

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

10 WRIT PETITION NO.3768 OF 2018

SHRI SAMARTH SAHAKARI GRUH NIRMAN SOCIETY LTD AURANGABAD
THROUGH CHAIRMAN D J HAZARI
VERSUS
MURTIDEVI SUMERCHANDRA AGRAWAL THROUGH SPL POWER OF
ATTORNEY S B AGRAWAL

...
Advocate for Petitioner : Mr. Khande Avinash A.
Advocate for Respondents : Mr. C.V. Thombre

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CORAM: ROHIT BABAN DEO, J.

Date: JANUARY 8th , 2020

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PER COURT :-

1 The petitioner is invoking writ jurisdiction being aggrieved by order dated 1.3.2018 rendered by the Maharashtra State Cooperative Appellate Court in Miscellaneous Application No.1/2018, whereby and where-under the Tribunal refused to condone the delay of 18 years and 63 days caused in preferring the appeal.

2 The genesis of the application for condonation of delay lies in a dispute filed by the respondent against the petitioner society *inter-alia* seeking a declaration and allotment of a plot. The dispute was ultimately dismissed. The respondent preferred an appeal which was partly allowed and the matter was remitted to the Cooperative Court. By Judgment dated 3.9.1999, the

Cooperative Court allowed the dispute and directed the society to allot a plot.

3 The gist of the justification given by the petitioner for enormous delay of 18 years and 63 days is thus:-

3.1 It is contended that the society was represented by Advocate Mr. R.G. Jadhav, who, due to old age stopped practice. It is then contended that the society was not aware of the said development. The next averment in the application for condonation of delay is that the society handed over the papers to the learned Advocate for preparing the appeal. It is further contended that the society and its representatives repeatedly visited the office of the learned advocate and were given to understand that the appeal, challenging the order dated 21.4.1997 passed by the Divisional Joint Registrar is pending.

3.2 The society then contended that it was only in the year 2008 that the society received the notice of execution proceeding and then approached advocate Shri S.R. Moharkar. According to the society, the said advocate advised society to prefer an appeal, challenging the order of the Cooperative Court and the order of the Joint Registrar – Cooperative Societies. It is contended that the learned Advocate obtained the signatures from the Chairman of the society and was paid professional fees. Further averment is that the learned advocate did not file the

appeal either before the Cooperative Appellate Court or the appropriate authority.

4 In the entire application, seeking condonation of delay, the learned counsel, who unfortunately expired in the year 2015 and who could not have responded to the serious allegations questioning his professional integrity, is blamed for the delay. I am more than satisfied that the order impugned, does not suffer from any error.

5 In matter after matters, this Court is noticing an extreme disturbing trend. The counsel is blamed at the drop of the hat. On occasions even the name of the counsel is not disclosed. In the present case, although the name of the learned counsel is disclosed, allegations are made knowing that the learned counsel is not alive to defend the allegations. The application for condonation of delay is in fact an abuse of process of law and is rightly rejected by the appellate tribunal.

6 Before I part with this order, I must record that the learned counsel for the petitioner made a valient effort to persuade me to hold that since the petitioner has an impeccable cause on merit, the delay may be condoned. The learned counsel is relying *inter-alia* on decisions in the matters of :-

- (a) *Sindhu Co-operative Housing Society versus State of Maharashtra and others* (2005 (3) Mh.L.J.624),
- (b) *State of Karnataka versus Y.Moldeen Kunhi (dead) by Lrs & others* (AIR 2009SC 2577),
- (c) *Baburao Deorao Wankhede versus Sewa Sahakari Sanstha & anothers* (1988 (1) LJSOFT 151),
- (d) *Pune Mahanagar Parivahan Mahamandal Ltd versus Sharad B. Bhade & anr* (2011 (10) LJ SOFT 23),
- (e) *Shenectady Herdilla Ltd versus Banibai Dhondu Sutar & others* (2005 (11) LJ SOFT 162,
- (f) *Basantlal Hariram Ahuja versus Bahubali Electronics Ltd & anr* (2006 (11) LJ SOFT (URC) 1)
- (g) *Brijesh Kumar & Ors versus State of Haryana & Ors* (2014(3)CPSC26)

to substantiate the contention that the delay be condoned and that on merits the society has an excellent case.

7 A good *prima-facie* case would only be one of the considerations, if at all, while considering whether just and sufficient cause for condonation of delay is made out. Even if it is assumed that the petitioner society did have a good case on merit, in view of the incredible, if I may say so bordering on the falsehood, explanation for the delay and the blame put on the deceased counsel, the Tribunal was well justified in refusing to condone the delay of 18 years and 63 days.

8 The petition is dismissed.

9 The amount deposited by the petitioner be remitted to the Executing Court.

10 At this stage, the learned counsel for the petitioner prays that the interim order operating may be continued for four weeks to enable the petitioner to approach the Honourable Apex Court, if so advised. The request is reasonable. The interim order shall continue to operate for the next four weeks.

(ROHIT BABAN DEO, J)

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