

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 516 OF 2017

Shivajirao Salunke Nagar Co-operative
Housing Society Ltd., Osmanabad,
Through its Chairman

.. **Petitioner**

Versus

The Assistant Registrar,
Co-operative Societies, Osmanabad
and others

.. **Respondents**

Mr. R. L. Kute, Advocate for the Petitioner.

Mr. S. B. Yawalkar, Addl. G. P. for Respondent
Nos. 1 and 2.

Mr. Ajit B. Kadethankar, Advocate for Respondent
No. 3.

CORAM: S. V. GANGAPURWALA, J.

DATE: 16th August, 2018

PER COURT :

1. Respondent no. 3 had filed an appeal before respondent no. 2 against his expulsion as a member. The appeal was filed along with an application for condonation of delay. Respondent no. 2 allowed the appeal.

2. Mr. Kute, learned counsel for the petitioner submits that without condoning the delay and without passing any orders upon the application

for condonation of delay, respondent no. 2 has allowed the appeal of respondent no. 3. The delay was of more than twenty years.

3. Mr. Kadethankar, learned counsel for respondent no. 3 submits that the Court was satisfied with the merits of the contentions of respondent no. 3, and thereafter has passed the order. Respondent no. 3 was expelled without adhering to the principles of natural justice. All these aspects are rightly considered.

4. It appears from the record that respondent no. 3 had filed an application for condonation of delay in filing the appeal before respondent no. 2. The order under appeal was passed on 03.03.1995. The appeal was filed in the year – 2015.

5. It is trite that whenever an application for condonation of delay is filed along with the appeal, the authority has to first decide the application for condonation of delay, and if the

authority condones the delay, then only can decide the appeal on merits. In the present case, as accepted by the parties, respondent no. 2 did not pass any order on the application for condonation of delay and straightway decided the appeal. The same is not permissible.

6. In the light of above, the impugned order is quashed and set aside. Respondent no. 2 shall first decide the application for condonation of delay filed by the present respondent no. 3 on its own merits, and depending upon the decision taken on the application for condonation of delay shall proceed further. The parties shall appear before respondent no. 2 on 03.09.2018. In view of that it is not necessary for respondent no. 2 to issue separate notice to the parties. The say has already been filed by the petitioner to the application of respondent 3 for condonation of delay. The respondent no. 2 shall hear the application for condonation of delay on its own merits and pass the orders within two (2)

months on the condonation of delay application from the date of appearance of the parties. It is made clear that I have not dealt with the contentions of the respective parties on the merits of the matter.

7. Writ Petition is disposed of. No costs.

[S. V. GANGAPURWALA, J.]

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