

Before : Sachin B. Bhansali,
Prothonotary & Senior Master
Date : 27th June, 2024

FOR HEARING AND FINAL DISPOSAL :

- 16 CHOL/250/2024) Mr. Yazad Udawadia a/w. Ms. Kajal Gupta i/b.
in) M. V. Kini and Company, Advocate for the
ARBPL/21970/2023) applicants.
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- 17 CHOLL/18052/2024) Mr. Ashish Mehadia a/w. Anoop Sharma and
in) Ms. Sarita D'lima, Advocate for the
ARBPL/21977/2023) respondents.
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- 18 CHOLL/18084/2024) P.C.: The present Chamber Orders are e-filed by the
in) applicants for setting aside Order dated
ARBPL/21975/2023) 02.04.2024 r/w. Order dated 24.04.2024,
) rejecting captioned Petitions under O.S.Rule
) 986 for non-compliance of office objections.
)
) Ld. Advocate for the respondents made a
) statement that Affidavit-in-Reply is e-filed in
) each Chamber Order and copy of the same is
) served upon ld. Advocate for the applicants.
) Statement is accepted.
)
) Perused Chamber Order, affidavit in-support of
) chamber and annexures, affidavit -in-Reply
) and annexures. Heard ld. Advocates for both
) the parties at length.
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) It is contended in Affidavits-in-Support to the
) Chamber Orders that as per Conditional
) Orders dated 02.04.2024 and 24.04.2024
) office objections were required to be complied
) with till 08.05.2024 and accordingly, same
) were complied with, within stipulated time i.e.
) on 04.05.2024, however, on enquiry with the
) department on 13.05.2024, the applicants
) came to know that further office objections
) were raised on 11.05.2024. It is further
) contended that since further objections were
) not uploaded on the official website of this
) Hon'ble Court due to technical glitch, said
) office objections could not be complied with.
) It is therefore contended that captioned
) petitions may be restored to file since no
) prejudice will be caused to the respondents.
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earlier, were complied with and fresh office objections were raised on 11.05.2024, about which the applicants came to know on 13.05.2024 and on same day, the applicants came to know about rejection of captioned petitions. Ld. Advocate for the applicants further submits that present Chamber Orders were filed on 13.06.2024, well in time i.e. within thirty days, and there is no delay caused in filing present Chamber Orders.

After hearing both sides, the moot points arise for the consideration are;

(1) whether the chamber orders are filed within time ?, if not, can the delay be condoned on oral application ?

(2) whether the applicants have made out a ground to allow these chamber orders?

At the outset, it is seen from Exhibits 'A' and 'B' to Chamber Orders that by Conditional Order dated 02.04.2024 r/w. Order dated 24.04.2024 the petitioners were directed to remove office objections on the captioned petitions and get the same numbered and/or registered till 08.05.2024, failing captioned petitions to stand rejected for non-removal of office objections under O.S.Rule 986.

In regard to point No.1, the provision of Article 117 of the Limitation Act, 1963, is relevant, which speaks about, *filing of proceeding from a decree or order of any High Court to the same Court, the period of limitation is Thirty days from the date of decree or order.*

From the provision quoted supra, it is clear that within 30 days from the last day of

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limitation (08.05.2024), applicants ought to have filed chamber orders for the relief claimed thereunder. However, these chamber orders came to be filed on 13.06.2024, which apparently appears to be filed beyond the period of 30 days.

In the aforesaid context, it is necessary to take note of the happenings from 04.05.2024 to 13.05.2024.

On going through the record viz. print out of objection sheet of official website (Exhibit B, page 26 to Affidavit-in-Reply) placed before this Authority, and averments made in Affidavits-in-Support, prima facie, it appears that on 04.05.2024 the applicants had complied with office objections raised in captioned petitions. However, concerned Scrutiny Officer was not satisfied with regard to compliance of some of the office objections. Therefore, the scrutiny officer on 11.05.2024 put remark that compliance praecipies are 'blurry'. Therefore, column of objection sheet indicates that office objections raised on "11.05.2024".

In view thereof, it is clear that as applicants have complied office objections on 04.05.2024, there was no question of getting further extension of time to comply office objections, granted vide order dated 02.04.2024 r/w Order dated 24.4.2024. From what has been discussed above, it is quite possible that the applicants were under bonafide impression that the captioned petitions will be numbered by the department. However, the Scrutiny Officer was not satisfied with the compliance, as stated above, and accordingly, uploaded remark to that effect on the official website on 11.05.2024. Therefore, limitation will begin from 11.05.2024.

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It is pertinent to note that 11.05.2024 was holiday on account of second Saturday and 12.05.2024 was holiday being Sunday. As stated by the applicants, they diligently have verified the website on 13.05.2024, which was very next working day from the date of uploading of the remark. Admittedly, the applicants have e-filed present Chamber Orders on 13.06.2024 though the same ought to have been filed on or before 11.06.2024. Therefore, it can be stated that two days delay has been caused in filing these chamber orders, which is negligible. The Ld. Advocate for the applicants rightly submitted that the same can be excused by way of oral applications. In this regard, I would like to rely on the decision of the Hon'ble Supreme Court in **Appeal No. 9198 of 2019 rendered in the case of Shesh Nath Singh and anr Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. And anr**, wherein the Hon'ble Supreme Court vide Para No. 102 observed that,

"At the cost of repetition it is reiterated that delay can be condoned irrespective of whether there is any formal application, if there are sufficient materials on record disclosing sufficient cause for the delay."

In the case in hand, as discussed supra, the applicants have demonstrated sufficient cause to excuse two days delay caused in filing chamber orders. However, to deal with objections with regard to restoration powers of this Authority and condonation of delay raised by the respondents, I rely upon the observations made by Full Bench of this Hon'ble Court in the case of **Prem Siddha Co-Op. Housing Society Vs. High Power Committee and other reported in 2016 (5) Mh.L.J., Page 778. The Hon'ble Full Bench vide paragraph no. 19 observed as under :**

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“Wherever a plaint or other document or petition is rejected by Prothonotary under Rule 986 or a suit or a petition or other proceedings is dismissed under Rule 87 or for default of appearance, Prothonotary has power to set aside his own order and admit document or restore proceeding, as case may be.”

The Hon'ble Full Bench further dealt with the question, *Whether the Prothonotary ceases to have such power after the rejection comes into effect, that is to say, to grant further time ex post facto?* And held that, *the rejection of plaint or a petition, as the case may be, for want of a procedural compliance and if the Prothonotary can exercise such power i.e. excuse the delay in such compliance, in case of a self-operating order of rejection, though before the order takes effect, there is nothing, in principle, to deny such power to the Prothonotary after the order takes effect.*

Relying on the observations of the Full Bench of this Hon'ble Court, as above, it is crystallized that this Authority has powers to condone delay and restore the matters, which were rejected under O.S.Rule 986 for non-compliance of office objections by this Authority.

Once, it is held that this Authority has powers to restore captioned petitions, this Authority has to see whether sufficient ground to restore captioned petitions, is made out. The Hon'ble Full Bench in the case of **Prem Siddha Co-op. Housing Society** (cited supra) vide paragraph No. 7 further observed that,

	)	<i>“it is still a matter as between</i>
contd....	)	<i>the party and the Court, and not</i>
CHOL/250/2024	)	<i>a lis as yet, and just as rejection</i>
in	)	<i>would be a matter of procedure,</i>
ARBPL/21970/2023	)	<i>even condonation of the default</i>
	)	<i>and subsequent admission of the</i>
	)	<i>documents after due compliance</i>
CHOLL/18052/2024	)	<i>would be a procedural matter.</i>
in	)	<i>No equity or other right arises in</i>
ARBPL/21977/2023	)	<i>favour of any third party,</i>
	)	<i>particularly the opponent, as a</i>
	)	<i>result of the original rejection</i>
CHOLL/18084/2024	)	<i>and none is lost upon the</i>
in	)	<i>subsequent recall and</i>
ARBPL/21975/2023	)	<i>admission.”</i>

For foregoing discussion and to avoid repetition, here I conclude that the applicants have made out their case for restoration of captioned petitions. However, it would be just and proper to impose cost on the applicants for two days delay caused in filing these Chamber Orders. Hence, Chamber Orders are granted as prayed subject to payment of cost of Rs. 1,000/-, by the applicants in each Chamber Order, to be paid to the Maharashtra State Legal Services Authority within a week from the date of uploading of order.

Upon payment of cost, the petitioners to remove office objections on the Petitions and get the same numbered and/or registered within three weeks from the date of uploading of Order, failing petitions to stand rejected for non-compliance of office objections under O.S.Rule 986.

At this stage, Id. Advocate for the respondents prays that operation of this Order may be kept in abeyance for period of four weeks since the respondents want to challenge this Order before the Hon'ble Court.

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Prothonotary & Senior Master
Date : 27th June, 2024

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In view thereof, in the interest of justice,
operation and effect of this Order is kept in
abeyance for period of two weeks from today.

Date : 27.06.2024

Prothonotary and Senior Master

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