

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

WRIT PETITION NO.10804 OF 2017

Mumbai District Central Co-operative
Bank Limited ... Petitioner

Vs.

Rajaram Dhonduji Dongre and ors. ... Respondents

Mr.Sampatrao Pawar for the Petitioner.

Mr.Kunal Bhangre i/by Mr. Neuty Thakkar for Respondent No.1.

Mr.Rajendra V. Pai i/by Ms.Apurva M. Bhat for Respondent No.4.

CORAM : M.S.SONAK, J.

DATE : APRIL 20, 2018.

P.C. :

1. Heard Mr. Pawar, learned counsel for the Petitioner and Mr. Mr.Kunal Bhangre i/by Mr. Neuty Thakkar for Respondent No.1 and Mr.Rajendra V. Pai i/by Ms.Apurva M. Bhat for Respondent No.4.

2. The challenge in this petition is to the order dated 7th July 2017, by which the Maharashtra State Co-operative Appellate Court (Appeal court) has condoned the delay of three months and 24 days in institution of appeal by Respondent No.1.

3. Mr. Pawar, the learned counsel for the Petitioner submits that a summary suit had been instituted by the Petitioner-Bank. In

such a suit, no leave to defend was ultimately granted to the Respondent No.1. Since, no leave was granted, an award came to be made. He submits that in fact against such an award an appeal is not even maintainable. He further submits that there is no sufficient cause shown for the delay of 3 months and 24 days in instituting the appeal. He submits that in fact the delay is of much more than 3 months and 24 days, since the delay is to be computed from the year 1996. For all these reasons, Mr. Pawar submits that the impugned order is liable to be set aside.

4. The learned counsel for the Respondents submits that the judgment and award against which the appeal has been instituted was made on 14th September 2016. There is delay of only 3 months and 24 days in instituting the appeal. The applicant who applied for condonation of delay was 87 years of age and physically incapacitated. Therefore, there was delay. Learned counsel for the Respondents submits that this is sufficient cause for condonation of delay and discretion has been exercised reasonably by the appeal court.

5. In this petition, the only issue is whether discretion for condoning the delay has been exercised reasonably or not. The

explanation for the delay is that the applicant was 87 years of age and was physically incapacitated. The appeal court has accepted this explanation as constituting sufficient cause for delay in instituting appeal. There is no unreasonableness or perversity involved in the exercise of discretion. In case of **N.Balakrishnan Vs. M. Krishnamurthy**¹ the Hon'ble Supreme Court held that where a court condones the delay in positive exercise of discretion superior court should not normally disturb the same unless it is established that the exercise of discretion was on wholly untenable ground or arbitrary or perverse.

6. Although, there is no case made out to interfere with the impugned order by which delay has been condoned, that by itself, does not mean that the objection of the Petitioner that the appeal itself was not maintainable stands decided against the petitioner. Now that the delay is condoned. It is always open to the petitioners to urge that the appeal itself is not maintainable. Such issue about the maintainability of the appeal is specifically kept open, since, it is contention of Mr. Pawar that once leave to

1 (1998)7 SCC 123

defend is rejected, no appeal is maintainable against the final judgment and award.

7. With the aforesaid clarification, and without interfering with the impugned order, this petition is disposed of.

8. There shall be no order as to costs.

(M.S.SONAK, J.)

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