

THE MAHARASHTRA STATE CO-OP. APPELLATE COURT, MUMBAI
BENCH AT PUNE
(BEFORE SMT. V.B.KULKARNI, MEMBER)

Misc. Application No. 01 of 2018

Exh. No.9.

Shri Siddheshwar Sahakari Pani Purvatha
Sanstha Ltd. Shendur,
Tal. Kagal, Dist. Kolhapur.

.....Applicant

V/s.

01. Smt. Aanubai Sambhaji Powar,
Age major, Occup. Agri
R/o. Shendur, Tal. Kagal,
Dist. Kolhapur.

.....Respondent

Ld. Adv. Shri. P.D.Pawar, for the Petitioner.
Ld. Adv. Shri. P.M.Patil, for the respondent.

ORDER

(Delivered on 19th March 2018)

- 1) The present Misc. Application has been filed by the original opponent for condonation of delay caused in filing revision challenging order dated 07/04/2017 passed below Exh. 26 in the dispute No. 605/2006, by the Judge Co-op. Court No.1 Kolhapur.
- 2) Heard respective advocates for the petitioner and respondent.
- 3) It is submitted on behalf of the petitioner that, there is delay of 212 days caused in filing the revision. The disputant is old leady and has filed dispute against the society for declaration and damages. The disputant has

given evidence and she is partly cross examined. Thereafter the disputant has filed application below Exh. 26 showing inability of the disputant to face cross examination due to illness and old age and requested the Court to examine her son being her witness. The society has filed reply. The trial Court has passed order but said order did not come to the notice of the society. The disputant has filed evidence of the son of the disputant and her evidence is discarded by the Court. The order of the trial Court prima facie illegal. The admission secured by the society has no place in the evidence. In the circumstances the society wants to challenge the said order. The order came to the notice on 18/11/2017 and thereafter application is filed by obtaining certified copies and passing necessary resolution of the society to initiate further proceeding. In the circumstances delay is caused which is not intentional. There is merit in the revision. It would be appropriate to give opportunity to pursue revision on merit. Therefore in the interest of justice delay needs to be condoned without cost.

- 4)** It is submitted on behalf of the respondent that the delay is not satisfactorily explained. The order passed by the trial Court is correct and no interference of the appellate Court is warranted. The present application is nothing but an attempt to prolong the dispute for one reason or another. The applicant has not shown sufficient cause for the delay caused. Even after obtaining certified copies considerable delay is caused

which is not duly explained. In the circumstances application needs to be rejected with heavy cost.

- 5) Considering the application and the argument advanced on behalf of the respective parties, following points arise for my determination;

	<u>Points</u>	<u>Findings</u>
01.	Whether the applicants are entitled for condonation of delay ?	As per final order.
02.	What order, what relief ?	As per final order.

6) **REASONS**

Point No. 1 :-

The impugned order is dated 07/04/2017. The delay condonation application is filed on 05/01/2018. Therefore, there is delay of 212 days caused in filing the revision application.

- 7) During the course of argument the Ld. Advocate for the petitioner has fairly submitted that the impugned order is two lined order and he could not noticed it. Therefore he was under impression that order is yet to be passed. When evidence affidavit of second witness came to be filed he came to know about the order. Thereafter Revision application is filed alongwith delay condonation application. The respondent being institution some time was spent in passing resolution by the committee to

initiate further proceeding. Therefore delay needs to be condoned in the interest of justice. This argument is strongly opposed by other side.

- 8) While deciding delay condonation application, instead of looking into span of the delay it is appropriate to see that sufficient cause is shown by the parties for the delay caused. It is also necessary to see intention of the parties to challenge the order. In this case the applicant has fairly admitted the mistake and prayed for condonation of delay. In the circumstances if the delay is condoned subject to cost of Rs. 2000/- by the society to the disputant it will meet the ends of justice. Hence the application is allowed conditionally. Discussing as above **the point No.1 is answered accordingly.**

9) **Point No.2**

In view of above discussion the Misc. Application bearing No.01/2018 is allowed conditionally. The delay caused in making revision challenging order dated 07/04/2017 passed below Exh. 26 in the dispute No. 605/2006, by the Judge Co-op. Court No.1 Kolhapur is hereby condoned subject to payment of cost of Rs. 2000/- by the applicant society to the respondent on or before 05/04/2018. The parties are directed to appear before the Court on 06/04/2018 and the office is directed to register the revision subject to cost compliance. Thus the order;

ORDER

- 1) The Misc. Application bearing No. 04/2018 is allowed conditionally.
- 2) The delay caused in making revision challenging order dated 07/04/2017 passed below Exh. 26 in the dispute No. 605/2006, by the Judge Co-op. Court No.1 Kolhapur is hereby condoned subject to payment of cost of Rs. 2000/- by the applicant society to the respondent on or before 05/04/2018.
- 3) The parties are directed to appear before the Court on 06/04/2018 and the office is directed to register the revision subject to cost compliance.

Dt. 19/03/2018.
Place; Pune.

Sd/-
(Smt. V.B.Kulkarni)
Member
Mah. State Co-op. Appellate Court
(Mumbai) Bench, Pune