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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 1766 OF 2019**

Rita Martis

.....Petitioner

V/s.

Falguni Dhruva and others

.....Respondents

WITH**WRIT PETITION NO. 1768 OF 2019**

Alveena Ceaser Gonsalves

....Petitioner

V/s.

Mansi Ashwin Dhruva and others

....Respondents

Mr. Ranjeev Carvalho alongwith Mr. Ritesh Jain & Sriraj Menon i/b
MJ Juris for the Petitioners

Mr. Prakash Shinde i/b MDP & Partners for respondent no. 1

Mr. Piyush N. Shh with Mr. Jay Vora for respondent no. 2

Mr. P. P. Pujari AGP for the State

Smt. Joyce Rath respondent no. 3 present in person

CORAM : NITIN W. SAMBRE, J.**DATE : JUNE 21, 2019.****P.C.**

Heard respective parties.

2 With consent of the parties, both these petitions are taken up for final disposal. The issue involved in both these petitions since is common, the facts of Writ Petition No. 1766 of 2019 are taken up for convenient disposal of the petitions.

3 In a dispute before the Co-operative Court, Mumbai being Case No. 375 of 2014 the petitioner sought to add as a disputant pursuant to provision of Section 91(1)(b) of the Maharashtra Co-operative Societies Act, 1960 as it is claimed by her that she has stepped into the shoes of present respondent no. 1 disputant, who was member and allottee. According to petitioner, cancellation of membership of disputant was suppressed when the transfer was effected by the disputant. The said request came to rejected by the order impugned dated 17/03/2017 against which the petitioner preferred appeal before Co-operative Appellate Court being MA No. 8 of 2018. Said challenge by the petitioner was accompanied with an application for condonation of delay, as there is delay of 257 days. The Co-operative Appellate Court refused to condone the said delay

as no bonafide cause was cited in support of delay caused in preferring the appeal. Hence, this petition.

4 The learned counsel for the petitioner submits that though the petitioner has tried to explain the delay, the fact that the petitioner is aged about 67 years and the order impugned passed by the Co-operative Court was not communicated or informed to her is formed to be a basis for condoning the delay. According to her, there was no intention to intentionally delay the proceedings before the Co-operative Appellate Court or the Co-operative Court and if required, submits that the petitioner may be put to strict conditions while allowing the prayer for condonation of delay.

5 The learned counsel for respondent no. 1 in whose shoes the petitioner claimed to have stepped in, supported the claim put forth by the petitioner.

6 The learned counsel for respondent no. 2 submits that he submits to the jurisdiction of the Court and urged that this Court

may pass an appropriate order in the facts and circumstances of the case.

7 Respondent no. 3 appearing in person submits that the petitioner is intentionally delaying the proceedings so as to deny her right to enjoy the property in question which she claim to have been lawfully allotted. According to her, approach on the part of the petitioner is malafide and the Appellate Court was right in rejecting the prayer for condonation of delay as same was not properly explained.

8 Considered submissions.

9 From the facts of the case in hand, it appears that the original allottee-respondent no. 1 appears to have transferred her right in the property in question in favour of petitioner. It is the claim of the petitioner that respondent no. 1 i.e. disputant before the Co-Operative Court has suppressed the issue of cancellation of membership while effecting the transfer.

10 The petitioner has preferred appeal against rejection of prayer for impleading herself as disputant after a delay of 257 days. The said delay is sought to be supported by reason of her advance age and the delayed intimatiton from the lawyer about passing of the order rejecting the prayer for her impleadment.

11 Though the cause which are cited in support of prayer for condonation of delay are not very satisfactory, considering the fact that the petitioner has stepped into the shoes of respondent no. 1, even though the respondent no. 3 strenuously opposing the application for condonation of delay, in my opinion, the delay of 257 days needs to be condoned subject to following conditions:

(A) The petitioner shall deposit cost of Rs. 1 Lakh as is volunteered before this Court within period of 8 weeks from today.

(B) Of the aforesaid amount of cost of Rs. 1 Lakh, if so deposited before the Co-operative Appellate Court, let the amount of Rs. 25,000/- be paid to respondent no. 2 and

balance amount of Rs. 75,000/- be paid to respondent no. 3.

(C) In case if the amount as undertaken is not deposited, the order of Co-operative Appellate Court rejecting the prayer for condonation of delay shall govern the proceedings.

(D) If the petitioner complies with the aforesaid order, it is directed that the appeal preferred by the petitioner be decided expeditiously and in any case, within period of 10 weeks from the date of reporting the compliance of the deposit of amount referred above.

12 Petitions stand allowed and disposed of in the above terms.

[NITIN W. SAMBRE, J.]