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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3075 OF 2025

Kasam Husain Panhalkar,
since deceased through LRs ... Petitioner

V/s.

Kolhapur District Central
Cooperative Bank Ltd., & Ors. ... Respondents

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Mr. S.C. Mangle for the petitioner.

Mr. Gangaji B. Naik for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : APRIL 2, 2025

PC.:

1. **Rule.** Rule is made returnable forthwith.
2. The challenge in the present writ petition, preferred under Article 227 of the Constitution of India, is directed against the order dated 07.02.2025, passed by the learned Cooperative Appellate Court, whereby the petitioners' application for condonation of delay in preferring an appeal against the Award dated 22 February 2023 passed in a dispute under Section 91 of the Maharashtra Cooperative Societies Act, 1960 ("the Act of 1960") has been rejected.
3. The factual backdrop, briefly stated, is that the predecessor of the petitioners was arrayed as opponent No.5.1 in a dispute

instituted by respondent No.1 for recovery of a loan amount under the provisions of the Act of 1960. During the pendency of the said dispute, the petitioners' predecessor expired on 28 April 2022. It appears that despite the death of opponent No.5.1, no steps were taken by the disputant (respondent No.1) to bring the legal representatives of the deceased on record, as is required in law. Notwithstanding the said demise, the learned Cooperative Court proceeded to adjudicate the matter and eventually passed an Award on 22 February 2023.

4. According to the petitioners, they became aware of the Award only upon receipt of the notice of execution, which was issued on 9 December 2024 and received by them on 11 December 2024. Thereafter, they promptly preferred an appeal along with an application for condonation of delay on 23 December 2024.

5. In the considered view of this Court, the approach adopted by the learned Cooperative Appellate Court in rejecting the application for condonation of delay, without appreciating the peculiar facts and circumstances of the case, is legally unsustainable. It is trite law that in a dispute concerning recovery of dues, once the party against whom relief is sought has expired, the onus lies upon the disputant to bring the legal representatives of the deceased party on record. In the present case, the record does not indicate that any such attempt was made by respondent No.1 to substitute the deceased opponent No.5.1 with his legal representatives prior to the pronouncement of the Award.

6. The failure to implead the legal representatives in such circumstances vitiates the adjudication qua the deceased opponent, and any proceedings or orders passed against a dead person are a nullity in the eyes of law. The proceedings against a dead person without bringing his legal representatives on record are a nullity. Continuation of proceedings without substitution of legal heirs renders the entire proceedings ineffective against such party.

7. In this background, the petitioners, being legal representatives of the deceased opponent No.5.1, cannot be faulted for not preferring an appeal earlier, when admittedly no notice or intimation was ever issued to them during the pendency of the dispute or at the time of passing of the Award. The fact that they acted with promptitude upon receiving notice of execution on 11 December 2024 and filed the appeal along with delay condonation application on 23 December 2024, reflects bona fides and due diligence on their part.

8. It is now well-settled that courts ought to adopt a liberal approach while considering applications for condonation of delay, particularly where sufficient cause is made out and the delay is neither deliberate nor intentional. In *Collector, Land Acquisition, Anantnag v. Mst. Katiji*, (1987) 2 SCC 107, the Hon'ble Supreme Court has emphasized that the expression "sufficient cause" should receive a liberal construction so as to advance substantial justice.

9. In view of the above factual matrix and settled principles of law, this Court is of the opinion that the Cooperative Appellate

Court erred in refusing to condone the delay, especially when the delay was attributable not to any negligence or lapse on the part of the petitioners, but rather to the failure of the disputant in bringing them on record in accordance with law. The impugned order, therefore, suffers from manifest illegality and a failure to exercise jurisdiction vested in the Appellate Court.

10. Hence, rule is made absolute in terms of prayer clause (b).
No costs.

(AMIT BORKAR, J.)