

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

**WRIT PETITION NO.519 OF 2019**

Mr.Tushar Khivaj Kuwad and anr. ... Petitioners

V/s.

Premnagar Co-operative Housing Society... Respondent

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Mr.S.S.Kanetkar, Advocate for the Petitioners.

Mr.S.S.Panchpor, Advocate for the Respondent-State.

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**CORAM : UJJAL BHUYAN, J.**

**DATE : NOVEMBER 15, 2019.**

**P.C.:-**

1. Heard Mr.S.S.Kanetkar, learned counsel for the petitioners; and Mr.S.S.Panchpor, learned counsel for the respondent.

2. By way of this petition filed under Articles 226 and 227 of the Constitution of India, petitioners have assailed the legality and correctness of the order dated 15<sup>th</sup> November, 2018 passed by the Maharashtra Co-operative Appellate Court, Mumbai Bench at Pune, in

Miscellaneous Application No.98 of 2018 condoning the delay in filing the appeal by the respondent.

3. Petitioners as the disputants had lodged a dispute against the respondent before the Co-operative Court No.1, Pune, which was registered as Dispute Application No.10 of 2016. By order dated 20<sup>th</sup> May, 2016, the dispute was answered in favour of the petitioners by directing respondent No.1 to pay an amount of Rs.5,76,940.00 to the petitioners with interest at the rate of 12% p.a. from the date of lodging the dispute till realization and in addition to pay cost of the dispute.

4. From the order dated 20<sup>th</sup> May, 2016, it is seen that summons issued by the Co-operative Court were duly served upon the respondent, but inspite of service of notice respondent remained absent compelling the Co-operative Court to proceed ex-parte. Thereafter, order dated 20<sup>th</sup> May, 2016 was passed.

5. Petitioners initiated execution proceeding. Faced with the execution proceeding, respondent preferred appeal before the Maharashtra Co-operative Appellate Court, Mumbai, Bench at Pune (Appellate Court). Since there was delay of 799 days (according to the respondent) the appeal was accompanied by an application for condonation of delay which was registered as Miscellaneous Application No.98 of 2018. The Miscellaneous Application was contested by the petitioners. Appellate Court by the order dated 15<sup>th</sup> November, 2018 condoned the delay though cost of Rs.5,000/- was imposed on the respondent.

6. It is this order which is under challenge in the present proceeding.

7. A perusal of order dated 15<sup>th</sup> November, 2018 would go to show that according to the Appellate Court the delay was not of 799 days, but was of 802 days. Appellate Court held that reasons assigned by the respondent for condonation of delay was not convincing

and acceptable. Appellate Court further held that the decree was basically a money decree and that the respondent was saddled with a huge amount. However, taking the view that since respondent wanted to pursue the appeal on merit, cause of justice would be defeated if the delay was not condoned. Accordingly, the delay was condoned by imposing cost of Rs.5,000/-.

8. It is true that law relating to condonation of delay in judicial or quasi-judicial proceeding has undergone a change. Earlier a strict view was taken and each day of delay was required to be explained. Over the years courts have taken the view that if there is a merit in the matter, delay should not come in the way for adjudicating the dispute on merit and therefore, a liberal view is taken. To that extent, the order of the Appellate Court condoning the delay may not be faulted notwithstanding the fact that reasons assigned by the respondent for condonation of delay were not convincing. This is more so when it had defaulted in contesting the dispute despite notice.

9. In such circumstances, court is of the view that it would sub-serve the cause of justice if the respondent is directed to deposit 25% of the awarded amount before the Executing Court, which may be retained by the Executing Court till disposal of the appeal and the appeal itself may be decided expeditiously.

10. Accordingly and in the light of the above, the following orders are passed:-

- (i) Respondent shall deposit 25% of Rs.5,76,940.00 within a period of four weeks from today before the Executing Court and furnish proof of deposit before the Appellate Court.
- (ii) On such deposit being made, the Appellate Court may expedite hearing of the appeal filed by the respondent and conclude the same within a period of six weeks from the date of deposit.
- (iii) The amount so deposited shall be retained till disposal of the appeal.

(iv) In the event respondent fails to deposit the amount as indicated above, the appeal filed by the respondent would stand dismissed.

11. Writ petition is disposed of.

**(UJJAL BHUYAN, J.)**

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