



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10134 OF 2023

Jayshri Prakash Divate and anr

.....Petitioners

Vs.

Mahadeo Limbanna Umbarje and Ors

.....Respondents

Mr. Anvil S. Kalekar for the Petitioners

Mr. Ajit Vishwanath Alange for Respondents

Smt. M. S. Bane, AGP for the State

CORAM : GAURI GODSE, J.

DATE : 13th FEBRUARY 2024.

P.C.

1. Parties agree that the petition can be heard and decided finally at admission stage. Hence, the petition is taken up for final disposal at admission stage.

2. Learned counsel for the petitioners submits that application filed by them for condonation of delay in filing appeal under Section 18(4) of The Maharashtra Money-Lending (Regulation) Act, 2014 ('the said

Act') is rejected by the Appellate Authority on an erroneous ground. He submits that the order impugned in the aforesaid appeal is dated 6th September 2021. He submits that the said order was received by the Petitioners through post on 5th October 2021; thereafter, by obtaining necessary documents, appeal was preferred on 22nd November 2021. Hence, according to the petitioners, there was delay of 47 days in filing the appeal. He submits that the delay has been explained by the petitioners in their application. However, the Appellate Authority has erroneously held that there is delay of 8 months and 9 days in filing the appeal. He submits that even if the date of order impugned in the Appeal is considered, i.e. 6th September 2021, still there won't be a delay of 8 months and 9 days in filing the appeal. He therefore submits that application of the petitioners ought to have been allowed by condoning the delay of 47 days in as much as the reasons were explained in the application.

3. Learned counsel appearing for respondent no. 1 opposes the application for condonation of delay on the ground that the delay is deliberately caused by the petitioners. He submits that there are no

condonable reasons given by the petitioners. He further refers to paragraph 2 of the impugned order and submits that the petitioners had filed appeal on 22nd November 2021, however, there was no affidavit in support filed by the petitioners. Hence, considering the delay in filing the affidavit in support which was subsequently filed, the appellate authority has rightly rejected the application for condonation of delay.

4. Learned AGP also supports the impugned order on the ground that valid reasons are recorded by the Appellate Authority for refusing to condone the delay.

5. I have considered the submissions made by parties. Perused the papers. It is the petitioners' case that copy of the order impugned in the appeal was received by them on 5th October 2021 and thereafter the appeal was preferred. Though affidavit in support was filed subsequently, it is not in dispute that the appeal alongwith delay condonation application was filed on 22nd November 2021. Learned counsel appearing for respondent no. 1 as well as learned AGP were unable to justify the observations made in clause 3 of the conclusions

recorded by the Appellate Authority thereby stating that delay in filing the appeal was 8 months and 9 days. Even by simple calculations, by taking into consideration the date of the order impugned in the appeal, there could not have been delay of 8 months and 9 days as recorded by the Appellate Authority. The order impugned before the Appellate Authority is dated 6th September 2021 and the petitioners filed their appeal on 22nd November 2021. Considering the reasons stated in the delay condonation application, the Petitioners ought to have been granted an opportunity of hearing on merits. Even otherwise, the reason given in paragraph 3 of the conclusions recorded by the Appellate Authority is erroneous and contrary to undisputed facts on record.

6. Hence, for the reasons stated above, petition is allowed by passing the following order:

ORDER

I. Impugned order dated 26th December 2022 passed by Respondent No. 4 in Money Lending Misc. Application No. 8 of 2022 is quashed and set aside and the

application is allowed and the delay in filing the Appeal is condoned.

II. Appeal preferred by the Petitioners under Section 18(4) of the said Act be registered and heard on merits.

7. Writ Petition is allowed in the aforesaid terms.

[GAURI GODSE, J.]