

Anand

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

WRIT PETITION NO. 13619 OF 2023

Jai Ganesh Co-operative Housing Society Ltd. .Petitioner

Vs.

The State of Maharashtra & anr. .Respondents

Mr. Ankush Saraf, Advocate, for the Petitioner
Ms. Joyce Rath, Advocate, for Respondent No. 2
Ms. M. S. Srivastava, AGP, for the Respondent – State

CORAM : MADHAV J. JAMDAR, J.

DATE : 31.10.2023

P. C.

1. Heard Mr. Saraf, learned counsel appearing for the Petitioner, Ms. Rath, learned counsel appearing for Respondent No. 2 and Ms. Srivastava, learned AGP appearing for the Respondent – State.

2. The Petitioner - Society registered under the Maharashtra Co-operative Societies Act, 1960 is challenging the legality and validity of the order dated 18.07.2023 passed by the Maharashtra State Co-operative Appellate Court, Mumbai below Exh. 1 in M. A. No. 12 of 2021. The said M. A. No. 12 of 2021 has been filed in or about March, 2021 seeking condonation of delay in filing Appeal against the Judgment and Award dated

13.02.2019. In the Delay Condonation Application, the reasons given are *inter alia* set out in paragraph Nos. 2 to 5 which read as under :-

“2. The Appellant state that, during pending proceedings of dispute, the Appellant’s advocate expired, the present Appellant herein, was not aware about Advocate’s death as nobody from his office informed to the said Society about his death. The Appellant states that, when present Respondent on mid 2019 informed vide Xerox uncertified copy of Order of Co-operative Court, the present Appellant came to know the Order of Co-operative Court. The Appellants states due to death of Advocate of Appellants, the matter was unattended and ex-parte judgment/order came to be passed by the Hon’ble Co-operative Court on dated 13/2/2019. Hereto annexed a Copy of Judgment dated 13/2/2019 as Exhibit “1”.

3. The Appellants further submit that, the Appellant No. 1 society was not aware about the impugned order passed by the Ld. Trial Court, since the Advocate on record had expired. The Appellant for the first time got the information and knowledge about the order on 10/10/2019. The Secretary of the Appellant thereafter made an Application for certified copy of the impugned order which was received on 18/10/2019.

4. The Appellant further state that, since the deceased Advocate was having entire copies of the proceedings, the Appellant could not even approach to the new Advocate, they tried to contact Advocate’s family for getting the proceeding papers. Ultimately approached a new Advocate Mr. Vinod B. Singh for advice and further

manage to get some of the papers of the proceeding, from one of the Ex-committee member. There new Advocate Mr. Vinod B. Singh who was entrusted to look after the matter and advice kept the papers with him for about 1 month and then advice the Appellant that they need to challenge the Order by way of Appeal and he also assured to do it. The Appellant states there new Advocate Mr. Vinod B. Singh was accordingly instructed to proceed and prepare Appeal but to the misfortune of the Appellants, their new Advocate Vinod B. Singh, due to his personal family problem whereby his wife fell ill for several month and expired. Due to the same, the Appellant were helpless, had no choice but to wait for their Advocate to revert who unfortunately did not revert at all. Ultimately in the second week of March informed the Appellant that he unable to revert because of increasing Covid-19 conditions in Mumbai.

5. The Appellants submit that thereafter they there present Advocate for advice and on her Advice it was mutually decided to prepare and file an Appeal was kept ready for filing in the second week of March, 2020, however, due to ever increasing Covid-19 pandemic and lockdown was brought in to force/implemented from 22nd March, 2020 till 31st Jan 2021 thereafter, the Appellants were on the verge of filing the Appeal, but due to their misfortune the present Secretary and deponent herein who was authorized to file the Appeal had to go to Goa just prior to the Lockdown on 16th March, 2020 and could not return till October 2020. Therefore the present appeal which required to be filed on or before May 29 and there is delay of 713 day in filing the appeal which may kindly be condoned in the interest of justice, equity and good conscience for which the Appellants have filed separate delay

condonation along with this Appeal.”

3. Perusal of the contents of the Delay Condonation Application shows that even if same is accepted in toto, the Petitioner came to know about the impugned order in mid 2019, as set out in paragraph No. 2. In paragraph No. 3, contrary stand is taken by the Petitioner that they came to know about the impugned order on 10.10.2019.

4. The factual position on record shows that the impugned order has been passed on 18.07.2023 and the Petitioner came to know about the same on mid 2019/10.10.2019 and the Appeal has been filed in March, 2021.

5. The learned President of the Maharashtra State Co-operative Appellate Court, Mumbai in the order has observed that the society was not diligent and active in filing the Appeal. In this particular case, the Delay Condonation Application clearly shows that the Petitioner has not come up with the true case and in any case, contradictory stands are taken. Therefore, this is not a case where any interference under Article 227 of the Constitution of India is warranted.

6. Accordingly, the Writ Petition is dismissed, however, with no order as to costs.

(MADHAV J. JAMDAR, J.)