

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1121 WRIT PETITION NO.551 OF 2021

NANDKUMAR S/O MURLIDHAR GANDHIE
VERSUS
THE STATE OF MAHARASHTRA AD OTHERS

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Advocate for Petitioners : Mr. V.D. Sapkal, Senior Advocate i/b
Mr. K. F. Shingare
Government Pleader for Respondent Nos. 1 to 3 : Mr. D.R. Kale
Advocate for Respondent No. 4 : Mr. S. S. Thombre
Advocate for Respondent No. 5 : Mr. K. J. Suryawanshi
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CORAM : V. K. JADHAV, J.
DATED : 26th FEBRUARY, 2021

PER COURT:-

1. By consent, heard finally at admission stage.
2. Mr. Sapkal, learned senior counsel has assailed the order passed by the Hon'ble Minister mainly on the ground that even though there is inordinate delay in filing the revision before the Hon'ble Minister, the Hon'ble Minister has not passed a separate order on the application seeking condonation of delay of more than one and half years. Learned senior counsel submits that the Hon'ble Minister has passed one line order for condonation of delay on merits. However, the Hon'ble Minister has not made any observations as to what merits he has considered while condoning such inordinate delay. Learned senior counsel submits that since the Hon'ble Minister has not passed a separate order on the application for condonation of delay, the petitioner has lost his right to challenge

the said order. Mr. Sapkal, learned senior counsel submits that after the decision of the Hon'ble Minister, the petitioner came to know about filing of an application by respondent No.4 himself before the Divisional Joint Registrar, Co-operative Societies on 25.6.2019 for obtaining certified copy of the judgment and order, specifically disclosing in the said application that he wanted to challenge the order by filing an appeal. Learned senior counsel Mr. Sapkal, submits that respondent No.4 has not disputed the said aspect of filing an application seeking a certified copy of the order passed by the Divisional Joint Registrar, Co-operative Societies. Mr. Sapkal, learned senior counsel submits that respondent No.4 has specifically contended in his application seeking condonation of delay that he came to know about the order passed by the Divisional Joint Registrar, Co-operative Societies only in the month of March, 2020 and as such, the same is contrary to the copy of application submitted before this Court alongwith this Writ Petition at page 64 Exh. F.

Mr. Sapkal, learned senior counsel, in order to substantiate his submissions, placed reliance on the following cases:-

- I. ***Dilawar Hakim Shah v. Special Recovery Officer & Others***, reported in 2006 (1) Bom.C.R. 141;
- II. ***Madhao Somaji Sarode v. Jotiba Dhyani Upasak Shikshan Sanstha Dudhala & Others***, reported in 2004 (6) Bom.C.R. 684.

3. Mr. Thombre, learned counsel for respondent No.4 submits that the Hon'ble Minister has considered the application seeking condonation of delay on merits and accordingly condoned the delay. Learned counsel submits that the Hon'ble Minister has considered the case on merits. The petitioner has very clearly used his surname sometimes as only Gandhile and sometimes as Patil. In fact, his surname is Gandhile Patil. Learned counsel submits that the petitioner is declining that he is father of his own children. There are school leaving certificates of those children placed on record and after considering the same, the Hon'ble Minister has passed the impugned order.

4. Mr. Kale, learned Government Pleader has supported the order passed by the Hon'ble Minister. Learned Government Pleader submits that the Hon'ble Minister has considered that due to re-outbreak of COVID pandemic situation, the revision could not be filed within time and as such the Hon'ble Minister has condoned the delay on merits.

5. It appears that respondent No.4 had filed a separate application seeking condonation of inordinate delay caused in filing the revision. The petitioner herein had strongly resisted the said application by filing say. Thus, it was expected from the Hon'ble Minister to consider the said application and the say filed by the other side after hearing both the parties, on its own merits. It appears that

the Hon'ble Minister has not taken pains either to consider the grounds raised in the application for condonation of delay or the grounds raised by the other side seeking rejection of the said application.

6. It appears that in this Writ Petition, at Exh. F page 64, the petitioner has filed a copy of the application dated 25.6.2019 submitted by respondent No.4 before the Divisional Joint Registrar, Co-operative Societies for obtaining a certified copy of the judgment and order passed by the Divisional Joint Registrar, Co-operative Societies. It is to be noted here that the Divisional Joint Registrar, Co-operative Societies has passed the order on 15.5.2019 which was impugned before the Hon'ble Minister. However, respondent No.4, in para 12 of his application seeking condonation of delay caused in filing the revision, has specifically contended that the copy of order dated 15.5.2019 passed by the Divisional Joint Registrar, Co-operative Societies was not served upon him and the he came to know about the order dated 15.5.2019 in the month of March, 2020. It appears that respondent No.4 has also not disputed filing of the application on 25.6.2019 before the said authority for obtaining certified copy of the judgment and order dated 15.5.2019.

7. In view of the same and considering the ratio laid down in the above cited cases, I am of the considered opinion and I am left with no other choice but to remand the matter to the Hon'ble Minister to

decide the application seeking condonation of delay afresh. Though learned counsel for respondent No.4 has repeatedly submitted before this Court that the Hon'ble Minister should decide the application seeking condonation of delay and the main revision simultaneously, however, such directions cannot be given for the reason that learned counsel for respondent No.4 is assuming that the Hon'ble Minister is going to condone the delay in any way. Learned counsel for respondent No.4 has not considered the other possibility that the Minister may reject the application seeking condonation of delay and that even there is no possibility of simultaneous hearing. However, without getting influenced by the observations made in this order, it is for the Hon'ble Minister to consider the application seeking condonation of delay caused in filing the revision on its own merits. Hence, I proceed to pass the following order:-

O R D E R

- I. Writ Petition is hereby partly allowed.
- II. The impugned order dated 16.12.2020 passed by the Hon'ble Minister for Co-operation, Marketing and Textile, Mantralaya, Mumbai in Revision No. 337 of 2020 is hereby quashed and set aside.
- III. The matter is remanded back to the Hon'ble Minister with following directions:-

- a) The application seeking condonation of delay caused in filing the revision be restored to the file of the Hon'ble Minister.
 - b) The Hon'ble Minister shall decide the said application separately after giving opportunity of being heard to both the parties within three months from the date of appearance of the parties before him.
 - c) The parties shall appear before the Hon'ble Minister on 12.3.2021.
- IV) Writ Petition is accordingly disposed of.

(V. K. JADHAV, J.)

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