

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.6667 OF 2016

01 Shrikant Vasant Patil,
age: 47 years, Occ: Business;

02 Jayant Namdeo Patil,
age: 47 years, Occ: Business;

Both R/o Jamner Road,
Anand Nagar, Bhusawal,
Tq.Bhusawal, District Jalgaon.

Petitioners

Versus

01 The State of Maharashtra,
through its Divisional Joint
Registrar, Nashik Division,
Nashik.

02 The Assistant Registrar,
Cooperative Societies,
Bhusawal, Tq. Bhusawal,
District Jalgaon.

03 Shri D.B.Mali,
Authorized Enquiry Officer,
Anand Urban Cooperative
Credit Society Limited,
Bhusawal, Tq. Bhusawal,
District Jalgaon.

04 The Chairman/Manager,
Anand Urban Co-operative
Credit Society Limited,
Bhusawal, Tq. Bhusawal,
District Jalgaon.

Respondents

Mr.V.B.Patil, advocate for the petitioners
Mr.A.V.Deshmukh, A.G.P. for Respondents No.1 & 2.
Mr.R.P.Adgaonkar, advocate holding for Mr.M.S.Patil, advocate for
Respondents No.3 & 4.

CORAM : S.B.SHUKRE, J.

DATE : 08th February, 2017

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 The appeal has been dismissed in default. According to the petitioners, the blame for dismissal of the appeal was largely upon their advocate. It is the contention of learned Counsel for petitioners that for the fault of the advocate, petitioners should not be made to suffer.

3 In fact, the application filed by them for restoration of appeal, does not state any reason as to why the application was filed after delay of about one year. Nevertheless, considering the nature of challenge raised in the appeal and also quantum of liability fastened upon the petitioners, I think that such matters are decided on merit rather than on some technical grounds. After all, petitioners have been directed to make good the loss caused to Respondent No.4-Society and such being the nature of the dispute, inconvenience caused to the parties, could also be compensated in terms of money.

4 Viewed in this way, I find that the impugned orders of dismissal of appeal in default as well as rejection of application for restoration of the appeal, deserve to be quashed and set aside and they are accordingly quashed and set aside.

5 Writ Petition is, thus, allowed subject to payment of cost of Rs.15,000/- (Rs.Fifteen thousand) by each of of the petitioners.

Learned Counsel for Respondent No.4 graciously submits that some amount of cost can also be deposited in the account of the High Court Advocates' Association Library at Aurangabad, and accordingly it is directed that amount of Rs.5000/- (Rs.Five thousand), payable by each of the petitioners, which would totally come to Rs.10,000/- (Rs.Ten thousand), shall be deposited with High Court Advocates' Association Library, Aurangabad and remaining amount of Rs.20,000/- (Rs.Twenty thousand) shall be paid to Respondent No.4-Society within two weeks from the date of the order. On deposit of the amount of cost, appeal shall be restored to its original file and shall be heard, as expeditiously as possible, preferably within six months from the date of appearance of the parties.

6 Rule is made absolute in above terms.

S.B.SHUKRE
JUDGE

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