

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2412 OF 2014

Vivek N. Pethkar	...	Petitioner
Vs.		
Pune Zilla Sahakari Dudh Utpadak		
Sangh Maryadit, Pune. & Anr.	...	Respondents

Mr.Makrand A. Utagikar,for the petitioner
Mr.J. Shekhar i/b. J. Shekhar & Co. for the respondents.

CORAM: SMT.SADHANA S.JADHAV, J.

DATE : 9th October, 2017.

P.C.

Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. The petitioner herein happens to be the original opponent in Dispute No.288 of 1997 which was filed before the Co-operative Court at Pune. The said Dispute was allowed by a judgment and order dated 30.11.2009 and award was drawn on the same day i.e. 30.11.2009.

3. The original opponent filed an application seeking condonatin of delay in filing the appeal on 22.7.2010 before the appellate Court although the limitation for filing the appeal is 30 days. There was a delay of 142 days in presenting the appeal. In fact, it is a money claim and no sufficient cause for condoning the delay was stated in the application seeking condonation of delay and the Dispute was being argued on merits. The said

application was registered as Misc. Application No.49 of 2010. The said application was dismissed for want of prosecution by an order dated 22.2.2012.

4. It appears from the records that the petitioner herein filed an application on 3.10.2012 seeking the relief of condonation of delay without filing an application seeking quashing and setting aside of the order dated 22.2.2012 or restoring the application and praying that the same be heard on merits. It is in these circumstances that the learned appellate Court by an order dated 13.12.2013 was pleased to dismiss Misc. Application No.40 of 2013 and the learned Court had observed that the application seeking condonation of delay was filed without seeking restoration of the said application to be heard on merits.

5. By this Writ Petition, the petitioner impugns the order dated 13.12.2013. The present petition is filed on 1.2.2014. Notice was issued to the respondent by an order dated 28.10.2014 and since then the matter has been adjourned on one or the other ground or it could not be heard due to paucity of time.

6. The learned counsel for the petitioner vehemently submits that the learned counsel representing the petitioner had inadvertently relied upon an application seeking condonation of delay i.e. Misc. Application No.40

of 2013 without filing an application seeking restoration and also prays that the petitioner should not be allowed to suffer irreparable loss for the negligence or inadvertence on the part of the Advocate representing the petitioner. It is submitted across the bar that the petitioner has a good case on merits and the petitioner desires to file an appeal before the Co-operative Appellate Court. The prayer seems to be just and fair. The petitioner cannot be denied his statutory right to file an appeal challenging the said judgment and order and the award.

7. Hence, the petitioner is granted liberty to file an appropriate proceeding by way of an appeal before the Co-operative Appellate Court. It is made clear that the petition has not been heard on merits. The petitioner shall deposit costs of Rs.10,000/- in the Co-operative Appellate Court along with the application seeking condonation of delay in filing the appeal. The learned Co-operative Appellate Court shall consider the time spent in this Court prosecuting the present petition. In the interest of justice, the appeal be heard on merits. The appeal be filed along with a copy of the present order. The learned appellate Court shall entertain the appeal only in the eventuality that it is filed on or before 30.11.2017. Rule is discharged. The Petition stands disposed of.

[SMT. SADHANA S.JADHAV, J.]