

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 3898 of 2019

Date : 19.3.2019

Between:

Smt Ala Poola W/o David aged 40 years president the
Muthyal Rao Cooperative Housing Society Ltd
R/o H No 37-70/C104 J J Nagar Colony Neredmet X Road
Medchal District 500 094 and others

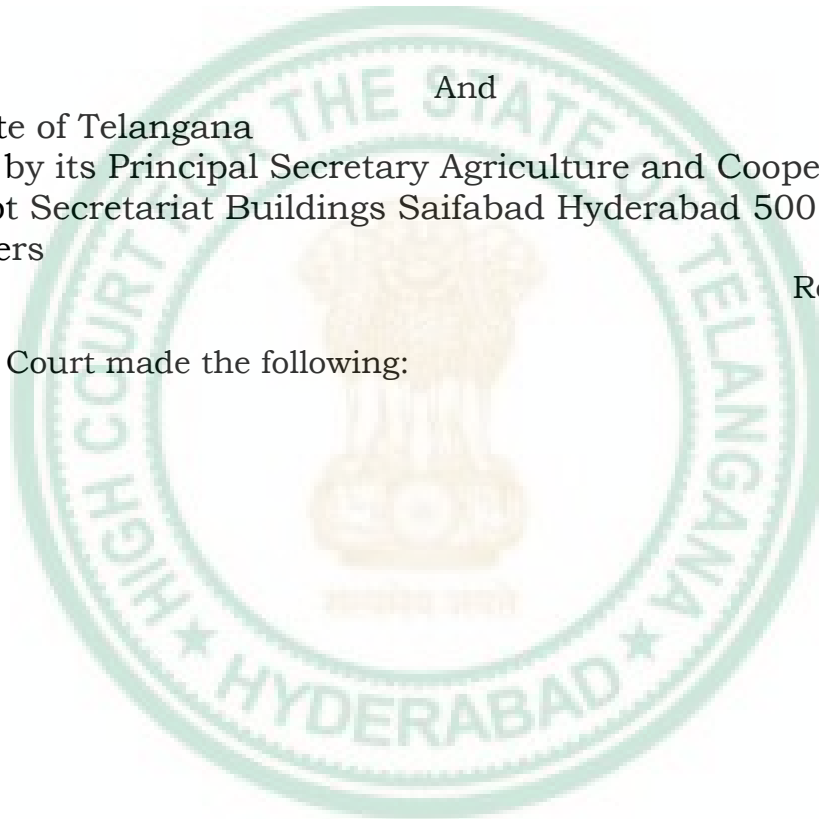
Petitioner

And

State of Telangana
rep by its Principal Secretary Agriculture and Cooperation
Dept Secretariat Buildings Saifabad Hyderabad 500 022 and
others

Respondents

The Court made the following:



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ORAL ORDER:

Heard learned counsel for petitioners Sri D Goverdhana Chary, learned Government Pleader for respondents 1 to 4 and learned counsel for 5th respondent Sri M.S.N.Prasad.

2. Petitioners are members of Managing Committee of The Muthyal Rao Cooperative Housing Society Limited/4th respondent (for short referred to as 'the Society'). Said Managing Committee was elected on 25.1.2015 for a term of five years. It appears based on the complaint lodged by Ex-President of the society and some members with the Commissioner for Cooperation and Registrar of Cooperative Societies/2nd respondent alleging financial irregularities, enquiry under Section 51 of the Telangana State Cooperative Societies Act, 1964 (for short the Act, 1964) was ordered. Thereafter notice dated 17.12.2016 was issued to the President and individual members calling explanation as to why action should not be initiated for superseding the Managing Committee. Contending that enquiry under Section 51 and notice of supersession under Section 34 (1) of the Act, 1964 is ex-facie illegal, petitioners filed W P No. 1129 of 2017.

3. While pending consideration of the said writ petition, order of supersession was passed on 13.4.2017 superseding the Managing Committee of the society. Aggrieved thereby, petitioners filed W P No. 13651 of 2017. This Court by order dated 18.4.2017 granted interim suspension. The writ petition was disposed of by order dated 19.3.2018

taking due note of the remedy of appeal available under the Act, 1964 before the Cooperative Tribunal and granting liberty to petitioners to file such appeal within two weeks and on filing such appeal to dispose of such appeal within four weeks. The Court also directed continuation of interim order granted on 18.4.2017 till disposal of the appeal. Objecting to the observation made by the Court that the order was passed with consent of both parties, Review I.A.No. 1 of 2018 was filed on 25.4.2018. However, even before the Review was taken up for consideration, petitioners filed appeal before the Cooperative Tribunal on 14.6.2018, which was numbered as Appeal (SR) No. 223 of 2018. Appeal (SR) No. 223 of 2018 was returned with office objection on 26.6.2018. The objection raised by the Office of the Cooperative Tribunal was that two weeks time granted by the High Court for filing appeal lapsed, therefore, appeal was not admissible.

4. The Review filed by the petitioners was disposed of on 16.11.2018. Accepting the plea of learned counsel for petitioners, the sentence where the counsel stated to have agreed for disposal was substituted with new sentence and office was directed to issue a corrected copy of the order. Within two weeks from the date of disposal of the Review, appeal was represented. Appeal was numbered as CTA No. 25 of 2018 and the same was admitted and notices were ordered.

5. In the said appeal, unofficial respondents filed I.A.No.131 of 2018 under Order VII Rule 11 read with Section 151 of CPC to reject the appeal on the ground that it is not filed within the time granted by the High Court. By the order impugned, the Cooperative Tribunal accepted the plea of unofficial respondents, allowed I A No. 131 of 2018 and

dismissed the appeal. After dismissal of the appeal, the Deputy Registrar/ District Cooperative Officer- 3rd respondent issued proceedings dated 23.2.2019 directing the Assistant Registrar-Malkajgiri to take over the affairs of the society under Section 34 of the Act, 1964. The said orders are assailed in this writ petition.

6. To complete the narration, earlier 5th respondent filed W P No. 1628 of 2019 seeking direction from this Court to consider the objection filed by 5th respondent on the maintainability of the appeal. This Court disposed of the writ petition, at the admission stage, directing the Tribunal to consider the objection and take a decision.

7. Learned counsel for petitioners Sri D Goverdhana Chary made the following submissions.

7.1 He would submit that application under Order VII Rule 11 of CPC is not applicable to appeal suits but is applicable only to original suits. He would further submit that once appeal is admitted, same cannot be rejected on the ground of limitation in an application filed under Order VII Rule 11 of CPC. He would further submit that though the petition filed by the 5th respondent was to reject the appeal but Tribunal erroneously dismissed the appeal and Tribunal could not have dismissed the appeal in an application filed for rejection of appeal. He would submit that what is urged in application filed under Order VII Rule 11 of CPC is on maintainability of the appeal as if it was not filed within time.

7.2. Further elaborating his contentions, he would submit that under Section 76 of the Act, 1964 the Tribunal is vested with power to

condone the delay. If the Tribunal found that appeal was not preferred within the period of limitation it ought to have granted opportunity to file application to condone the delay. Tribunal erred in not affording that opportunity. Therefore, order impugned is ex-facie illegal, without jurisdiction and competence and liable to be set aside on that ground. In support of said contentions, he placed reliance on the judgment of Full Bench of this Court in **In re Chunduru Venkata Subrahmanyam**¹.

7.3 He would further submit that aggrieved by the order of this Court dated 19.3.2018 in W P No. 13651 of 2017 petitioners preferred review petition. The review petition was heard and finally disposed of on 16.11.2018. Once review petition is finally disposed of ordering corrections to the order earlier passed, it becomes substituted order and takes the place of original order. Thus, limitation has to be computed from the date of the order in the review petition. He would submit that consequent to the decision in the review in I.A. No. 1 of 2018, office of the High Court issued corrected copy of the order on 3.12.2018.

7.4 According to learned counsel the effect of the order dated 16.11.2018 would clearly imply that limitation also stands extended from the date of communication of the order in the review and the appeal was presented within the time of two weeks from the date of receipt of copy of the order in the review and therefore the Tribunal erred in dismissing the appeal by referring to time fixed by the High Court in the order dated 19.3.2018.

8. Per contra, learned counsel for 5th respondent would submit that when appeal was filed it was time barred. No appeal can be filed

¹ AIR 1955 Andhra 74

beyond the time granted by the Act and admittedly the appeal was not filed within the time specified in the Act nor within the extended time granted by the High Court in the order dated 19.3.2018.

8.1. He would submit that in the Review the Court only substituted the words deleting consent of the counsel for parties. Thus, the substitution in the form of review is only applicable to that portion and rest of the order is not disturbed, therefore petitioners cannot seek to count the date of the order in the Review Petition nor its communication to resurrect limitation period by counting the date of communication of the order in Review Petition. It is further submitted that after the disposal of the writ petition, petitioners had enough time to present the appeal but deliberately delayed in filing the appeal and therefore, there are no bonafides in the petitioners. He would submit that principle of merger in the Review order, does not arise.

8.2. The Cooperative Tribunal has inherent power to reject the appeal by duly taking note of the objection of the 5th respondent; the Cooperative Tribunal looked into the issue of limitation and directions issued by this Court in W.P. No. 13651 of 2017 and as appeal was not preferred within time granted by this Court, the appeal was validly dismissed. He would further submit that though, petition on maintainability of the appeal under Order VII Rule 11 is filed, as the Tribunal is competent to reject the appeal filed beyond the period of limitation, considering the objections filed and passing orders cannot be said as vitiated.

8.3. By referring to the order of Tribunal, learned counsel would submit that having committed grave illegalities in managing the affairs of

the society, the petitioners are dragging on the litigation and merrily continuing in office affecting the interest of the society and its members.

9. According to learned Government Pleader, the order in the Review Petition is confined only to the issue of consent to dispose of the writ petition and rest of the order is not disturbed. Therefore, time granted by High Court when writ petition was disposed of alone would apply and limitation can not be counted from the date of communication of the order in the Review Petition. He would submit that Cooperative Tribunal Act and the Rules made thereunder are self contained Code dealing with all aspects of the matters arising out of the Act, 1964 and the provisions of Civil Procedure Code are not attracted.

10. The issue for consideration is whether the Cooperative Tribunal erred in dismissing the appeal as time barred?

11. Time line of events leading to filing of the writ petition are as under. Against order of Deputy Registrar/District Cooperative Officer dated 13.4.2017 superseding the Managing Committee, petitioners filed W P No. 13651 of 2017. On 18.4.2017 this Court granted interim suspension. By order dated 19.3.2018, writ petition was disposed granting liberty to prefer appeal to Cooperative Tribunal under Section 76 of the Act within two weeks. On 25.4.2018 petitioners filed Review Application praying to review the order dated 19.3.2018. One of the grounds urged was the Court recorded as if petitioners' lawyer consented but there was no such consent. Pending consideration of Review Application, petitioners preferred appeal on 14.6.2018; Tribunal assigned SR No. 223 of 2018 on 23.6.2018 and returned with office objections on 26.6.2018. Review application was disposed of on 16.11.2018. The

Court accepted the plea of petitioners' counsel and deleted the sentence on consent and ordered to insert new sentence in its place. The copy of the order in W.P. No. 13651 of 2017 after the substitution of sentence was furnished to petitioners on 3.12.2018. On 14.12.2018 appeal was resubmitted. On scrutiny, appeal was numbered as CTA No. 25 of 2018 and the Tribunal ordered notices to opposite parties. At this stage, 5th respondent filed I.A. No. 131 of 2018 under Order VII Rule 11 read with Section 151 of CPC to reject the appeal as time barred. By the order impugned this objection was upheld and appeal was dismissed.

12. The Tribunal holds that by way of Review order, the High Court only deleted a sentence and no other directions were amended or removed. Tribunal further observed that petitioners did not obtain extension of time for filing appeal. Thus, appeal filed on 23.6.2018 and its resubmission is not in consonance with order of the High Court dated 19.3.2018. Tribunal also rejected the contention on maintainability of the application under Order VII Rule 11. Tribunal further holds that even if two weeks time is reckoned from 16.11.2018, the date on which order in Review was passed, the resubmission on 14.12.2018 was beyond the time granted.

13. Section 76 of the Act, 1964 provides remedy of appeal before the Cooperative Tribunal. As per section 76 (3) appeal has to be preferred within 60 days from the date of communication of the order of original authority. The Act vests discretion in the Tribunal to condone delay in filing appeal. A.P. Cooperative Tribunal (Procedure) Rules, 1994 regulate the procedure of the Tribunal. For the purpose of this case, Rules 7 to 10 and 26 are relevant. To give effect to provision in Section

76 (3), Rule 10 (b) requires filing of application for condonation of delay. Act and Rules are self contained code with reference to conducting of proceedings before the Cooperative Tribunal. As per Rule 26, if Rules do not deal with any particular procedure, the provisions of Code of Civil Procedure are attracted.

14. There were two aspects for consideration before the Tribunal. Firstly, the time limit fixed by the High Court in filing appeal and secondly power of the Tribunal to condone the delay, if appeal is not preferred within the time specified. Section 76 (3) vests power in the Tribunal to condone delay if satisfactory explanation is offered by the Appellant for not filing the appeal within 60 days from the date of communication. Thus, even if appeal is not preferred within 60 days and an application is filed for condonation of delay, the Tribunal can consider the reasons assigned and if satisfied can condone the delay and entertain the appeal. Against the order of the Original Authority dated 13.4.2017 petitioner had remedy of appeal within 60 days but instead of preferring appeal, petitioner preferred writ petition. The time prescribed in the Act expired long ago before filing the writ petition. However, while disposing W.P. No. 13651 of 2017 the Court granted two weeks time to prefer appeal. Within two weeks time if appeal was preferred, there was no need for petitioners to file application for condonation of delay. Seeking review of the order, petitioners filed review application and review was disposed of on 16.11.2018 by substituting a portion of the order.

15. What is the effect of substitution would be considered later. Suffice to note at this stage, even assuming the Tribunal was right in holding that Review order has limited scope and original time granted by

High Court was not extended, therefore, appeal was not filed within time, the appellants are entitled to prefer petition to condone the delay in filing the appeal. There was no occasion for the petitioners/appellants to file petition to condone delay as appeal was numbered. Thus, Tribunal ought to have given opportunity to the appellants to file application for condonation of delay. Not granting such opportunity for the appellants and straight away dismissing the appeal on the ground that appeal was not filed within the time granted by the Court, was not valid and would be running contrary to the intendment of Section 76 (3) of the Act.

16. Any litigation must have finality. A person succeeding in the litigation must have certainty of his success and enjoy the fruits of success. Therefore, while creating remedy of appeal statutes governing such remedy also prescribe time limit within which an aggrieved person can go in appeal. Statutes also enable the Appellate Tribunal / Authority the discretion to condone the delay in filing such appeal, if the reasons for delay is satisfactorily explained. It is settled principle of law which needs no reiteration that while considering applications for condonation of delay where no time limit is prescribed for condoning the delay, it is the discretion of the Appellate Tribunal/ Authority to consider the reasons which impelled the party not availing the remedy within the time stipulated and by a cogent order accept or reject the application for condonation of delay. It would be entirely different aspect whether Tribunal would have accepted the reasons for condonation of delay but that course ought to have been followed. It is appropriate to note that unlike other statutes where legal remedy in the form of appeal/revision is provided by fixing time limit to avail such remedy and restricting scope to

condone the delay wider discretion is vested in the Cooperative Tribunal on condoning the delay in filing appeal.

17. The orders of this Court dated 19.3.2018 and 16.11.2018, to the extent relevant read as under:

- (i) **“Writ petition is disposed of by this Court with the consent of the learned counsel appearing for the parties”**
 - a) the petitioners are given liberty to file appeal before the Cooperative Tribunal within two weeks from the date of receipt of copy of this order.
 - b)
- (ii) In the Review, high-lighted portion is substituted by following sentence:
“After hearing the counsel and perusing the material, this Court is not persuaded to entertain the writ petition and the writ petition is disposed of by this order.
 - a) the petitioners are given liberty to file appeal before the Cooperative Tribunal within two weeks from the date of receipt of copy of this order;
 - b)”

18. From the extracted portions of the orders of this Court dated 19.3.2018 and 16.11.2018, it is appropriate to note that while disposing the writ petition, liberty was granted to prefer appeal **within two weeks from the date of receipt of copy of the order.** After the review, while substituting earlier portion of the order above paragraphs ‘a’ to ‘d’, the content of said paragraphs are not altered. Consequent to review, a fresh order was communicated on 3.12.2018 by incorporating the order to the extent indicated by the Court in the Review. Order in paragraph ‘a’ continues to read as it was prior to Review order. It is pertinent to note

that Review application was considered and earlier order was reviewed and after substitution of a paragraph, revised order was issued. This substituted order takes the place of earlier order and is the final order in W.P. No. 13651 of 2017. In terms thereof, two weeks time limit has to be computed from the date of communication of order after review. That being so, it cannot be said that resubmitting the appeal on 14.12.2018 was not within time.

19. Tribunal also erred in not appreciating that the High Court granted two weeks time from the date of receipt of the copy of the order. Keeping aside the issue whether the order in Review would amount to fresh order, the order in Review was made on 16.11.2018 and communicated on 3.12.2018. From the date of communication of the order, the appellants had two weeks time to prefer appeal and within two weeks only appeal was resubmitted. This fact was not noticed and only looking at the date of the order passed in the Review and date of resubmission, the Tribunal erred in holding that even otherwise within two weeks time it was not presented.

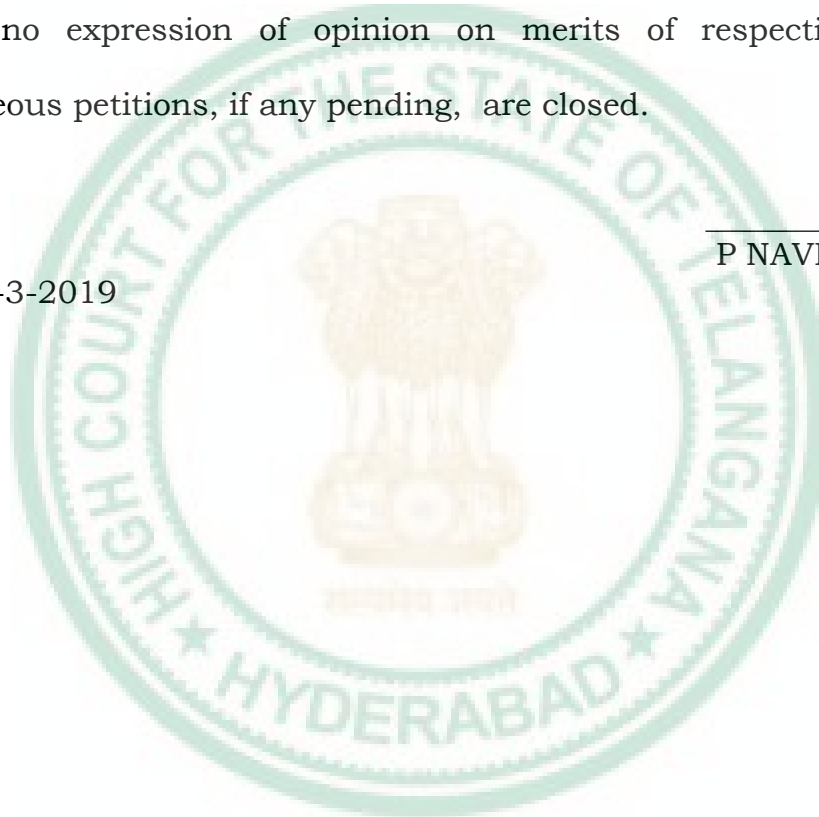
20. Another significant aspect to be noticed is that appeal was presented for the first time on 14.6.2018. It was returned on the ground of delay, therefore appellants could have resubmitted on compliance of the objections immediately but it was resubmitted after decision in the Review. Even before the submission of appeal, Review was preferred and review was pending before this Court till 16.11.2018. In the peculiar facts of this case, it cannot also be said that the petitioners were aware that they had to submit appeal within two weeks after the disposal of

writ petition, deliberately did not resubmit and by not presenting appeal within that time they waived their right to file appeal.

21. For the reasons aforesaid the Tribunal erred in dismissing the appeal. Writ Petition is allowed. Appeal is restored to the file of the Cooperative Tribunal. The Cooperative Tribunal shall dispose of the appeal within eight weeks from the date of communication of order. Parties are directed to cooperate for early disposal. It is made clear that there is no expression of opinion on merits of respective claims. Miscellaneous petitions, if any pending, are closed.

DATE: 19-3-2019
TVK

P NAVEEN RAO,J



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Date : 19.3.2019

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