



(1)

927 WP-8979-2021

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 WRIT PETITION NO. 8979 OF 2021

Satpuda Urband Co Operative Credit Society Limited Thr Its Assistant
Manager Kashinath Dongar Warke

VERSUS

Late Eknath Nimaba Patil Since Deceased Through Lrs Astul Eknath Patil
And Others

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Mr. Shubham S. Kote h/f Mr. A. V. Hon, Advocate for the Petitioner.

Mr. Jay S. Chavan h/f Mr. D.B. Thoke for Respondent No.1A to 1E.

CORAM : KISHORE C. SANT, J.

DATE : 9th JANUARY 2025

PC :-

1. Heard the learned Advocate for the parties.
2. The petitioner is a Co-operative Credit Society. The respondent Nos. 1A to 1E are the legal heirs of one late Eknath Nimaba Patil, who had availed the loan from society. Respondent Nos.2 and 3 are the guarantors to the said loan. The society had filed proceedings for recovery against deceased respondent No.1 and other respondents bearing Suit No.214 of 2005 in the Co-operative Court at Jalgaon. The original borrower Eknath Patil died on 28th August 2006. The present

petitioner therefore filed an application for bringing legal heirs i.e. present Respondent Nos.1A to 1E on record on 30th January 2012. Now the respondents filed reply to the application stating that the application is hopelessly barred by limitation. The application is filed after six years of the death of the deceased. No justifiable reason is stated in the application. It is further specifically stated in the reply that the news of death of late Eknath Nimaba Patil had appeared in the newspaper. The officers of the petitioner-society were visiting the house of the respondents for recovery from time to time. They had visited the house even after the death of the deceased. Thus, they had the knowledge. Still no due diligence is shown by the society in bringing on record the legal heirs and opposed the application.

3. The learned Judge, Co-operative Court, Jalgaon rejected the application below Exhibit-19 holding that there is no due diligence shown by the petitioner in filing the application. The learned Advocate for the opponent also relied upon the judgment of Hon'ble Supreme Court in the case of *Maniben Devraj Shaha Vs. Minicipal Corporation of*

Brihan Mumbai¹.

4. The petitioner challenges this order before the Maharashtra State Co-operative Appellate Court at Aurangabad. The said Misc. Application also came to be rejected. The petitioner is therefore before this Court.

5. The learned Advocate Mr.Kote holding for Mr. Hon vehemently argued that the society is a corporate body and does not have the knowledge. There is no question of having any personal knowledge. The society came to know during proceeding that the respondent died during the course of proceedings. Thereafter, it took some time to collect the death certificate from Gram Panchayat and some time also took place in getting the details of legal heirs as such there is delay caused in filing the application. He submits that ultimately the money of society is a public money. The society has to recover its amount given by way of loan. Both the courts have adopted hyper technical approach and have rejected the application. It is submitted that in the interest of justice, the society need to get chance to prosecute the proceeding and prays for allowing the writ petition.

¹ 2012(3) ALL MR 450

6. Learned Advocate Mr. Chavan h/f Mr. Thoke appearing for Respondents vehemently opposes the petition. He submits that though the petitioner happens to be a society, the Manager had a knowledge of death of deceased Eknath Patil. From time to time, there officers used to come to the house for recovery of the amount. The respondents are from small village where the fact of death is known to everyone. The excuse given is very lame. There is complete lack of due diligence. He relies upon the judgment of the Hon'ble Court in the case of ***Mool Chandra Vs. Union of India and Anr.***² The Hon'ble Apex Court held that it is necessary to show that the party was diligent and inspite of due diligence, it could not get the knowledge of any fact. He submits that though there is delay of six years, no justifiable reason is coming on record. In the trial, if a judgment is delivered against the respondents, they will have to pay the interest even for this period of six years. He thus prays for dismissal of the writ petition.

7. Considering that the petitioner is the Corporeal body. No personal knowledge can be attributed to it. It is true that, there is delay of six

years. At the same time, there is nothing on record to show that any intimation was given by Respondent Nos.2 and 3 about the death of original borrower to the petitioner society. There is no case that inspite of giving intimation as required under order 22 Rule 10(A) of the Code of Civil Procedure, 1908, no steps were taken. In such circumstances, it is difficult to believe that the society had the knowledge. Ultimately, the proceeding is for recovery of the amount of the society. The amount of the society is the amount of depositors. Assuming that, there is no due diligence on the part of the society still the depositors interest should not suffer. So far as the judgment in the case of *Mool Chandra* (supra) is concerned, this Court finds, on facts, that this judgment is of no use to the respondents. Keeping in mind that delay is of six years, it is necessary to take care of the interest of the respondents. This Court is inclined to allow the petition. Petition is therefore allowed. Hence, the following order:-

ORDER

- (i) Writ Petition stands allowed in terms of prayer clause (B).
- (ii) The application Exhibit-19 passed in Dispute No. CCJ-214 of

2005 pending before the learned Judge, Co-operative Court, Jalgaon stands allowed.

(iii) It is made clear that in case, the society succeeds before the Co-operative Court, Jalgaon, it shall not be entitled to change interest for the delayed period that is caused in bringing on record Respondent Nos. 1A to 1E.

(iv) The learned Judge, Co-operative Court, Jalgaon to dispose of the dispute as earlier as possible and in any case within a period of one year from today.

(v) Parties to co-operate.

(vi) Petition stands disposed off.

[KISHORE C. SANT, J.]