to be taken, save and except in cases where oblique motives, dishonest intentions and laches are attributed to the conduct of the applicant. In the instant case, I do not find from the record that laches and dishonest intention have been

attributed to the conduct of the petitioner. It is equally settled that if by refusal to condone the delay, the applicant would be rendered remediless and if the issue of immovable property and especially residential accommodation is at issue, a pragmatic view has to be taken, rather than taking a pedantic view going by technicalities.

8. The Honourable Apex Court in the matter of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107] and Isha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [(2013) 12 SCC 649], has laid down the principles for condonation of delay. Paragraph No.3 of the Collector, Land Acquisition's case (supra), which reads as under:-

“ 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean

that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

9. Notwithstanding the above, while condoning the delay, the Court should be conscious about the hardships and inconvenience because caused to the other side, who would be continued in litigation if the delay is condoned. The hardships of the other sides can be reduced by imposing costs.

10. In the instant case, the petitioner is directed by the

Cooperative Court to be evicted and to pay Rs.800/- per month for illegal occupation of the premises w.e.f. 11.9.1996 till handing over of possession. The petitioner is, therefore, required to pay an amount of Rs.1,94,400/- from October 1996 till July 2017 for the occupation of the said premises as he is held to be a trespasser. Therefore, I deem it proper to balance the equities by directing the petitioner to deposit an amount of Rs.1,00,000/- before the Cooperative Appellate Court, Bench at Aurangabad as a condition for condoning the delay and registering the Appeal.

11. In the light of the above, this petition is partly allowed. The impugned order dated 6.5.1998 is quashed and set aside. The delay caused in filing the Appeal is condoned on the condition that the petitioner shall deposit an amount of Rs.1,00,000/- (Rs. One Lakh only/-) before the Cooperative Court within eight weeks from today, failing which, the Appeal which would be registered under the directions of this Court, shall stand dismissed.

12. The learned counsel for the petitioner prays for a date to appear before the Cooperative Appellate Court, Bench at Aurangabad. Request is accepted. He shall appear before the Cooperative Appellate Court, Bench at Aurangabad on 4.8.2017.

13. The Cooperative Appellate Court, Bench at Aurangabad shall register the Appeal and issue notices to the respondents in the Appeal. Needless to state, if the amount as directed is not deposited before the Cooperative Appellate Court, Bench at Aurangabad within the time ordered, the Cooperative Appellate Court, Bench at Aurangabad would therefore, proceed to dismiss the Appeal on this count.

(RAVINDRA V. GHUGE, J.)

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