

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 366 OF 2016
WITH
WRIT PETITION NO. 417 OF 2016

MANDAKINI SOMNATH GANGAWANE
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

Advocate for Petitioner : Shri V.B. Patil.
AGP for Respondent Nos. 1 & 2 : Shri N.T. Bhagat.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 24th July, 2017

PER COURT :

1. In both these matters, the petitioners are aggrieved by the order dated 29/06/2015, passed by the Divisional Joint Registrar, Cooperative Societies, Nashik, by which, the applications for condonation of delay filed by both the petitioners dated 15/07/2013, in Appeal Nos. A-138/2013 and A-132/2013 respectively, have been rejected.

2. Shri Patil, learned advocate for the petitioners has

strenuously criticized the impugned order. He relies upon the judgment of the Hon'ble Apex Court in the matter of Collector, Land Acquisition, Anantnag & Another Versus Mst. Katiji & Others **[AIR 1987 SC 1353 = (1987) 2 SCC 387]**, to support his contention that the delay caused deserves to be condoned. He, further submits that the enquiry under Section 88 of the Maharashtra Co-operative Societies Act has been completed and certain liabilities are fixed on the petitioners, who are Directors, in addition to the others i.e. Branch Manager and a Cashier. If the delay is not condoned they would not be in a position to challenge the conclusions arrived against them as they has been held guilty of misappropriation of amount of Rs. 66,00,000/- (Rupees Sixty Six Lakhs only).

3. I have considered the submissions of the learned counsel for the petitioners and the learned AGP on behalf of the State. With their assistance I have gone through the petition paper book.

4. The Hon'ble Apex Court has laid down the law for

condonation of delay in Collector Land Acquisition, Anantnag & Others' case (Supra), as well as in the matter of Esha Bhattacharjee Versus Raghunathpur Nafar Academy, [(2013) 12 SCC 649]. Certain principles have been culled out in the Esha Bhattacharjee's case.

5. The issue before me is as to what were the reasons put forth by these petitioners in their applications for condonation of delay. The record reveals that both these petitioners were Directors of the Co-Operative Society and the reasons put forth are that their economic condition was very poor and they did not have the money to engage an advocate. It is stated that the daughter of the second petitioner was unwell and she could not rise from her bed, She underwent some operation in Bombay in 2013.

6. The enquiry under Section 88 was concluded in the year 2008 and these petitioners were held guilty for their involvement in misappropriation of huge sums, by the report dated 06/05/2008. The applications for condonation of delay in filing

an appeal was filed on 15/07/2013, which is after five years.

The limitation was of 60 days.

7. I find that besides the first petitioner stating that her economic condition was bad and the second petitioner stating that his daughter is unwell, no reasons were cited in their short applications for condonation of delay. Even if these two applications were to be allowed, I do not find sufficient material before me, by which, I could support a conclusion of condoning the delay of five years. In the absence of reasons which would convince the Court that the delay is properly explained and justified, these petitions cannot be allowed. It is trite law that delay is not to be condoned by showing sympathy towards a litigant.

8. Considering the above, I do not find that the petitioners have explained the delay so as to convince the Court to allow these petitions. Keeping in view the feeble grounds set out, I do not think that the delay of five years has been properly explained.

9. In the light of the above, both these petitions being devoid of merits, are therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

S.P.C.