



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 2241 OF 2024

The Akola Janata Commercial Co-operative Bank Ltd. Akola,
through its Managing Director/C.E.O.,
Vilas Bhalchandra Agrawal,
aged about 59 years, Occ. Service,
R/o Akola, Tq. and District – Akola.

...PETITIONER

Versus

- 1] M/s. Renuka Oil Industries,
Khamgaon, through its Proprietor,
Nilesh Sureshrao Deshmukh,
aged about 50 years, Occ. Business,
R/o At Nandanwan Apartment,
Jalamnaka, in front of Anjuman High School,
Nandura Road, Khamgaon, District – Buldhana.
- 2] Hasanrao s/o Narayanrao Deshmukh,
aged – adult, Occ. Business,
R/o At Nandanwan Apartment,
Jalamnaka, in front of Anjuman High School,
Nandura Road, Khamgaon, District – Buldhana.
- 3] The Recovery Officer,
The Akola Janata Commercial Co-operative Bank Ltd.,
Akola.

...RESPONDENTS

Shri R.L. Khapre, Senior Advocate with Shri V.A. Lohia, Counsel for
the petitioner.
Shri A.A. Naik, Senior Advocate with Shri Ashwin Deshpande,
Counsel for respondent nos. 1 and 2.

CORAM : ANIL L. PANSARE, J.

DATE : AUGUST 26, 2024

ORAL JUDGMENT :

The petitioner – Bank has challenged order dated 12/2/2024 passed by the Co-operative Appellate Court, Mumbai, Bench at Nagpur, in Miscellaneous Application No. 19/2023, thereby condoning the delay of 3195 days in filing appeal against the judgment and award dated 30/12/2014 passed by the Co-operative Court, Akola, in Dispute No. 674/2001.

Briefly stated, the facts are as follows :

2] The petitioner – Bank, in the year 2001, filed dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960, read with Rule 77-F of the Maharashtra Co-operative Societies Rules, 1960, against four opponents, of which respondent nos. 1 and 2 herein were opponent nos. 1 and 2 before the Co-operative Court.

3] It appears that respondent no.1 had obtained loan from the petitioner – Bank. Respondent no.2 and other two

opponents stood guarantors. Respondent no.2 and the third opponent mortgaged their properties.

4] The Co-operative Court, vide judgment and order dated 26/3/2002, held all the opponents jointly and severally liable to pay, to the Bank, amount of Rs.26 Lakh approximately with interest thereon till realization of full amount. This decree was partly satisfied in the execution proceedings when the properties, mortgaged with the Bank, were sold.

5] This decree was passed *ex parte* against all the opponents. Opponent no.3 filed an application before the Co-operative Court to set aside the *ex parte* decree, which came to be allowed by the Co-operative Court vide order dated 5/5/2005.

6] The petitioner – Bank assailed the order before the Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Nagpur, in Appeal No. 30/2005. The Appellate Court allowed the appeal and set aside the order passed by the Co-

operative Court, Amravati, vide order dated 15/12/2005. Opponent no.3 carried the matter before this Court in Writ Petition No. 729/2006. The Court allowed the Writ Petition and, thus, set aside the order passed by the Co-operative Appellate Court, and while doing so, the Court clarified that what is adjudicated in the petition is only the rights of the petitioner and none else.

7] Shri A.A. Naik, learned Senior Counsel for respondent nos. 1 and 2, submits that by way of clarification, the order passed by the Co-operative Appellate Court is quashed and set aside to the extent of the petitioner therein, *viz.*, opponent no.3 before the Co-operative Court. According to him, the effect of this order will be that order dated 15/12/2005 passed by the Appellate Co-operative Court setting aside the judgment and order dated 5/5/2005 passed by the Co-operative Court is quashed and set aside to the extent of opponent no.3 and, therefore, the judgment and order passed by the Co-operative Court would stand quashed and set aside

against opponent no.3 and not against the respondents herein (original opponent nos. 1 and 2). Accordingly, it is argued that the decree was partly set aside.

8] This interpretation has been rightly countered by Shri R.L. Khapre, learned Senior Counsel for the petitioner. He submits that this Court has, in clear terms, quashed and set aside the order passed by the Co-operative Appellate Court. What has been clarified is that opponent no.3's rights have been tested and not of anyone else. This clarification was required because the other opponents (respondents herein) were not even party to the Writ Petition. It is, thus, evident that the entire order of Co-operative Appellate Court was quashed and set aside and thus *ex parte* decree stood set aside in its entirety. By way of clarification, only opponent no.3 was given opportunity to contest dispute, which is but natural because opponent nos. 1 and 2 (present respondent nos. 1 and 2) had never challenged *ex parte* decree passed against them.

9] The Co-operative Court then proceeded with the

original dispute, viz., Dispute No. 674/2001 and vide judgment and order dated 3/8/2006 held that original opponent no.3 is also jointly and severally liable to repay the loan along with opponent nos. 1, 2 and 4 in terms of the decree passed on 26/3/2002.

10] As could be noticed, the Co-operative Court, vide judgment and order dated 26/3/2002, passed decree against opponent nos. 1, 2 and 4 and thereafter, vide judgment and order dated 3/8/2006, clarified that opponent no.3 is also jointly and severally liable to repay the loan to the petitioner – Bank.

11] Opponent no.3 filed appeal against the said judgment and decree in Appeal No. 8/2008. The petitioners were made party respondent nos. 3 and 4. The Appellate Court allowed the appeal and remanded the matter back to the trial Court for decision afresh vide judgment and order dated 18/7/2008. The Co-operative Court then considered the issue afresh and vide judgment and award dated 30/12/2014 partly

allowed the dispute filed by the petitioner – Bank and held opponent nos. 1, 2 and 4 jointly and severally liable to pay amount of Rs.14 Lakh approximately to the petitioner – Bank along with interest till realization of the amount. The opponent no.3 was exonerated.

12] Respondent nos. 1 and 2, in the year 2023, filed appeal against the said judgment and award along with an application seeking condonation of delay of 3195 days. The Appellate Court noted the reasons put forth by respondent nos. 1 and 2 in approaching belatedly, one of which was that the respondents had moved application on 12/4/2019 before the Executing Court for dismissal of execution proceedings, though they appeared on 26/11/2018. I am informed that the said application is still pending. The Court then proceeds to note that respondent nos. 1 and 2 acquired knowledge of the decree only in November – 2018 when they received notice of the execution proceedings. The Court then noted that respondent nos. 1 and 2 have not explained the delay for the period from

the year 2019 till the date of filing the appeal. The Court then proceeds to hold that the reasons given for condonation of delay are not acceptable. However, the delay has been condoned on the ground that respondent nos. 1 and 2 herein want to contest the matter on merits. Thus, despite rendering categorical finding that the reasons given for condonation of delay are not acceptable, the First Appellate Court has condoned the delay on the ground that the respondents want to contest the matter on merit. This finding has been challenged by the petitioners in the present petition.

13] I have heard both sides. The respondents have relied upon the following judgments to contend that where the party has good case on merits, the Court should be liberal in condoning the delay. The learned Senior Counsel by taking aid of the judgments further argued that the delay is not intentional but is *bona fide* and, therefore, this Court may not disturb the finding. He then urged that once the Appellate Court has, in its discretion, condoned the delay, this Court in

writ jurisdiction ought not to interfere in the finding to correct the error, particularly when no prejudice will be caused to the petitioner, inasmuch as he will be entitled to resist the claim of the respondent/s on merits.

1] *Ashok Mahadeo Mankar Vs. Rajendra Bhausaheb Mulak [(2012) 12 SCC 27]*.

2] *Collector, Land Acquisition, Anantnag And Another Vs. Mst. Katiji And Others [(1987) 2 SCC 107]*.

3] *Esha Bhattacharjee Vs. Managing Committee Of Raghunathpur Nafar Academy And Others [(2013) 12 SCC 649]*.

4] *Arunoday Singh Vs. Lee Anne Elton [2021 SCC OnLine SC 3285]*.

14] Shri R.L. Khapre, learned Senior Counsel for the petitioner, has cited various judgments of this Court as also the Hon'ble Apex Court to contend that once it is held by the Appellate Court that it will be impermissible to condone the delay on the grounds put forth by the Counsel for respondent nos. 1 and 2, there is no sufficient cause to condone the same.

- 1] *Collector, Land Acquisition, Anantnag And Another Vs. Mst. Katiji And Others [(1987) 2 SCC 107].*
- 2] *Pathapati Subba Reddy (Died) By L.Rs. and Others Vs. Special Deputy Collector [2024 SCC OnLine 513].*
- 3] *Yashomandir Sahakari Patpedhi Maryadit, Mumbai Vs. Ashok Raj Enterprises, Mumbai and others [2013(3) Mh.L.J. 39].*
- 4] *Pundlik Jalam Patil (Dead) By Lrs Vs. Executive Engineer, Jalgaon Medium Project And Another [(2008) 17 SCC 448].*
- 5] *Rajendra Namdeorao Akre Vs. Rajkumar Bhalerao Balbudhe and another [2016(1) Mh.L.J. 184].*
- 6] *Ramlal and others Vs. Rewa Coalfields Ltd. [AIR 1962 SC 361].*
- 7] *State of Gujarat Vs. Sayed Mohd. Baquir El. Edross [AIR 1981 SC 1921].*
- 8] *Basawaraj and Anr. Vs. The Spl. Land Acquisition Officer [AIR 2014 SC 746].*
- 9] *Brijesh Kumar and Ors. Vs. State of Haryana and Ors. [AIR 2014 SC 1612].*
- 10] *Damodaran Pillai and Ors. Vs. South Indian Bank Ltd. [AIR 2005 SC 3460].*

15] In my considered view, the issue involved could be answered by relying upon the recent judgment of the Hon'ble

Apex Court in the case of *Pathapati Subba Reddy (Died) By L.Rs. and Others Vs. Special Deputy Collector [2024 SCC OnLine 513]*. The grounds put forth by the Counsel for respondent nos. 1 and 2 have been, in a way, dealt with in paragraph 16 of the judgment, which reads thus :

“16. Generally, the courts have adopted a very liberal approach in construing the phrase ‘sufficient cause’ used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice. In Collector, Land Acquisition, Anantnag And Another Vs. Mst. Katiji And Others [(1987) 2 SCC 107], this Court in advocating the liberal approach in condoning the delay for ‘sufficient cause’ held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day’s delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of ‘sufficient cause’ for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases ‘liberal approach’, ‘justice-oriented approach’ and cause for the advancement of ‘substantial justice’ cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act.”

16] As could be seen, the Hon'ble Apex Court has held that the phrases 'liberal approach', 'justice-oriented approach' and cause of the advancement of substantial justice cannot be employed to defeat the law of limitation so as to allow the stale matters or to be revived and reopened by taking aid of Section 5 of the Limitation Act. The Apex Court has referred to various other judgments and summarized the law in following terms :

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that :

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where

there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

17] Thus, the Apex Court has held that merits of the case are not required to be considered in condoning the delay. The Court has further held that a right or remedy that has been not exercised or availed of for a long time must come to an end or cease to exist after a fix period of time. The Court also held that in order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind, but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act.

18] In the present case, the emphasis of Shri Naik,

learned Senior Counsel, is on advancement of substantial justice on the ground that respondent nos. 1 and 2 were not even aware of the pendency of proceedings because no notice was received by them and further that they have good case on merit.

19] It indeed appears that respondent nos. 1 and 2 were not served with notice of the dispute in the second round of litigation, the question, however, is whether respondent nos. 1 and 2 have acted diligently or have slept over their rights once they acquired knowledge of the impugned decree after receiving notice of the execution proceedings.

20] The Appellate Court has, in clear words, expressed that the reasons given for condonation of delay are not acceptable. Once it is so held, the Appellate Court could not have condoned the delay on the count that respondent nos. 1 and 2 want to contest the matter on merits. Interestingly, the Appellate Court does not even record that the respondents herein have good case on merit except to note that there are

triable issues. How the issues are triable, is not even discussed in the impugned order. In that sense, one can not argue that the Appellate Court has noticed existing of good case on merit.

21] Shri Naik, learned Senior Counsel, submits that the respondents were pursuing the matter before the Executing Court and later on realized that they were pursuing the matter before wrong forum.

22] Shri Khapre, learned Senior Counsel, submitted, and rightly so, that the respondents may not take a plea of pursuing the matter before wrong forum because they are still pursuing the matter before the Executing Court on the ground that the decree under question is not executable against them. The respondents have not withdrawn the said proceedings. The respondents intend to pursue two remedies and have, without assigning any reason, in the year 2023, decided to lodge appeal, which is contrary to the law laid down by the Hon'ble Apex Court on the point of limitation.

23] I find substance in aforesaid arguments. This is a case where the respondents have acted negligently and have slept over their rights for substantial period. In fact, the respondents appear to have acted casually before the trial Court as well. In the first round of litigation, they didn't appear and thus dispute proceeded *ex parte* against them. The decree was then partly realized by selling their mortgaged properties. The respondents didn't challenge the decree at that time but opponent no.3 did and succeeded too. The respondents kept quiet, may be because they carried an impression that since properties mortgaged having been sold no further action will be taken against them. Thus, in a way, the respondents have accepted the decree. However, on receiving notice in execution proceedings, they thought to contest the same but on realizing that the unchallenged decree will be hurdle in their way, they opted to file appeal but after about 3195 days. Thus, casual approach continued.

24] In the circumstances, in absence of sufficient cause

having been shown, the Appellate Court has committed serious error of law in condoning the delay, particularly when it found that the reasons given for condonation of delay are not acceptable.

25] Resultantly, the Writ Petition is allowed. The order dated 12/2/2024 passed by the Co-operative Appellate Court, Mumbai, Bench at Nagpur, in Miscellaneous Application No. 19/2023, is quashed and set aside.

26] The respondent nos. 1 and 2, however, are at liberty to pursue the remedy in the execution proceedings. The Executing Court shall not get influenced by the observations made by this Court and shall consider the objections raised by the respondents on its own merits.

27] The Writ Petition is disposed of in above terms.

JUDGE

Sumit