

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11685 OF 2017

Rishikesh P. Gulwani

..Petitioner

V/s.

The State of Maharashtra and Ors.

..Respondents

Ms. T. J. Kapre /b J.S. Kapre for the Petitioner.

Mrs. Vaishal Nimbalkar, AGP for Respondent Nos. 1 to 4/State.

Mr. Atul Damle, Senior Advocate i/b Ms. S.H.Sagvekar for
Respondent No. 5.

CORAM : C.V. BHADANG, J.

DATE : 10 OCTOBER 2022

:ORDER:

. Rule made returnable forthwith. The learned counsel for the Respondents waive service. Heard finally by consent of parties.

2. The Petitioner in his capacity as Chief Promoter had filed an application under Section 10(1) of the Maharashtra Co-operative Societies Act, 1960 for registration of a society by name Viva Hallmark Co-operative Housing Society Limited, which comprised of 52 flat holders from building A and B out of six buildings proposed to be completed by Respondent No.5 Builder. According to Respondent No.5, there are 9 buildings.

3. Be that as it may. The District Deputy Registrar of Co-operative Societies, Pune ('DDR' for short) by an order dated 15.02.2014 had rejected the application *inter alia* placing reliance on the circular dated 02.05.1980 on the ground that the requirement of the minimum number of members for formation of society is not satisfied. The DDR has also noticed that the project comprised of total 516 tenements out of which construction of 215 tenements was completed and were sold out to the proposed members. The DDR has noticed that as per the terms of the agreements, there was a common society for all the buildings to be formed.

4. Feeling aggrieved by the order passed by the DDR, the Petitioner challenged the same in an Appeal before the Divisional Joint Registrar of Co-operative Societies, Pune. There was a delay of 288 days for which a Misc. Application No. 41 of 2015 was filed for condonation of delay. The Divisional Joint Registrar by an order dated 03.10.2015 has refused to condone the delay placing reliance on the decision of the Supreme Court in *Ramlal, Motilal And Chhotelal vs Rewa Coalfields Ltd*¹. The Divisional Joint Registrar found that each day's delay is required to be explained which has not been done.

5. The Petitioner carried the matter in Revision before the Hon'ble Minister for Co-operation. The Hon'ble Minister by an

1 1962 AIR SC 361

order dated 19.06.2017 has rejected Revision Application No. 896 of 2015, which order is subject matter of challenge in this petition.

6. I have heard learned counsel for the parties.

7. The Supreme Court in a recent decision in the case of *Esha Bhattacharyajee v/s. Managing Committee of Raghunathpur Nafar Academy and Ors.*² after taking a survey of several decisions holding the field has culled out the principles which are germane while considering the prayer for condonation of delay. It has *inter alia* been held that there is no presumption that the delay is intentional or deliberate. There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice. (*see para 21.1.(i)*)

It is necessary to note that no party stands to gain by approaching the court late.

8. The learned counsel for the Petitioner pointed out that members are staying at different places and therefore, some time was consumed in deciding to challenge the order passed by the DDR, which is unintentional.

² (2013) 12 SCC 649

9. Mr. Damle, the learned Senior Advocate appearing for Respondent No.5 states that the application for registration of the society has not been rejected only on the ground of non compliance with the circular dated 02.05.1980. It is pointed out that the DDR has also noted that there was a single society proposed to be formed in respect of all the buildings.

10. I am afraid the only issue in this petition is about refusal by the Divisional Joint Registrar in condoning the delay in filing the appeal. The Divisional Joint Registrar has not gone into the merits of the matter and obviously so, unless the delay was condoned. Bare perusal of order of the Hon'ble Minister shows that the Minister has also dwelt upon the merits of the matter.

11. Considering the over all circumstances, in my view, it is appropriate that the Divisional Joint Registrar considers the appeal on its own merits and in accordance with law after condonation of delay.

12. In that view of the matter, the petition is allowed.

13. The impugned orders passed by the Divisional Joint Registrar and the Hon'ble Minister refusing to condone the delay are hereby set aside. The delay in filing the appeal, stands condoned.

14. The Divisional Joint Registrar of Co-operative Societies shall hear the appeal on its own merits and in accordance with law as expeditiously as possible and within a period of three months from the date of appearance of the parties.

15. The parties to appear before the Divisional Joint Registrar on 14.11.2022.

16. Rival contentions of parties are left open.

Rule is made absolute in the aforesaid terms with no order as to costs.

C.V. BHADANG, J.