

(1)

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

WRIT PETITION NO. 5778 OF 2013

Bharti Pitambar Barhate

...PETITIONER

VERSUS

State of Maharashtra and others

...RESPONDENTS

Mr S.B. Joshi, Asstt. Government Pleader for respondents No.1 to 3

Mr G.C. Navandar, Advocate for respondent No.4.

CORAM : R.D. Dhanuka, J.

DATE : 14th August, 2017

ORAL ORDER

None present for the petitioner.

2. Rule returnable forthwith. Learned Counsel for respondents waived service. By their consent, matter is heard finally.

3. By this petition, petitioner impugned the order dated 19th March 2013 passed by the learned Divisional Joint Registrar,

(2)

Nashik, rejecting the application for condonation of delay, filed by the petitioner on the ground that the petitioner has not deposited 50% of the payable amount in terms of Section 154(2-A) of the Maharashtra Co-operative Societies Act, 1960.

4. Learned Counsel Mr Navandar, appearing for respondent No.4, states that he has no objection if delay in filing revision application is condoned by this Court and the matter is remanded back for the purpose of considering the application under Section 154 of the Maharashtra Co-operative Societies Act, including the issue of pre-deposit U/S. 154 (2-A).

5. Mr Joshi, learned Assistant Government Pleader for respondents No. 1 to 3, invited my attention to the judgment of this Court in the case of **Vivek Bhila Patil and another Versus State of Maharashtra and others {2008 (3) Bom. C.R. 754}**, and would submit that application for condonation delay is rejected by the learned Joint Registrar on the ground that pre-deposit in terms of Section 154(2-A) of the Maharashtra Co-operative Societies Act, 1960, is not made.

6. Perusal of the impugned order passed by the learned

(3)

Joint Registrar reveals that application for condonation of delay is rejected on the ground that the petitioner has not made pre-deposit in terms of Sub-Section(2-A) of Section 154 of the Maharashtra Co-operative Societies Act, 1960.

7. This Court in case of **Vivek Bhila Patil**, (supra) has considered identical facts, and has held that bar under section 154(2-A) would not apply for consideration of an application for condonation of delay. In the event, the delay is condoned by the Divisional Joint Registrar, the rigours of Section 154(2-A) would then come into play.

8. On going through the ratio laid down in the decision of **Vivek Bhila Patil's** case (supra), in my view, learned Joint Registrar could not have rejected application for condonation of delay on the ground that the petitioner has not made pre-deposit under section 154 (2-A) of the Maharashtra Co-operative Societies Act. The question of pre-deposit would have arisen, if delay in filing revision application would have been condoned and when Revision Application would have been heard on merits.

9. Since the contesting respondent states that he has no

(4)

objection if delay in filing revision application is condoned by this Court and the matter is remanded back for the purpose of considering the application under Section 154 of the Maharashtra Co-operative Societies Act, including the issue of pre-deposit U/S. 154 (2-A), the application filed by the petitioner for condonation of delay in filing revision application is hereby condoned. Revision application is restored to the file.

10. The learned Joint Registrar to consider the provisions of pre-deposit in terms of Section 154(2-A) of the Maharashtra Co-operative Societies Act, on its merit before considering the revision application on merit. The learned Joint Registrar shall consider the said application, within eight weeks from the date of communication of this order.

11. Rule is made absolute in the aforesaid terms. There shall be no order as to costs. The parties to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)

pjm