

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10493 OF 2014

Mr Sudhir Puransingh Chavan and anr.	... Petitioners
v/s	
Dr Aparna Vijay Kelkar and others	... Respondents

Mr Idris M. Vohra for Petitioners.
Ms Manjiri Parasnis for Respondent Nos.1 to 12.

CORAM : B.P. COLABAWALLA, J.

DATE : 13th DECEMBER, 2018

P.C.:

1. This Writ Petition has been filed seeking to challenge the order dated 27th July 2014 passed by the Co-operative Court, Raigad / Ratnagiri at Alibag in Dispute No.121 of 2014 as well as the judgment and order of the Maharashtra State Co-operative Appellate Court, Mumbai dated 29th September 2014 passed in Appeal No.80 of 2014.

2. The Respondents herein who were the disputants before the Co-

operative Court, had filed a dispute for setting aside the resolution dated 10th October 2006 passed by the Petitioner – Society in its Special General Body Meeting. This dispute was filed on 26th June 2015 contending that the Respondents came to know about this Resolution in the year 2010. This dispute was formally admitted and registered by the Trial Court and summons were issued to the Petitioner. Once this was done, the Petitioner – Society filed its appearance and lodged an objection to the maintainability of dispute on the ground of limitation. Thereafter, the Respondents (disputants before the Trial Court) filed an application for condonation of delay under section 92(3) of the Maharashtra Co-Operative Societies Act 1960. In these circumstances, the Trial Court accordingly framed a preliminary issue regarding limitation under section 9-A of the C.P.C.

3. After hearing the parties, the Trial Court held that though the dispute was filed after the period of limitation, a case was made out for condoning the delay and hence condoned the same. Accordingly, it held that the dispute was maintainable and the prayer for rejection of dispute was negated. Being aggrieved by this order, the Petitioner – Society approached the Maharashtra State Co-Operative Appellate Court, Mumbai. The Appeal Court also rejected the appeal.

4. I have gone through both these orders. The Trial Court as well as the Appellate Court invoked the provisions of section 92(3) of the said Act to condone the delay even after the expiry of the limitation period. As correctly recorded by the appeal Court, the Co-Operative Courts have been given wider powers and than a Civil Court for condoning the delay and to admit a dispute after the expiry of the limitation period subject to the disputant satisfying the Court that he has sufficient cause for not preferring the dispute within such period. The Trial Court and the Appeal Court, after considering all these factors, thereafter came to the conclusion that a case for condoning the delay was made out and hence there was no question of the dispute being barred by the law of limitation. It is in these circumstances that the preliminary issue under section 9-A of C.P.C. came to be rejected by both the lower Courts.

5. Having gone through both the orders, I find that they are well reasoned and have applied the correct provisions of law to come to the conclusion that they have. I do not find that they suffer from any perversity and/or are vitiated by any error apparent on the face of the record requiring interference under Article 227 of the Constitution of India. The dispute before the Trial Court is still pending and not decided.

6. Taking an overall view of the matter, I do not think that this is a fit

case to interfere in the impugned order. The Writ Petition therefore dismissed.
However, there shall be no order as to costs.

(B. P. COLABAWALLA, J.)