

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.13130 OF 2014
IN SAST/26909/2014

JAYHIND CO-OP. HOUSING SOCIETY LTD. THROUGH ITS CHAIRMAN
VIJAY PITAMBAR PATIL
VERSUS
RAMESH BHURA PATIL AND ANR.

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WITH
CIVIL APPLICATION NO.13131 OF 2014
IN SAST/26916/2014

JAYHIND CO-OP. HOUSING SOCIETY LTD. THROUGH ITS CHAIRMAN
VIJAY PITAMBAR PATIL
VERSUS
SUDHIR NARHAR ALANDE AND ANR.

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WITH
CIVIL APPLICATION NO.13133 OF 2014
IN SAST/27110/2014

JAYHIND CO-OP. HOUSING SOCIETY LTD. THROUGH ITS CHAIRMAN
VIJAY PITAMBAR PATIL
VERSUS
HIMMAT KHANDU PATIL SINCE DECEASED THR. LRS. KAMALBAI
HIMMAT PATIL AND ANR

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WITH
CIVIL APPLICATION NO.5373 OF 2015
IN SAST/26923/2014

JAYHIND CO-OP. HOUSING SOCIETY LTD. THROUGH ITS CHAIRMAN
VIJAY PITAMBAR PATIL
VERSUS
RAJENDRA NIVRUTI RAIGUDE AND ANR

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Mr. S. P. Shah, Advocate for applicants in all the applications.
Mr. S. T. Kazi, Advocate for respondents in all the applications.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 05.08.2021

Pronounced on : 28.10.2021

ORDER :-

. Present Civil Application Nos.13130 of 2014, 13131 of 2014 and 5373 of 2015 have been filed for getting the delay of 2545 days condoned in filing second appeals and Civil Application No.13133 of 2014 has been filed for getting the delay of 2546 days condoned in filing second appeal. The applicant – society is original plaintiff No.1 in all the applications. The society, in all, had filed five suits, namely, Regular Civil Suit Nos.209 of 1990, 210 of 1990, 211 of 1990, 212 of 1990 and 213 of 1990 for possession and mesne profits against the respondents in respective second appeals. All the suits were partly decreed by the learned Joint Civil Judge Junior Division, Dhule. In fact, Regular Civil Suit No.209 of 1990 came to be partly decreed on 30.03.2001, whereas other four suits were partly decreed on 06.10.2004. The appeals filed by original defendant No.1 in respective matters, namely, Civil Appeal Nos.189 of 2004, 190 of 2004, 191 of 2004 and 192 of 2004 came to be allowed and the suits were dismissed. Hence, plaintiff No.1 – society intends to file second appeals, however, there is delay. Hence, these applications.

2. Heard learned Advocate Mr. S. P. Shah for the applicant in all the applications and learned Advocate Mr. S. T. Kazi for respondents in all the applications.

3. It has been vehemently submitted on behalf of the applicant – society that after the Regular Civil Suit No.209 of 1990 was partly decreed, the defendants therein filed appeal and the said appeal came to be allowed thereby dismissing the suit filed by present applicant and, therefore, the society filed second appeal before this Court. The said Second Appeal No.583 of 2006 came to be admitted by this Court on 14.07.2009. After the other four suits came to be partly decreed, as aforesaid, the occupants filed appeals and the first Appellate Court has reversed the decrees by common judgment on 20.07.2007. One Shri. Z. B. Patil was the President of the applicant – society, who was looking after the proceedings. He had exclusive knowledge regarding pendency of five different suits. Said Shri. Z. B. Patil expired on 17.02.2006 and thereafter, the applicant – society lost the track about the suits. Thereafter, when it was noticed by the applicant that the respondents have started construction work over the suit property, the society revealed about the rights and came to know about the decision by the first Appellate Court. The delay was unintentional. Further, after the demise of Shri. Z. B. Patil, though there was a Managing Committee

elected in the year 2007, yet that decision about the election was challenged in election petition. In the said election petition, election of the Managing Committee was set aside. Thereafter, the appeal was filed challenging that decision, which is still pending. Thereafter, again a new Managing Committee got elected in the year 2012 and then it was unanimously decided that the Committee would persuade the proceedings further. Under such circumstance, the delay has been caused and the genuine reason is that the Committee with the election was basically challenged before the Co-operative Courts. The learned Advocate for the applicant, therefore, prayed for condonation of delay.

4. Per contra, the learned Advocate appearing for the respondents in all the matters strongly objected the applications and submitted that, in fact, the present Committee member i.e. Arun Zulalrao Salunke is the son of said Z. B. Patil. It cannot be imagined that he would have had knowledge about the decision by the first Appellate Court. In fact, the learned first Appellate Court had assessed the case properly and has taken into consideration all the law points involved. Under such circumstance, there is no question of framing any substantial question of law when there is no merit in the case and the delay is not required to be condoned.

5. At the outset, it is to be noted that the applicant is a Co-operative society. It should have a proper and authenticated Committee or body, then only it can take up the actions like filing any litigation. Though, in this case, there is huge delay, the fact remains that the Committee, that came into force after the election in the year 2007, was required to face the election petition/dispute before the Co-operative Court. The judgments in the said dispute have been produced on record. The Judge, Co-operative Court, Jalgaon has allowed the said Dispute No.CC/D/21/2007 on 21.09.2011. The elections held on 17.12.2006 for the period of 2007-2012 were set aside. It appears that the same Court by order dated 03.10.2011 stayed the execution and operation of the judgment and award passed in the dispute till 10.10.2011 and it has been stated that the appeal, that has been preferred by the elected members, is still pending before the Appellate Co-operative Court. It is stated that again the elections have been held in the year 2012 and the new body appears to have taken up. This can be considered as a good ground for the delay. Now, as regards one of the member, being son of late Shri. Z. B. Patil, will not be a hurdle for the applicant, as the society in general is required to be considered and further when the earlier body was facing the dispute, the personal information may not be necessarily to be attributed as negligence.

6. Another fact that is in favour of the applicant is the order passed by this Court in Second Appeal No.583 of 2006, wherein by order dated 14.07.2009, this Court has admitted the second appeal by framing substantial questions of law. In fact, it is a surprising note that when five suits were filed, only one came to be decided prior in time to the decision of the other four and before the first Appellate Court in four other matters could decide those appeals, the second appeal was filed before this Court. When the action taken or involved in the matters was same, all the suits ought to have been considered simultaneously. Definitely, one chance is required to be given in view of the fact that the Committee, in this case, was required to face the election petition and then the said election was set aside with direction to hold fresh elections and, then that order was stayed.

7. The inconvenience that would be caused to the respondents in all these four matters is definitely required to be compensated in terms of money while condoning the huge delay. Hence, the following order :-

ORDER

- I) All the applications stand allowed and disposed of.
- II) The delay caused in filing each of the second appeal in all the matters stands condoned, subject to deposit of cost of

Rs.20,000/- in each case within a period of four weeks from today.

III) After the amount is deposited, registry to verify and register the second appeals.

IV) The amount so deposited be given to the respondents in respective applications, equally.

[SMT. VIBHA KANKANWADI, J.]

scm