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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST) NO. 33165 OF 2016

Hind Co-op.Hsg. Society Ltd.	...Petitioner
VS	
Prakashwati Agarwal & Anr.	...Respondents

WITH
WRIT PETITION (ST) NO. 33166 OF 2016

Hind Co-op.Hsg. Society Ltd.	...Petitioner
VS	
Shankerlal Agarwal & Anr.	...Respondents

WITH
WRIT PETITION (ST) NO. 33176 OF 2016

Hind Co-op.Hsg. Society Ltd.	...Petitioner
VS	
Pramod B. Agarwal & Anr.	...Respondents

WITH
WRIT PETITION (ST) NO. 33187 OF 2016

Hind Co-op.Hsg. Society Ltd.	...Petitioner
VS	
Sunita Agarwal & Anr.	...Respondents

WITH
WRIT PETITION (ST) NO. 33189 OF 2016

Hind Co-op.Hsg. Society Ltd.	...Petitioner
VS	
Jyotikumar Agarwal & Anr.	...Respondents

WITH
WRIT PETITION NO. 418 OF 2017

Hind Co-op.Hsg. Society Ltd.	...Petitioner
VS	
Balkishan Agarwal & Anr.	...Respondents

.....
Mr Jignesh Shah for the Petitioner in all Petitions.
Mr S.A.Sawant with Abhishekh Deshmukh for Respondent No.1
in all Petitions.

.....
CORAM : **B. P. COLABAWALLA, J.**
SEPTEMBER 20, 2017.

P.C. :

1. The first five Writ Petitions were on board today. The sixth Writ Petition, namely, Writ Petition No. 418 of 2017, though not shown on board today, by consent of parties, was taken on board. Rule is issued in all the Writ Petitions. Respondents waive service. By consent of parties, rule is made returnable forthwith in all the Writ Petitions and heard finally.

2. These Writ Petitions challenge six orders all dated 7th January, 2016 (for short **“the impugned orders”**) passed by Respondent No.2 (Deputy Registrar, Co-operative Societies,

Mumbai Division) in an application for condonation of delay in six different Revision Applications filed by the Petitioner Society. Since it is common ground before me that the facts in all the Writ Petitions are identical, they are all being disposed of by this common order and judgement. For the sake of convenience, I shall refer to the facts from Writ Petition (ST) No. 33165 of 2016.

3. The Petitioner is a Co-operative Housing Society registered under the provisions of the Maharashtra Co-operative Societies, Act, 1960 (for short **“the MCS Act”**). Respondent No.1 is a member of the Petitioner Society and Respondent No.2 is the Deputy Registrar before whom Revision Application No.8 of 2015 was filed and who has passed the impugned order.

4. In April 2010, the Petitioner Society filed an Application under Section 101 of the MCS Act before the learned Assistant Registrar, Co-operative Societies, for issuance of a Recovery Certificate against Respondent No.1. After completion

of pleadings and hearing the parties, the Assistant Registrar issued a Recovery Certificate dated 20th April, 2011 against Respondent No.1. Thereafter, on 12th July, 2013, the Petitioner Society filed an Application before the Special Recovery and Sales Officer for execution of the said Recovery Certificate.

5. In the interregnum, Respondent No.1, being aggrieved by the Recovery Certificate dated 20th April, 2011, sometime in 2012, filed a Revision Application before Respondent No.2 challenging the said Recovery Certificate. After hearing both parties, Respondent No.2 vide its order dated 22nd January, 2013 quashed and set aside the Recovery Certificate dated 20th April, 2011 and remanded the matter back before the Assistant Registrar with directions to conclude the fresh hearing of the matter within two months from the date of the order. Thereafter, the Assistant Registrar again heard the Petitioner as well as Respondent No.1. After hearing both parties, the Assistant Registrar vide its order dated 20th May, 2013 rejected the Application for issuance of the Recovery Certificate under Section 101 of the MCS Act.

6. Being aggrieved and dis-satisfied with the order dated 20th May, 2013, the Petitioner Society filed a Revision Application before Respondent No.2. Once again, Respondent No.2 vide its order dated 7th March, 2014, quashed and set aside the order dated 20th May, 2013 and remanded the matter back to the Assistant Registrar to decide the matter afresh. After hearing the parties, the Assistant Registrar, vide its order dated 20th November, 2014, again rejected the Application for issuance of the Recovery Certificate filed under Section 101 of the MCS Act.

7. Being aggrieved by this order of the Assistant Registrar, the Petitioner Society filed Revision Application No. 8 of 2015 before Respondent No.2 on 4th April, 2015. Since there was a delay in filing the Revision Application of approximately 52 days, an application for condonation of delay was also filed. This application for condonation of delay was dismissed by the impugned order and hence the present Writ Petition.

8. In this factual backdrop, Mr Shah learned Advocate appearing for the Petitioner, submitted that the revisional authority had gone completely wrong in dismissing the Petitioner's Application for condonation of delay. Mr Shah submitted that the delay had been sufficiently explained inasmuch as the Treasurer of the Petitioner Society and who was in the know of the things, was unwell and was advised rest and which was the reason why there was a delay in filing the Revision Application. The Petitioner had also produced a medical certificate dated 5th January, 2015 which can be found at page 46 of the paper-book in Writ Petition (St) No.33165 of 2016. He submitted that the delay was not intentional and no prejudice would be caused to Respondent No.1 if the delay was condoned. He submitted that the finding of Respondent No.2 (Deputy Registrar) that no sufficient cause was shown, was wholly perverse especially considering that the delay was only of 52 days and was certainly not intentional.

9. Mr. Shah submitted that in an application for condonation of delay the Court should adopt a justice oriented

approach and unless it was shown that the delay was inordinate or that there was lack of bonafides, the Court should take a liberal approach in condoning the delay. For all these reasons he submitted that the impugned order dated 7th January, 2016 be set aside and the Revision Applications filed by the Petitioner Society be heard on merits.

10. On the other hand, Mr Sawant, learned advocate appearing for Respondent No.1, vehemently opposed the Writ Petitions. He took me through the impugned order and submitted that the same requires no interference. He submitted that even the medical certificate relied upon by the Petitioner Society clearly states that Mr Srinivasan (the Treasurer) was advised rest for a period of 3 to 4 weeks from 5th January, 2015. This would only aid the Petitioner in explaining the delay up to 5th February, 2015 but not thereafter. He, therefore, submitted that the findings given by the Deputy Registrar cannot, by any stretch of the imagination be termed as perverse requiring any interference by this Court in its writ jurisdiction. For all the aforesaid reasons, Mr Sawant submitted that the Writ Petitions

be dismissed.

11. I have heard the learned advocates for parties at length and perused the papers and proceedings in the Writ Petitions. I find that despite the fact that there has been delay of approximately 52 days, there is sufficient explanation given for the same. Even though it is true that the medical certificate states that Mr Srinivasan was advised rest for a period of 3 to 4 weeks, the fact still remains that he had suffered a fracture in his left hand. This has not been disputed by Respondent No.1. In an application for condonation of delay the Courts should not adopt an injustice oriented approach in rejecting the application. However, the Courts while allowing such an application have to draw a distinction between delay and inordinate delay and want of bonafides or negligence. Once there has been no inordinate delay and there is no lack of bonafides or negligence, then the Courts should be liberal in condoning the delay so that the matter can be heard on merits.

12. In the facts of the present case, I do not find that the

delay has been inordinate or there is any lack of bonafides, inaction or negligence on the part of the Petitioner Society. The Treasurer of the Petitioner, and who was in the know of things, had suffered a fracture of his left hand and was advised rest by the doctor. In these circumstances, I find that the Deputy Registrar ought to have condoned the delay and heard the Revision Application on merits by imposing costs on the Petitioner Society.

13. In view of the aforesaid discussion, I pass the following order.

ORDER

- (a) The six impugned orders of the Deputy Registrar dated 7th January, 2016 are hereby quashed and set aside and the applications for condonation of delay filed by the Petitioner Society are allowed subject to the condition that in each of the Writ Petitions costs of Rs.10,000/- be paid by the Petitioner Society to Respondent No.1. These costs shall be paid within a period of four weeks from today. If this condition is satisfied, the Deputy Registrar shall hear the Revision Applications filed by the Petitioner Society on

merits and in accordance with law;

- (b) Needless to clarify that if the costs are not paid within the period of four weeks from today, then these Writ Petitions shall automatically stand dismissed without further reference to the Court and the impugned orders shall stand revived;

14. The writ Petitions are disposed of in the aforesaid terms. It is clarified that if the costs are paid as directed earlier, all contentions of all parties are kept open to be argued before the Revisional Authority.

(B. P. COLABAWALLA, J.)