

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

WRIT PETITION (WP) NO.5515 of 2018

Nanaji s/o Sitaramji Shamkule

// VERSUS //

Advocate Parashram s/o Gangaramji Nikose and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.S. Ghate, Advocate for the petitioner

Ms Hemlata Jaipurkar, AGP for the respondent Nos.2 and 6

Shri K.P. Mahalle, Advocate for the respondent No.3

CORAM : ANIL S. KILOR, J.

DATED : 19.01.2023

1. In this writ petition, a challenge is raised to the order below Exh.80 passed by the Judge, Co-operative Court, Nagpur dated 16.07.2018, rejecting the application moved by the petitioner/opponent for framing of additional issues on the point of limitation and further the judgment and order dated 06.08.2018 passed by the Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Nagpur in Revision Application No.09 of 2018, confirming the order dated 16.07.2018.

2. The reasons recorded by the learned Judge Co-operative Court, Nagpur in paragraph 4 of the order below Exh.80, which read thus:

“4) Though after perusal of order of Writ Petition No.718/2012 it seems that Hon’ble High Court did not make any comments on the point of limitation. It can be held that Hon’ble High Court within its power has condoned the delay in terms of S.92(3) of Co-Op. Societies Act and allowed the petitioner /disputant to file this dispute. Therefore, in the background of above, framing of issues on the same point is not permissible. Finding on those issues has attained the finality by the Hon’ble High Court also. Hence, present application being not maintainable stands rejected.”

3. It is a well settled principle of law that no court has jurisdiction to extend the limitation as provided under the statute and therefore, the observation made by the learned Judge, Co-operative Court, Nagpur in the impugned order dated 16.07.2018, that Hon’ble High Court did not make any comments on the point of limitation and hence it can be held that Hon’ble High Court within its power has condoned the delay, is erroneous in absence of a specific order condoning the delay. Thus, presuming that the High Court has condoned the delay is erroneous and since the Revisional Court has upheld the said erroneous order, I am of the opinion that both the orders need to be quashed and set aside.

4. Furthermore, as the point of limitation goes to the root of the matter, and since no issue has been framed as regards limitation, the application Exh.80 needs to be allowed. Accordingly, I pass the following order:

- (i) The writ petition is **allowed**.

(ii) The order dated 16.07.2018 and judgment and order dated 06.08.2018, are hereby quashed and set aside.

(iii) The application Exh.80 filed in Dispute No.488 of 2010 before the Judge, Co-operative Court, Nagpur, is hereby allowed.

The petition is **disposed** of accordingly.

[ANIL S. KILOR, J.]