

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 8812 OF 2023**

M/s. Mayfair Builders and Developers

Thr. Its Partner and Authorized Signatory

Iqbal B. Shaikh

...Petitioner

Versus

The Divisional Joint Reigstrar, Co-operative

Societies, Pune Division and ors.

...Respondents

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Mr. Vishal Kanade a/w Mr. Ziauddin Sherkar i/b M/s. Sherkar and Company for the Petitioner.

Ms. M. S. Srivastava, AGP for the State- Respondent Nos. 1 & 2.

Mr. Rahul Karnik i/b Mr. Kedarnath Maniyar a/w Mr. Lohit Chawadi a/w Ms. Sakshi Dhamecha for Respondent No. 3.

Mr. Mayur Khandeparkar a/w Ms. Swati Singh i/b Parinam Law Associates for Respondent Nos. 4 & 5.

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CORAM : N.R. BORKAR, J.

DATED : 21 JULY 2023

P.C. :-

By the impugned order, the respondent No. 1 Divisional Joint Registrar Co-operative Societies, Pune rejected the application filed by the present petitioner seeking condonation of delay of three months and sixteen days in filing appeal under Section 152 of the Maharashtra Co-operative Societies Act, 1960.

2. The averments on the basis of which condonation of delay was sought reads thus:

“The society Registration Certificate under challenge is dated 6/9/2022. There is a delay of about 3 months and 16 days in filing the present

Appeal. The Appellant had filed an application on 1/11/2022 for obtaining certified copies of the Registration proposal. The Appellant got knowledge of the said impugned order/ Society Registration Certificate on 4/11/2022 when the Appellant received the certified copies. After getting the knowledge of the impugned order immediately on 20/11/2022 the Appellant issued a Legal Notice to Opponent Nos. 3 and 4 and copy of the same to Opponent No. 2 and waited for the reply from the Opponent Nos. 3 and 4 and copy of the same to Opponent No. 2 and waited for the reply from the Opponent Nos. 3 and 4, however the Opponent Nos. 3 and 4 did not reply the said notice, thereafter the Appellant approached the Advocate to seek Legal advice from the Advocate. The Advocate advised the Appellant to challenge the said order and therefore immediately the Appellant have filed the present Appeal today. It is submitted that there is delay of about 3 months and 16 days in filing the present Appeal. It is further submitted that certain unavoidable circumstances beyond the control of the Appellant has resulted in to said delay in filing the present Appeal. The said delay is not deliberate one and therefore the said delay in filing the Appeal may please be condoned in the interest of justice, equity and good conscience.”

3. I have perused the impugned order. The respondent No. 1 while rejecting the application has not considered the fact that the petitioner was not party to the proceedings/ order impugned in the appeal and the delay was of hardly three months and sixteen days that too in filing appeal.

4. Even otherwise, the Hon'ble Supreme Court in Collector Land Acquisition vs. Katiji reported in AIR 1987 SC 1353 has observed :

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is con- doned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.”

5. Considering the overall facts and circumstances, order impunged is set aside. The delay in filing appeal is condoned.

6. To enable the petitioner to pray for interim relief before the respondent No. 1, the parties shall maintain status quo for a period of two weeks.

7. The respondent No. 1 shall endeavour to decide the appeal filed by the petitioner within six months from the date of receipt of copy of this order.

8. The Petition is disposed of.

(N.R. BORKAR, J.)