

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13980 OF 2023

Loni Vikas Seva Sahakari Sanstha ...Petitioner
Maryadeet

V/s.

Ajit Manohar Nikam & Ors. ...Respondents

Mr. P.D. Dalvi for Petitioner

Dr. Uday Warunjikar a/w Mr. Siddhesh Pilankar for
Respondent Nos. 1 to 60 (except Respondent Nos.
14, 16, 19, 32, 39, 45 and 52).

Mr. S.D. Rayrikar, AGP for Respondents 61 to 63-
State.

CORAM: MADHAV J. JAMDAR, J.
DATE: 12th December 2023

P.C.:

1. Heard Mr. Dalvi, learned Counsel appearing for the
Petitioner, Dr. Warunjikar, learned Counsel appearing for
Respondent Nos.1 to 60 (except Respondent Nos. 14, 16, 19,
32, 39, 45 and 52) and Mr. Rayrikar, learned AGP for
Respondent Nos. 61 to 63.

2. Mr. Dalvi, learned Counsel and Dr. Warunjikar, learned
Counsel appearing for the contesting parties have raised

several contentions. One of the contention raised by Mr. Dalvi, learned Counsel is that there is delay of 64 days in filing appeal filed under Section 23(2) of the Maharashtra Co-operative Societies Act, 1960 challenging order dated 3rd November 2017 of the Petitioner-Society. He submitted that the said delay is not condoned by the Assistant Registrar. He submitted that the Divisional Joint Registrar as well as Hon'ble Minister of Co-operation has not at all taken into consideration the reasons for delay. Dr. Warunjikar, learned Counsel states that the valid reasons are given.

3. Perusal of the order dated 7th July 2018 passed by Assistant Registrar of Co-operative Societies, Vaduj, Taluka Khatav, District Satara shows that prayer seeking condonation of delay made in Appeal No. 51 of 2017 is not specifically rejected or even the reasons assigned for delay are not taken into consideration. In fact, the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur who has set aside the said order dated 7th July 2018 has also ignored the said factor and even the Hon'ble Minister, who has passed the order in Revision has also not considered the said aspects.

4. It is the contention of Mr. Dalvi, learned Counsel appearing for the Petitioner that there is delay of about 64 days and no reasons are given for condonation of the same and it is the contention of Dr. Warunjikar, learned Counsel that valid reasons are given, however, the Assistant Registrar has not taken into consideration the reasons for delay condonation and has not passed any order with respect to the same except observing that no valid reasons are assigned for delay condonation. Thus in effect the Assistant Registrar has rejected the delay condonation application, however after making observation on the delay condonation application, the Assistant Registrar considered the merits of the case. Once the Assistant Registrar comes to the conclusion that valid reasons for delay condonation are not given, then in effect the delay is not condoned and in that case he has no jurisdiction to consider the merits of the case. In fact, he has not even formally rejected the prayer for condonation of delay. The condonation of delay is vital as after condonation of delay, the authority gets the jurisdiction to consider the matter on the merits. As observed earlier, the said aspect is not considered by the Divisional Joint Registrar and the Hon'ble Minister.

Although the Divisional Joint Registrar has observed that it is necessary to condone the delay, however has not considered the reasons of delay. In view of this, factual and legal position, all the orders i.e. order dated 22nd March 2022 passed by Hon'ble Minister of Co-operation, order dated 23rd October 2019 passed by Divisional Joint Registrar Co-operative Societies, Kolhapur Division, Kolhapur and order dated 7th July 2018 passed by Assistant Registrar, Co-operative Societies, Vaduj, Taluka Khatav, District Satara are quashed and set aside and said Appeal No.51 of 2017 is restored to the file of the Assistant Registrar, Co-operative Societies, Vaduj, Taluka Khatav, District Satara.

5. At this stage, Dr. Warunjikar, learned Counsel states that in view of the objections raised by learned Counsel appearing for the Petitioner, in each appeal, delay condonation application will be filed separately. Such delay condonation application will be filed on or before 12th January 2024. Reply if any, be filed on or before 24th January 2024.

6. The learned Assistant Registrar to first consider delay condonation application and decide the same on or before 31st March 2024 and thereafter if the delay is condoned, decide

the respective appeals on or before 31st August 2024.

7. Dr. Warunjikar, learned Counsel appearing for the Respondents raised the contention that by impugned common order dated 22nd March 2022 passed by Hon'ble Minister Co-operation, 64 Revisions have been disposed of and the Petitioner has challenged the said order by filing only one Writ Petition. Mr. Dalvi, learned Counsel states that appropriate Court fees for challenging orders passed in 63 Revisions will be affixed to the Writ Petition on or before 22nd December 2023. It is clarified that if the Court fees as directed is not affixed on or before 19th December 2023, the Writ Petition stands dismissed without further reference to this Court. If the proper Court fees are affixed, the Writ Petition is allowed in above terms.

8. The Writ Petition is disposed of in above terms with no order as to costs.

BHALCHANDRA
GOPAL
DUSANE

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(MADHAV J. JAMDAR, J.)