

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5450 OF 2021

Mahendra Yadavrao Fuse
aged about 35 years, occ. Business, R/o
Baripura, Malkhed Railway, Tq. Chandur
Rly and Distt. Amravati.

.... **PETITIONER**

// **VERSUS** //

1. Navin Subhedar Nagari Sahakari Pat
Sanstha Maryadit, Nagpur, Branch at Am-
ravati, through its Authorized Officer, Plot
No. 750, new Subhedar Layout, Nagpur,
Distt. Nagpur
2. Shri Rajendra Pandurang Shegokar
(Ori.OP No.2) aged abou : 52 yrs, Occ.
Service, R/o Parati Sadan, Triveni Colony,
Amravati, Tq. And Distt. Amravati
3. Shri Uttam Shamrao Behre (Ori. OP No.3)
Aged about : 52 yrs, Occ. Business, R/o Jy-
oti Colony, Gopal Nagar, Amravati, Tq.
And Distt. Amravati.

.... **RESPONDENTS**

Shri Y.B. Sonone, Advocate for the petitioners.
Shri Abhijeet Desmukh, Advocate for respondent no.1.

CORAM : ROHIT B. DEO, J.
DATED : 08/02/2022.

ORAL JUDGMENT :

Hearing was conducted through Video Conferencing.

2. Heard. **Rule.** With Consent, the petition is heard finally.

3. The petitioner is assailing the order of the Maharashtra State Co-operative Appellate Court, whereby the application preferred by the petitioner seeking condonation of 145 days delay in preferring the appeal challenging the judgment and Award of the Co-operative Court, Amravati in Dispute 165 of 2018, is rejected.

4. One of the justifications pleaded in support of the contention that the delay was not deliberate, was that the petitioner was not kept apprised of the developments by his Counsel and the Award came to be passed *ex-parte*. While the learned Appellate Court has not accepted the submission and the justification in support of the application seeking condonation, I need not make any positive observation on the findings recorded by the Appellate Court.

5. During the course of the hearing, the petitioner was asked whether he would deposit Rs.10 lakhs in the Appellate Court, as a pre-condition for hearing on merits. The learned Counsel appearing on behalf of the original disputant Mr. Abhijeet Deshmukh fairly had intimated that the disputant shall have no objection if such liberty is granted to the petitioner.

6. The petitioner has filed an affidavit dated 04.02.2022 which reads thus :

“1. That, the I have filed writ petition before this Hon’ble Court challenging the order rejecting application for condonation of delay by Hon’ble Maharashtra State Co-operative Appellate Court Mumbai, Bench at Nagpur. The matter was fixed for hearing on 31.01.2022, while hearing, this Hon’ble Court has been pleased to direct me to file an affidavit regarding payment of half of the amount of personal loan availed from respondent no.1.

2. Therefore, I do undertake to pay Rs.5,00,000/- within 4 weeks of month of February 2022 and by the March 2022 Rs.5,00,000/-. Hence this affidavit.”

7. Learned Counsel for the disputant Mr. Abhijeet Deshmukh states that the disputant would have no objection, if the delay is condoned subject to the compliance of the undertaking.

8. By consent, the following order is made :

- (i) The order impugned is quashed.
- (ii) The delay shall stand condoned subject to the petitioner complying with the undertaking, particularly paragraph 2 thereof.
- (iii) It is made clear that if the undertaking to deposit Rs.10 lakhs by March 2022 is not complied with, the rejection of condonation of delay shall stand revived.
- (iv) Before hearing the appeal on merits, the learned Appellate Court shall

satisfy itself that the undertaking is duly complied with.

(v) Till 31.03.2022, no coercive recovery shall be made against the petitioner. The petition is disposed of in the afore-stated terms.

JUDGE

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