IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPEALLATE JURISDICTION

WRIT PETITION NO. 8286 OF 2015

M/s. Sai Sakshi Advertising ..Vs.. The Divisional Joint Registrar of Co-operative Societies, Mumbai & Anr.

Office Notes, Office Memorandam of appearances, Court's orders or directions & Registrar's orders.	Court's or Judge's orders

Mr. Kaustubh Javale I/by. Abhay Parab for Petitioner.
Mr. S. D. Rayrikar, AGP for Respondent No.1.
Mr. D. R. Tolankar for Respondent No.2.

CORAM : K. K. TATED, J.
DATE : JULY 01, 2017.

P.C. :

. Heard learned Counsel for parties.

2. By this petition under Articles 226 and 227 of the Constitution of India, Petitioner is challenging the order dated 10th February, 2015 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai allowing the Respondent No.2's Application for condonation of 950 days' delay in filing Revision Application No. 383 of 2014.

3. The learned Counsel for Petitioner submit that the Divisional Joint Registrar

failed to consider the fact that the Respondent No.2 - Bank failed to disclose sufficient cause for condonation of inordinate delay of 950 days in filing Revision Application. He further submit that even at the time of passing impugned order dated 10th February, 2015, the Divisional Joint Registrar failed to give any reason why he is allowing the Respondent No.2's application for condonation of inordinate delay.

4. The learned Counsel for Petitioner submit that they have already paid the entire amount due and payable to the Petitioner. He submit that the matter is settled between the parties. In spite of that, Respondent No.2 had filed application for condonation of delay. Hence, the impugned order dated 10th February, 2015 passed by the Divisional Joint Registrar of Co-operative Societies allowing the Respondent No.2's application for condonation of delay in filing Revision Application No. 383 of 2014 be set aside.

5. On the other hand, learned Counsel appearing on behalf of Respondent No.2 – Bank submit that at the time of filing any litigation they have to take approval from several departments/officer. In that process there was a delay on their part to prefer

Revision Application immediately. Hence, they preferred the application for condonation of delay which was decided on its own merits.

6. The learned Counsel for Respondent No.2 - Bank submit that in any case on technical ground, litigant do not deprived from his right. Hence, the present Writ Petition be dismissed with costs.

7. I heard both the sides at length. By this Petition, Petitioner is challenging the order dated 10th February, 2015 passed by the Divisional Joint Registrar, Mumbai allowing Respondent No.2's application for condonation of delay in filing Revision Application No. 383 of 2014.

8. It is to be noted that Respondent No.2 is Bank. They have to take decision at several level to file any litigation on behalf of Bank and in that process there was a delay on their part to prefer Revision Application immediately. Apart from that, Respondent No.2 filed Additional Affidavit dated 12th June, 2017 explaining the delay. Even in Application for condonation of delay dated 17th September, 2014 they had explained the delay in para 3 of that application which read thus :

"The Applicant further states that as the Applicant were involved in various inquiry proceedings and also busy with the compliances in respect of the inquiry proceedings and Reserve Bank of India guidelines etc. the Applicant Bank further states that, the Recovery Certificate issued on 28.11.2011 for the lesser amount than the claim amount. The Borrowers and Respondents have not paid the Recovery Certificate amount within the 7 days period from the date of receipt of the Recovery Certificate. One of the director Mr. Angre and others have made various complaints to the various authorities, therefore there was inquiry u.s. 88 was conducted in the year 2012 till 2013, in which some of the office bearers have held responsible for the losses and as such officers have been suspended. Four directors of the bank have filed Writ Petition in the High Court based on the various complaints made to the various authorities the High Court matter is pending. 89A inquiries and DDR inquiries was taken place in the year 2012 – 2013 in which the bank was busy with the inquiries and also court matters, therefore the Recovery Certificate was not challenged before this Hon'ble Authority within time, even RBI have pointed out such recovery in its inspection report. Therefore there is a delay about 950 days for filing this Revision Application which delay is not intentionally are purposely, therefore there is delay in filing this application which may condoned in the interest of justice and equity whereas public money have been involved to be recovered from the Respondents. In the circumstance, it is necessary to challenge the illegal, improper Recovery Certificate dated 28.11.2011."

9. Apart from that, The Apex Court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123*** held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

> *11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

10. Considering the submission made by the learned Counsel for Petitioner and the averments made in Application, I do not find

any reason to interfere in the impugned order dated 10th February, 2015.

11. Hence, Writ Petition stand rejected.

12. No order as to costs.

(K.K.TATED, J.)