



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO. 3735 OF 2025
IN WP/13719/2024**

Gangadhar Bhanudas Mache And Others

VERSUS

Ghodegaon No. 1 Vividh Karyakari Seva Sahakari Society Ltd. And
Others

...

- Mr. K. J. Suryawanshi, Advocate for Applicants
- Mr. V. S. Badakh, AGP for Respondent/s – State
- Mr. K. J. Suryawanshi, Advocate for Respondent Nos. 1 to 3
- Mr. V. H. Dighe, Advocate for Respondent No. 5 and 6
- Mr. S. S. Wagh, Advocate for Respondent Nos. 7 to 10, 13, 14, 16 and 17

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WITH

WRIT PETITION NO. 13719 OF 2024

Rupchand Deorao Darekar and Other

VERSUS

Gangaram Bhanudas Mache and Others

...

- Mr. V. D. Hon, Senior Advocate i/b Mr. A. V. Hon, Advocate for the Petitioners
- Mr. V. S. Badakh, AGP for Respondent/s – State
- Mr. K. J. Suryawanshi, Advocate for Respondent Nos. 1 to 3
- Mr. V. H. Dighe, Advocate for Respondent No. 5 and 6
- Mr. S. S. Wagh, Advocate for Respondent Nos. 7 to 10, 13, 14, 16 and 17

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CORAM : ROHIT W. JOSHI, J.

DATE : JULY 24, 2025

ORDER:

1. Elections to Ghodegoan No. 1 Vividh Karyakari Seva Sahakari Limited, Ghodegoan, Tq. Shrigonda, Dist. Ahmednagar, which is a co-

operative society registered under Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as “**MCS Act**”) were held in the month of July 2022 and the elections results were declared on 21.07.2022. Respondent Nos. 1 to 3 filed a dispute challenging the said elections invoking Section 91 of the MCS Act. The dispute is filed on 11.07.2023. Section 92(1)(d) of the said Act provides limitation of two months for filing a dispute in order to challenge an election. The limitation commences from the date of declaration of election result. There is a delay of almost ten months in filing of the dispute. The learned Co-operative Court rejected the prayer for condonation of delay. The delay is sought to be explained in paragraph 9 of the dispute petition, which reads as under:

“IX) The impugned election results are dated 21.07.2022. The election dispute came to be filed on 11.09.2023. Therefore, there is a delay of 11 months and 20 days caused in filing the election petition.”

2. It is merely stated that after the results were declared on 21.07.2022, the clerk of the society had informed that some names of persons who were not members of the society were inserted in the voter list. It is stated that information was received on 03.07.2023 and therefore, the cause of action for filing election petition also arose on 03.07.2023. This is the only explanation offered for condonation of delay. The learned Co-operative Court has rejected the said prayer vide order dated 04.12.2023, holding that no plausible explanation is offered

for seeking condonation of delay of around ten months. The learned Co-operative Court has observed that disputant no. 1 is erstwhile Chairman of the co-operative society. The learned Co-operative Court has observed that delay cannot be condoned, merely for the asking and the reasons specified for seeking condonation of delay were inadequate.

3. Aggrieved by the said order dated 04.12.2023, the disputants i.e. respondent nos. 1 to 3 filed a revision application before the learned Co-operative Appellate Court being Revision Application No. 44 of 2023. The said revision is filed under Section 149(9) of the MCS Act. The learned Co-operative Appellate Court has allowed the revision vide judgment dated 01.10.2024. It is observed by the learned Co-operative Appellate Court that the disputants did not offer in plausible explanation for the delay. However, it is observed that since the allegation is that around 32 persons who were not members of the society, have cast their votes. It is held that since names of 32 persons who were not members were included in the voter list, it was necessary to condone the delay. The learned Co-operative Appellate Court has placed reliance on judgment of the Hon'ble Supreme Court in the matter of **Collector, Land Acquisition, Anantnag and Ors. Vs. Mst. Katiji and Ors.** reported in **1987 SCR (2) 387** to condone the delay observing that a meritorious matter should not be thrown out of the Court at the threshold on account of delay. Heard Mr. V. D. Hon, the learned senior

advocate appearing for the petitioners. Mr. Hon contends that the learned Co-operative Court has rightly rejected application for condonation of delay, since there is no explanation at all seeking condonation of delay. Drawing attention to paragraph 9 of the dispute petition, he contends that the statement in the application is not in the nature of explanation for the delay. According to the learned senior advocate the contention of the disputants appears to be that cause of action itself arose on 03.07.2023, when the alleged information of 32 bogus voters was allegedly received by the disputants. He further contends that the disputant nos. 1 and 2 are erstwhile Chairman and Vice-Chairman respectively of the said co-operative society and the disputant no. 3 / respondent no. 3 contested the elections. He submits that this would imply that the disputants are broadly aware about the provisions of the Act and Rules and certainly the procedure with respect to declaration of result, preparation of voter list, etc. The submission of the learned senior advocate is that since the matter is concerning an election dispute, delay needs to be explained meticulously with the minute details and the same cannot be merely asking.

4. Per contra, Mr. K. J. Suryawanshi, learned advocate for the disputants supports the order and contends that purity of election process cannot be compromised by inserting names of persons who are not members of the society as voters. He contends that the learned Co-

operative Appellate Court has rightly condoned the delay finding that it was necessary to decide the dispute on merits in order to uphold democratic values on which co-operative movement is founded. He also states that prior to 03.07.2023, the disputants were not aware about illegal insertion of certain names in the voter list and, therefore, there was no reason to file dispute.

5. Perusal of the order passed by the learned Co-operative Court will demonstrate that the learned Co-operative Court has recorded proper reasons for refusing, to condone the delay. It is observed that the statute has prescribed limitation of two months for filing dispute in relation to an election dispute and therefore, delay of around ten months cannot be condoned merely for asking. The learned Co-operative Court has also observed that the disputant nos. 1 and 2 were office bearers of the society immediately preceding election and were aware about the alleged ineligibility of the said 32 persons, whose names are alleged to be wrongly included in the voter list.

6. As regards the learned Revisional Court, the said Court has also categorically recorded that no plausible ground is set out, seeking condonation of delay. It is merely observed that since the allegation in the election dispute is regarding illegal insertion of certain names in the

vote list, it is necessary to condone the delay in order to decide the controversy on merits.

7. Having heard the rival submissions, this court is of the opinion that the learned Co-operative Appellate Court has erred in allowing the Revision Application. This Court is unable to concur with the reasons recorded by the learned Co-operative Appellate Court in allowing the Revision Application.

8. At the outset, having held that the delay was not properly explained, the Revision ought to have been rejected. The learned Co-operative Appellate Court has entertained the revision under Section 149(9) of the MCS Act. The said provision provides that revisional power can be exercised by the Co-operative Appellate Court only in order to satisfy itself, as regards legality or propriety of the decision or order passed by the Co-operative Court. The learned Co-operative Appellate Court has not recorded that the learned Co-operative Court has committed any illegality in rejecting the application or any impropriety in the decision making process.

9. Condonation of delay is essentially a matter of discretion of a Court. A Revisional Court normally should not interfere with such discretionary order, save and except, in cases where the order passed is

perverse or not in accordance with statutory mandate or suffers from procedural impropriety, such as non-compliance with principles of natural justice, etc. Nothing of the sort is pointed out by the learned Co-operative Appellate Court while allowing the revision.

10. The learned Co-operative Appellate Court has also lost sight of the fact that the dispute in the matter is an election dispute, where normally laws of limitation should be applied strictly with full rigor. In such matters, applications for condonation of delay should be scrutinized strictly and equitable principles, which weigh with the Courts, in dealing with such applications in other disputes are not relevant in election disputes. The learned Court should have appreciated that the election dispute seeks to unsettle a body of democratically elected persons. In order to do so, the law of limitation should be scrupulously followed. Learned Co-operative Appellate Court has relied upon a judgment of Hon'ble Supreme Court in a land acquisition matter, to hold that even if the delay is not properly explained, it should be condoned in the interest of justice. The learned Co-operative Appellate Court has failed to appreciate that parameters for condonation of delay in land acquisition cases and election dispute will be diametrically opposite.

11. Having regard to the totality of circumstances in the considered opinion of this Court, the order impugned does not stand the scrutiny of

facts and also of law. The learned Co-operative Appellate Court has exercised jurisdiction under section 149(9) of the MCS Act erroneously. The order warrants interference at the hands of this Court in exercise of its jurisdiction under article 227 of the Constitution. The writ petition is **allowed** by quashing and setting aside the judgment and order dated 01.10.2024 passed by the Member, Maharashtra State Co-operative Appellate Court, Mumbai, Bench at Aurangabad in Revision Application No. 44 of 2025.

12. Learned counsel for respondents - disputants states that in order to balance the equities, the learned Co-operative Appellate Court had imposed cost of Rs.25,000/-, which is already deposited by the disputants and therefore, this should not now interfere with the order impugned. The contention is recorded only in order to be rejected. The fact that the disputants have deposited the cost in compliance with order passed by the learned Co-operative Appellate Court will not defeat the rights of the petitioners to contest the petition on merits in order to get rid of the impugned order, which according to them is not passed in accordance with law.

13. At this stage the learned counsel for respondent nos. 1 to 3, the original disputants makes a request that since the petition is allowed, cost of Rs.25,000/- which is deposited by respondent nos. 1 to 3 with the

society, should be ordered to be refunded. Mr. V. D. Hon, the learned senior advocate states that there is no difficulty in refunding the amount, however, since the entire record of the society is illegally retained by respondent nos. 1 and 2 and therefore, the petitioners are not in a position to refund the amount. Liberty is granted to respondent nos. 1 to 3 to move appropriate civil application in the present petition. The civil application will be decided after getting response of the petitioner.

[ROHIT W. JOSHI, J.]