



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9503 OF 2023

Max Edward Cardoz

Flat No 402, Parasnath Darshan
Complex, A Wing Kirol, Vidyadhar (W)
Mumbai – 400086

Through,
Santosh Koli, (Power of attorney holder)
Office No.415, Vardhaman Chambers,
4th floor, Cawasji Patel Street, Fort,
Mumbai – 400001.

...Petitioner

Versus

1. **State of Maharashtra,**
Through Divisional Joint Registrar,
Co-operative Societies, Mumbai
Division, Fort, Mumbai – 400001.
2. **The Deputy Registrar, C.S,**
'L' Ward, Kokan Bhavan, 3rd Floor,
Room No.311, Mumbai – 400050.
3. **Mr. Jitendra Jaywant Sawant,**
349/2, Shree Sai Ganesh Estate Agency,
Opposite Police Chowki, Cheda Nagar,
Chambur, Mumbai.
4. **Navrebaug CHSL,**
Station Road, Opposite platform No.9,
Kurla (E), Mumbai – 400024.
5. **Antonette Lobo,**
Flat no. 27, 4th floor, C wing
Navrebaug CHSL,
Station Road, Opposite platform No.9,
Kurla (E), Mumbai – 400024

...Respondents

Mr. Avirat A. Sonawane a/w. Mr. Ruben A. Fernandes for the Petitioner.
Ms. Kavita N. Solunke, AGP for Respondent Nos.1 & 2 State of Maharashtra.

Mr. Pravin Kamble for Respondent No.3.

**CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.**

DATE : 26th MARCH 2024.

Judgment (Per Jitendra Jain, J.) :-

1. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

2. By this petition under Article 226 of the Constitution of India, the Petitioner seeks to challenge an order passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai whereby Miscellaneous Application filed by the Petitioner has been dismissed on the ground that the delay in filing the same has not been explained.

Brief facts are as under :

3. The dispute arises out of the claim of ownership of Flat No.27 in Respondent No.4-Society. The said flat originally belong to Mrs. Luiza Edward Cardoz in whose name share certificate No.93 dated 14th May 1997 stood. Mrs. Luiza Edward Cardoz had made a nomination in favour of her husband and daughter. On 2nd March 1998, Mrs. Luiza Edward Cardoz passed away and the flat was transferred in the name of her nominees i.e. her husband and daughter.

4. The Petitioner is son of Mrs. Luiza Edward Cardoz and brother of Respondent No.5. The Petitioner came to know that his sister Respondent No.5 has sold the aforesaid flat to Respondent No.3. Respondent No.3 was granted deemed membership by Respondent No.2 and said order came to be challenged by the Petitioner by preferring Revision Application No.293 of 2015 in which status-quo was passed and same was extended from time to time.

5. On 24th June 2021, the aforesaid Revision Application No.293 of 2015 was dismissed for non prosecution. On being aware of the same, the Petitioner filed on 30th September 2021 Miscellaneous Application No.59 of 2021 for restoration of revision application. The Petitioner also filed an application for condonation of delay in filing the same on 20th October 2021. On 12th April 2023, Miscellaneous Application was dismissed on the ground that there is no sufficient cause explained in delay in filing the miscellaneous application. It is on this backdrop that the Petitioner is before us seeking to challenge the order dated 12th April 2023.

6. The Petitioner submits that there is no intentional delay in filing the Miscellaneous Application. The Petitioner submits that his Advocate could not appear on the date when the revision application was posted for hearing on account of Covid restrictions which were

prevailing in June 2021. The Petitioner submits that as soon as he came to know about the dismissal, he filed a Miscellaneous Application for restoration within three months of the dismissal. The Petitioner submits that 2021 was the period when the pandemic was at its peak and further the Supreme Court suo motto in the case of **Re-cognizance for Extension of Limitation in Suo Motu Writ Petition (C) No.3 of 2020** had extended the limitation period till 28th February 2022 for the purpose of various filing under all the laws. The Petitioner, therefore, submitted that the impugned order is contrary to the decision of the Supreme Court and also fails to consider the situation of pandemic for condoning the delay.

7. Per contra, the Respondents supported the order of the Divisional Joint Registrar and submitted that the Petitioner has not been following up since 2015 in pursuing his revision application and therefore the impugned order has been correctly passed and no fault can be found.

8. We have heard the learned counsel for the Petitioner and the learned counsel for the Respondents and with their assistance have perused the documents annexed to the petition.

9. In our view, the Divisional Joint Registrar was not justified in refusing to condone the delay in filing the miscellaneous application for restoration of revision application. Firstly, the Revision Application

No.293 of 2015 was dismissed for default on 24th June 2021, which was the period during the which pandemic was at its peak and there were restrictions on the movement of people. The Petitioner has stated these reasons for non-attendance of revision application which has not been considered by the Divisional Joint Registrar. In our view, this constitutes sufficient cause for non-attendance on 24th June 2021. Further, as soon as, the Petitioner came to know about the dismissal, immediately approximately within three months he filed miscellaneous application for restoration on 30th September 2021. Even this period falls within the pandemic and the Supreme Court had extended the limitation period in the case of **Re-cognizance for Extension of Limitation in Suo Motu Writ Petition (C) No.3 of 2020** till 28th February 2022 and the dates with which we are concerned falls within the said outer limit of February 2022. The Divisional Joint Registrar has also not considered the said decision of the Supreme Court. In our view, therefore, the Petitioner has sufficiently explained the delay in filing the miscellaneous application and for non-attendance of the revision application and therefore, the impugned order is required to be set aside.

10. In view of above, we pass the following order :-

O R D E R

- (i) The order dated 12th April 2023 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai is set aside.
- (ii) The Miscellaneous Application seeking condonation of delay and restoration of the Revision Application is allowed. The Revision Application is restored for being adjudicated on merits.
- (iii) The same shall be decided within a period of three months from the first date of appearance before the said Authority.
- (iv) The parties shall appear before the Divisional Joint Registrar on 10th April 2024.
- (v) All points on merits are kept open.

11. Rule is made absolute in the above terms. No costs.

[JITENDRA JAIN, J.]

[A. S. CHANDURKAR, J.]