

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH: NAGPUR**

CIVIL APPLICATION (CAS) NO. 70 OF 2022

IN

SECOND APPEAL (ST.) NO. 983 OF 2022

Hadgaon Taluka Sahakari Kharedi Vikri Sangh

Vs.

M/s. Kanhaiyalal Bhailal Vora & Sons. And anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. K.S. Narwade, Advocate for applicant.
Mr. S.A. Mohta, Advocate for respondents.

CORAM : MANISH PITALE J.

DATE : 20.04.2022.

By this application, the applicant is seeking condonation of delay in filing the accompanying second appeal. It is conceded by the learned counsel appearing for the applicant that from the date of the judgment and order of the appellate Court the delay comes to about 1988 days but, the Registry appears to have calculated the number of days of delay as 1229, by taking into consideration the effect of the Covid-19 Pandemic from March – 2020, till filing of the appeal in January 2022.

2. Mr. Narwade, learned counsel appearing for the applicant referred to a number of documents filed

along with the application for condonation of delay, as also the application for grant of permission to place on record documents, filed along with the appeal. It was contended, that the applicant being a body corporate and a registered society under the relevant provisions of the Maharashtra Co-operative Societies Act, 1960, was expected to be served as per procedure known to law to be aware about the proceedings before the appellate Court. It is contended that the material on record clearly indicated that the proceedings before the appellate Court continued on the basis of service of notice on the erstwhile President of the applicant – society, who had no concern with the society from the year 2010, thereby indicating that the entire proceedings before the appellate Court were conducted behind the back of the applicant-society.

3. It was submitted that only when the execution proceedings were pursued by respondent No.1 i.e. original plaintiff and the bank account of the applicant – society was attached that the applicant became aware about the fact that the appellate Court had allowed the appeal in favour of respondent No.1 and granted decree for specific amount in favour of respondent No.1, to be recovered from the applicant – society. It is submitted that as soon as the applicant –

society became aware about the judgment and decree of the appellate Court, necessary steps were taken for challenging the same by filing the accompanying second appeal.

4. By inviting attention to various documents on record, it was submitted that there was no service of notice as known to law on the applicant – society, thereby indicating that the entire proceedings before the appellate Court were conducted behind the back of the applicant and there was no way in which the applicant – society could be aware about the judgment and decree passed by the appellate Court, as far back as on 26.04.2016. It was submitted that the material on record indicated sufficient cause made out on behalf of the applicant for condonation of delay.

5. On the other hand, Mr. S.A. Mohta, learned counsel appearing for the contesting respondent No.1 (original plaintiff) submitted that when the suit for recovery of amount was filed by respondent No.1 in the year 2009, undisputedly the applicant – society was represented by then President.

6. It was further submitted that the respondent No.2 was the original defendant No.2, who at the

relevant time was the Vice-Chairman and Director of the applicant – society. It was submitted that the proceedings before the trial Court were contested wherein the parties led evidence in support of their respective stands. In the appellate Court also, the original defendants were served and they were represented through counsel. It was after the appeal was contested on merits that the judgment and decree dated 24.06.2016 was passed in favour of respondent No.1, who was held entitled for amount of ₹ 6,03,295/- along with interest @ 9%. It was submitted that in view of the aforesaid admitted position on facts, it could not lie in the mouth of the applicant to contend that it became aware of the judgment and decree passed by the appellate Court, only in November 2021 when the bank account of the applicant was attached in pursuance of the execution proceedings. It is submitted that even in the execution proceedings, although the then President of the applicant-society was proceeded against ex-parte, the respondent No. 2, who continued to be a Director of the applicant–society, was duly served.

7. It was further submitted that in the proceedings before the trial Court registered addresses of the applicant – society represented through the then President and the defendant No.2 were placed on record

and notices/summons were duly served on the said addresses. On this basis, it was submitted that no case was made out by the applicant for condonation of delay.

8. This Court has perused the material on record and heard learned counsel for the rival parties. As regards, the number of days of delay, although the accompanying second appeal has been filed after a delay of about 1988 days, the application seeking condonation of delay states the number of days of delay is 1229. This is perhaps on the basis that the Registry of this Court took into account the COVID – 19 Pandemic, which struck in March 2020. It appears that the order passed by the Hon'ble Supreme Court extending limitation period was taken into account.

9. But, this Court is of the opinion that the factum of the COVID-19 Pandemic having struck in March 2020 and the orders passed by the Hon'ble Supreme Court in that light extending the period of limitation would inure to the benefit of only those litigants in whose cases the period of limitation was to expire after March 2020, when the pandemic struck and lockdowns had to be imposed. The benefit of the orders passed by the Hon'ble Supreme Court cannot inure to

the benefit of litigants who kept sleeping of over their rights for years together.

10. Therefore, the actual number of days of delay in the present case ought to be treated as 1988 days and not 1229 days. Nevertheless, even if the delay is to be treated as of 1229 days, the applicant is expected to demonstrate reasonable cause and to present proper explanation for condonation of such huge delay.

11. The contentions raised on behalf of the applicant have been noted above. The first contention is that the applicant is a society and a body corporate. It was not duly served in the proceedings before the appellate Court and that it became aware about the judgment and decree passed by the appellate Court on 26.04.2016, when it received letter dated 23.11.2021, from its bank informing that the bank account of the applicant was attached.

12. The aforesaid contention raised on behalf of the applicant would give an impression that the proceedings before the appellate Court had remained uncontested and that the judgment and decree dated 26.04.2016, was passed in a one-sided manner. But, the material on record shows that the appeal was duly

contested and after considering the rival contentions, the appellate Court allowed the appeal and granted decree in favour of respondent No.1 for recovery of the said amount along with interest. Even before the trial Court, the matter was duly contested. Evidence was led on behalf of the rival parties and the suit was decreed in favour of the applicant only for a small amount. It was for this reason that the respondent No.1 was constrained to file the appeal to challenge the said decree, which stood allowed in the aforesaid manner.

13. This Court has perused the material on record. It is found that before the trial Court the registered address of the defendants was specifically stated. For the defendant No.1 i.e. the applicant no.1 before this Court the address was of the then President representing the applicant society. The address of applicant No.2 herein, who was the original defendant No.2, was also specifically stated before the trial Court. The said defendants were duly served before the trial Court and after a full-fledged trial, the suit was decreed in the aforesaid manner.

14. The matter was carried in appeal to the appellate Court. Notices were served on the defendants, on the registered addresses stated before the trial Court.

It is the case of the applicant – society that after the year 2010, the then President had nothing to do the affairs of the applicant – society. Yet, it is crucial that the appeal was duly contested before the appellate Court and thereupon, the appeal stood allowed and the decree for the aforesaid amount with interest was passed in favour of respondent No.1. It is significant that the respondent No.2 i.e. original defendant No.2 continues to be the Director the applicant – society and he was also before the appellate Court when the appeal was contested and it stood allowed.

15. It is significant that in the execution proceedings initiated by respondent No.1, the original defendants were served. The defendant No.1 i.e. the then President of the applicant – society when the suit was filed, was proceeded against ex-parte while the original defendant No.2, who continues to be a Director of the applicant – society was duly served. In such a situation, it cannot lie in the mouth of the applicant – society that it was unaware about the decree passed by the appellate Court or the pending execution proceedings. This Court is of the opinion that the applicant society cannot turn around after about 1988 days of delay to claim that it is entitled to a hearing on merits of the matter on the basis that the persons who

were served before the appellate Court and Executing Proceedings had nothing to do with the applicant society. The said contentions cannot be accepted in the facts and circumstances of the present case, as a reasonable explanation for condonation of huge delay in filing the present appeal.

16. This Court is of the opinion that when notices were duly served on the original defendants on the registered addresses and the appeal was indeed contested, it cannot be said that the applicant society was wholly unaware of the proceedings. Despite the applicant no.2 continuing to be a Director of the Society and the appeal being contested on merits, the Society woke up from its slumber only in November 2021, when its bank account was attached. The explanation sought to be tendered before this Court to seek condonation of delay of about 1988 days cannot be said to be reasonable and hence, it is found to be unacceptable. Once this Court concludes that the applicant has failed to show sufficient cause for condonation of delay, there is no reason why this Court should show any indulgence in favour of the applicant.

17. The suit was filed way back in the year 2009 and the appellate Court passed the judgment and decree

in favour of respondent No.1 as far back as on 26.04.2016. In these circumstances, this Court is of the opinion that no case is made out for condonation of delay.

18. Accordingly, the application is dismissed.

JUDGE

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