

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 9614 OF 2014

Ramchandra Satappa Bhosale ... Petitioner
Vs.
Shri Margai Nagari Sahakari Pat Sanstha
Maryadit, Pangire and Ors. ... Respondents

Mr. Chetan G. Patil, advocatet for the Petitioner.
Mr. Ashish Pawar, a/w Megha Jain i/b Vinayak Salokhe, for the
Respondent No. 1.

CORAM : M. S. SONAK, J.

DATE : MARCH 14, 2019

ORAL JUDGMENT:

1. Heard Mr. Chetan Patil, learned counsel for the petitioner and Mr. Ashish Pawar, learned counsel for respondent No. 1.
2. Mr. Patil, learned counsel for the petitioner, states that respondent Nos. 2 and 3 are guarantors and in that sense formal parties to this petition. He submits that they have even been served in this petition.
3. Accordingly, rule. Rule is made returnable forthwith. Mr. Ashish Pawar waives notice for respondent No.1. By consent, petition is taken up for final hearing.

4. The challenge in this petition is to the order dated 9/9/2014, by which the learned appellate court has declined to condone the delay of 283 days in instituting an appeal against the judgment and award dated 8/8/2012 made by the Co-operative Court. The record indicates that the application seeking condonation of delay was not responded to by the respondent No.1 herein. Therefore, the averments in the said application, which were duly proved by the affidavit of the petitioner, were uncontroverted.

5. The petitioner in his application seeking condonation of delay has stated that he is an illiterate agriculturist and was not really aware of the order made by the Co-operative Court. It is averred that petitioner obtained knowledge of the order when he was served with the execution process. There is no denial to this factual averment. Besides, Mr. Patil, learned counsel for the petitioner points out that section 152(3) of the Maharashtra Co-operatives Societies Act, 1960 provides that an appeal against an order or decision of the co-operative Court shall be filed within two months from the date of communication of the order or decision. In the present case, there is no record that the order or decision of the co-operative Court was formally communicated to the petitioner. Therefore, it can be

accepted that order / decision of the Co-operative Court was communicated to the petitioner on the date when he received the notice in the execution proceedings.

6. Even though there is delay of 283 days in filing the appeal, it can be said that the petitioner showed sufficient cause. Mr. Pawar, however, relies on Judgment of this Court in **Executive Engineer and Ors. Vs. Avinash V. Joshi**, reported in **2018 (3) Bom.C.R. 234** to submit that unless proper cause is shown, the delay cannot be condoned by merely adopting liberal construction. The facts in the present case are in no manner comparable to the facts in **Executive Engineer and Ors. Vs. Avinash V. Joshi** (supra). In that case, the state Government, after inordinate delay ranging between 655 and 1399 days had instituted appeals under the Land Acquisition Act, 1894. Observation made in the said case are in the context of such delay, where the State Government was the appellant.

7. Mr. Pawar has also relied upon the decision of the learned Single Judge of the Madras High Court in **N. Sengottian and Ors. Vs. Shanmughavadivu and Ors.**, reported in **2016 0 Supreme (Mad) 3346**. In this case, learned Single Judge of the

Madras High Court, by referring to yet another decision of the Madras High Court, has observed that the Court expects the parties to be vigilant and sensitive on the proceedings of the Court and when the case was in the part heard stage, it is the duty of the parties to follow the conduct of the case and contact their advocate also to know about the stage of the case. But the defendant has failed to follow the proceedings because of their lethargic attitude. It is well settled principle that the length of the delay is not material, but whether was sufficiently explained has to be looked into.

8. In the present case, the petitioner is an illiterate agriculturist. No doubt, the petitioner should have been diligent when the matter was pending before Co-operative Court. However, in the present case, the delay arises from the date the co-operative Court made its order. The delay has been sufficiently explained in the present case.

9. In **N. Balakrishnan Vs. M. Krishnamurthy**, reported in **AIR 1998 SC. 3222**, Hon'ble Apex Court has held that in matters of condonation of delay, there can be some lapses on the part of the party seeking condonation. However, so long as the conduct of the applicant is not malafide and the applicant seeking condonation of

delay is not intentionally prolonging the matter, utmost consideration is required to be shown to such applicant. The relevant observations read thus :

“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. In the aforesaid case, the Hon'ble Apex Court has been made it clear that the opposite party, who is loser cannot be totally forgotten. Therefore, it is necessary to balance the equities and if necessary compensate the opposite manner for his loss.

11. In the present case, the execution of the award had been stayed by this Court. Possibly, since, it was expected that this petition would be disposed at an early date, no condition was imposed upon

the petitioner to deposit the amount of the impugned award. The award impugned is in the range of Rs. 97, 000/- with the interest rate of 20% per annum. The petitioner is required to put some terms with regard to stay to the execution of the impugned award.

12. Accordingly, the petition is allowed as per following order:

- (a) The impugned order made by the appellate Court is hereby set aside and the delay in institution of the appeal against order dated 8/8/2012 is hereby condoned, subject to payment of costs of Rs.5,000/- by the petitioner to the respondent No.1, society within a period of four weeks from today. If no costs are paid within four weeks from today, then the petition shall stand dismissed without further reference to this Court.
- (b) Further, hearing in the appeal before the appellate court is expedited and the learned appellate court is directed to dispose of appeal within a period of six months from today.
- (c) The execution of the decision / award dated 8/8/2012 is stayed during the pendency of the appeal, subject to the petitioner depositing amount of Rs.1,00,000/- with the respondent No.1 within

four weeks from today. Such deposit shall, undoubtedly, be without prejudice to the rights and contentions of the petitioner in the appeal. If no such amount is deposited within four weeks from today, the respondent No.1 shall be entitled to execute the award dated 8/8/2012 made by the Co-operative Court, notwithstanding the pendency of the appeal. Further, the direction for disposal of the appeal within six months from today, will also not apply, and the appellate court can dispose of the appeal as per its turn.

- (d) The parties to appear before the appellate court on 15th April, 2019.
- (e) Rule is made absolute to the aforesaid extent.
- (f) Parties to act on an authenticated copy of this order.

Sd/-
(M. S. SONAK, J.)