

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.8872 OF 2021**

Mr. Basil Shamrao Rath Petitioner
Versus
Jai Ganesh Co-op.Hsg.Soc.Ltd.& Ors. Respondents

Mr. Juzer Udaipuri a/w. Joyce Rath & Sofia Udaipuri i/b. Udaipuri & Co.
for the Petitioner.

Mr. Sandeep R. Waghmare for Respondent Nos.1 & 2.

Ms Deepa Kamath for Respondent No.3.

CORAM : A.S. GADKARI, J.

DATE : 27th APRIL, 2022

PC. :

Present Petition is directed against Order dated 12th May 2021 passed in M.A.No.12 of 2021 by the Incharge President, Maharashtra State Cooperative Appellate Court, Mumbai allowing the said application preferred by Respondent Nos.1 and 2, thereby condoning delay of 713 days in preferring the Appeal against the Judgment and Award dated 13th February 2019 passed by the learned Judge of the Cooperative Court No.3 in Dispute No.41/2011.

2. Heard Mr. Juzer Udaipuri for the Petitioner, Mr. Sandeep R. Waghmare for Respondent Nos.1 & 2 and Ms. Deepa Kamath for Respondent No.3.
Perused record.

3. It is an admitted fact on record that, before passing the impugned Order dated 12th May 2021, Petitioner who is the sole Respondent in the said Appeal, was not afforded an opportunity of being heard in the matter. The impugned order is an ex-parte order passed on the presumption that, the Petitioner herein i.e. Respondent in the said Appeal was duly served and despite it, he remained absent.

4. Perusal of record indicates contrary to what has been stated by the Appellants/Respondent Nos.1 and 2 before the Appellate Court.

In view thereof, there is a consensus amongst all the learned Advocates appearing for the respective parties that, the impugned Order dated 12th May 2021 needs to be set aside and the said application be restored to the file of Appellate Court for hearing it afresh on its own merits, by granting an opportunity of being heard to the Petitioner/Original Respondent by the Appellate Court.

5. In view thereof, impugned Order dated 12th May 2021 passed by the Co-op. Appellate Court, Mumbai is hereby quashed and set aside. M.A.No.12 of 2021 is restored to the file of Appellate Court.

Learned Judge of the Appellant Court is directed to grant an opportunity of being heard to the Petitioner/Original Respondent before passing appropriate Order as per the provisions of law, on the said

Application.

6. In view of setting aside of impugned Order dated 12th May 2021, the Order dated 12th August 2021 passed in M.A.No.15 of 2021 does not survive.
7. Advocate Mr. Udaipuri waives notice on behalf of the Petitioner i.e. Respondent in Appeal before the Appellate Court and fresh notice to the Petitioner by the Appellate Court is not necessary.
8. Petition is allowed in the aforesaid terms.
9. Petitioner is directed to produce a copy of present Order before the Appellate Court.
10. All the concerned to act on the basis of the authenticated copy of this Order.

(A.S. GADKARI, J.)