

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1065 OF 2019

Shyamsunder M. Ambekar, Major in age,
Resident of Near Government High School,
Headland, Sada, Vasco da Gama. ...Petitioner

Versus

1. VPK Urban Cooperative Credit Society Ltd.,
Mardol Branch, Mardol, Ponda, Goa.
2. Shri Venkatesh Kole, H. No. 151, Ward No. IV,
I, Headland, Sada, Vasco Da Gama, Goa.
3. Shri Yamnappa Madar, r/o MPT Colony,
Building M-229, Vasco da Gama, Goa.
4. Shri Sunil T. Pandit, r/o. H. No. 251, Headland
Sada, Vasco da Gama, Goa.
5. Shri Krishna Kanta Manjrekar, r/o. H. NO.
277-B, Near Prince Bakery, Headland Sada, Vasco
da Gama, Goa.
6. The Financial Advisor, Chief Accountant,
M.P.T. Headlland Sada, Vasco da Gama. ...Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. T. Sequeira
Advocate for the Petitioner.

Mr. Jatin Ramaiya, Advocate for Respondent no. 1.

CORAM: M. S. SONAK, J

DATED: 26th August 2021

ORAL JUDGMENT

1. Heard Mr. S. D. Lotlikar, learned Senior Advocate for the Petitioner, and Mr. Jatin Ramaiya, learned Counsel for the Respondent no.1-Bank.

2. The record indicates that the other Respondents are served, even though, Mr. S. D. Lotlikar points out that they may not be affected by the relief applied for in this Petition.

3. Accordingly, Rule is granted and the Rule is also made returnable forthwith at the request and with the consent of the learned Counsel for the parties.

4. The challenge in this Petition is to the order dated 14.07.2017, by which the Co-operative Tribunal has refused to condone the delay of 2 years 9 months, and 17 days in instituting an appeal against the award by the Assistant Registrar of Co-operative Societies.

5. The Petitioner was a surety for a loan. Since the principal borrower defaulted, Respondent no.1-Bank proceeded against the Petitioner. The record indicates that a substantial portion of the retiral benefits payable to the Petitioner was appropriated by Respondent no.1-Bank against the loan account.

6. The record also bears out that the Petitioner instituted a Civil Suit resisting the execution of the award made by the Assistant Registrar. The Petitioner had taken out an application for interim relief in such Civil Suit but, after the same was

rejected, it appears that the Petitioner did not pursue the suit which came to be dismissed for non-prosecution. Even otherwise, it is doubtful, whether such a suit was maintainable.

7. Only, thereafter, the Petitioner, on proper legal advise, instituted an appeal to challenge the Assistant Registrar's Order/Award after delay. The application for condonation of delay has been rejected by the impugned order and hence the present Petition.

8. Mr. S. D. Lotlikar, learned Senior Advocate, submits that this is a hard case where the Petitioner was not ignorant but was pursuing his remedies. Mr. Lotlikar pointed out that the delay is neither deliberate nor has the Petitioner gained anything from the delay. He submits that the lapses, if any, on the part of the Petitioner, can be compensated by costs, particularly now that the Bank has already recovered most of the retiral dues paid to the Petitioner by his Employer. He relies on *N. Balakrishnan vs M. Krishnamurthy*¹ to submit that there should be a liberal approach in such a matter.

9. Mr. Jatin Ramaiya, the learned Counsel for Respondent no.1-Bank, submits that there is material on record to indicate the petitioner himself offered to settle the loan account through his retiral dues. He submits that the Petitioner was never diligent and even this Petition has been instituted after considerable delay. He submits that the loan account is now closed and any opportunity to the Petitioner to settle the issues will only complicate the matter further. He submits that it is always open

¹ 1998(7) SCC 123

to the Petitioner to recover amounts from the Principal Borrower. For all these reasons, he submits that this Petition may be dismissed.

10. Having considered the rival contentions and perused the record, according to me, this is a case where a liberal approach will have to be adopted and the delay will have to be condoned.

11. As noted earlier, the record bears out that the Petitioner has not been totally indolent. True, the Petitioner, may not have availed of the most appropriate remedy available to him but that does not mean that the Petitioner has slept over his rights. The Petitioner was in some form or the other pursuing the matter.

12. Further, the record bears out that a substantial portion of the retiral dues payable to the Petitioner has already been recovered by the Bank and appropriated towards the loan account.

13. Thirdly, this is not a case where the Petitioner has acted malafide or secured any undue advantage on account of his delay in approaching the Tribunal. Rather, the Petitioner has suffered on account of such delay.

14. In *N. Balakrishnan* (supra), the Hon'ble Supreme Court has held that where the party's conduct does not on the whole warrant to castigate him as an irresponsible litigant, the Courts can be liberal in matters of condonation of delay. Further, in such matters, the length of the delay is no matter. The acceptability of the explanation is the only criterion. Sometimes delay of the

shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of the positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

15. The Hon'ble Supreme Court has further held that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of malafides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too could have incurred quite a large litigation expense. It could be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.

16. Applying the aforesaid principles of the facts of the present case, the impugned order made by the Tribunal is hereby set aside. The Petitioner's application for condonation of delay is

allowed subject to the Petitioner paying costs of ₹ 5,000/- to Respondent no.1-Bank within two weeks from today. The costs may either be directly paid to the Bank or deposited before the Tribunal within two weeks so that the Bank can withdraw the same unconditionally.

17. Now that the delay is condoned, the Tribunal will have to consider the appeal on merits. All contentions of all parties on merits are expressly kept open.

18. The Rule is made absolute in the aforesaid terms.

M. S. SONAK, J.

ANDREZA PEREIRA
Digitally signed by ANDREZA PEREIRA
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