

(2018) 02 BOM CK 0077

BOMBAY HIGH COURT (PANAJI BENCH)

Case No: 1029 of 2017

Shri.Prakash Varik

APPELLANT

Vs

The Chairman,
Shivnery Co-operative
Housing Society

RESPONDENT

Date of Decision: Feb. 20, 2018

Acts Referred:

- Constitution of India, Article 227 - Power of superintendence over all courts by the High Court
- Limitation Act, 1963, Section 5 - Extension of prescribed period in certain cases
- Goa Co-operative Societies Act, 2001, Section 114

Hon'ble Judges: Prithviraj K.Chavan

Bench: Division Bench

Advocate: A.D.Bhobe, Mahesh Kamat

Final Decision: Disposed Of

Judgement

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the respective parties.

2. The petitioner has invoked jurisdiction under Article 227 of the Constitution of India challenging an order dated 29.9.2017 passed by the Co-operative Tribunal, Goa in Misc. Civil Application No.12/2017/Condone and Misc.Appln.No. Unregistered/Stay/2017, by which the learned Tribunal dismissed the application for condonation of delay dated 7.6.2017 seeking condonation of delay of 407 days in filing an appeal under Section 90 read with Section 114 of the Goa Co-operative Societies Act, 2001 against an order dated 9.5.2016 passed by the Assistant Registrar, Co-operative Societies, South Goa, Margao, in Case No.ARCS/SZ/SCHS/SAL/ABN -1/2002.

3. Briefly stated, the respondent, who is the original disputant, had raised a dispute under Section 83 of the Goa Co-operative Societies Act, 2001 against the petitioner, which was being considered by the Assistant Registrar of Co-operative Societies, South Goa, Margao, and was registered as case no.ARCS/SZ/SCHS/SAL/ABN-1/2002. Hearing of the said matter was concluded on 17.02.2016. The petitioner was personally present on that date. The Assistant Registrar thereafter fixed the said case for orders by stating that it would be communicated to the parties. However, it is the contention of the petitioner that the Assistant Registrar did not communicate the said order to the petitioner. When the petitioner had been to the office of the Assistant Registrar in connection with another case bearing no.ARCS/SZ/SCHS/SAL/ABN-1/2003, he learnt about disposal of ARCS/SZ/SCHS/SAL/ABN-1/2002. He came to know that the Assistant Registrar had disposed of Case No. ARCS/SZ/SCHS/SAL/ABN-1/2002 on 9.5.2016. The petitioner thereafter applied for certified copy on 20.3.2017.

4. The petitioner, being aggrieved by the order dated 9.5.2016 passed in Case No.ARCS/SZ/SCHS/SAL/ABN-1/2002, approached the learned Tribunal with an appeal under Section 90 read with Section 114 of the Goa Co-operative Societies Act, 2001. Though, the petitioner was not communicated with the said order, out of an abundant caution, he filed an application seeking condonation of delay of 407 days. However, the learned Tribunal, after considering the application and reply filed by the respondent, by the impugned order rejected the application.

5. Shri Bhobe, the learned counsel for the petitioner, argued that the Tribunal has committed jurisdictional error in law as well as in facts to appreciate that the application seeking condonation of delay was essentially on the ground that the judgment and order dated 9.5.2016 was not communicated to the petitioner. The respondent, who appears in person, though agrees that there is no record indicating the communication of the said order to the petitioner yet, he submits that the petitioner had notice and knowledge of the impugned order dated 9.5.2016. It is submitted by the learned counsel for the petitioner that he had made out, "sufficient cause" for seeking condonation of delay. The learned Tribunal ought to have accepted the explanation of the petitioner and merely because the respondent has contended that the petitioner had knowledge of the said order, would not ifso-facto mean that the petitioner was negligent. He, therefore, prays for quashing the impugned order dated 29.9.2017.

6. It is a settled principles of law laid down by a catena of decisions that while entertaining an application for condonation of delay, what is required to be seen is, "sufficient cause" for not approaching the Court within time. The object of the law of Limitation is to ensure that the litigant is diligent in seeking his remedies in a Court of law. It is equally important that "sufficient cause" is to be seen in the context of the factual matrix of a particular case and would depend mostly on the bonafide nature of the explanation. From the record, it can be said that the cause shown for the delay does not lack bonafides for the reason

that admittedly, there was no notice of the order dated 9.5.2016 being communicated to the petitioner by the Assistant Registrar. In the impugned order, there is absolutely no whisper about this fact. Merely because the petitioner had knowledge of the order dated 9.5.2016 as he incidentally had been to the office of the Assistant Registrar in connection with another Case bearing no. ARCS/SZ/SCHS/SAL/ABN-1/2003 would not ifso facto mean that his action was malafide by not acknowledging the said order. Even otherwise, the petitioner would not have gained anything by causing deliberate delay and, therefore, on this count also, it cannot be said to be malafide. The discretionary power under Article 227 of the Constitution of India needs to be exercised to correct the unjustifiable refusal to exercise jurisdiction vested in the Tribunal. It is also a settled legal principles that the words, "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is imputable to a party. Thus, in order to advance substantial justice between the parties in a dispute and in the light of the admitted fact that the order dated 29.9.2017 was not communicated to the petitioner, the discretion under Section 5 of the Limitation Act can be exercised for condoning the delay.

7. The learned counsel for the petitioner has placed reliance on a ruling of the Supreme Court in Case of Housing Board, Haryana, Vs. Housing Board Colony Welfare Association and others reported in AIR 1996 SC 92. Para 12 of the said judgment can be reproduced for advantage, which reads thus:

"12. In the facts and circumstances stated above, the date of pronouncement of the order in the open Court by itself cannot be the starting point of determining the period of limitation under Section 15 of the Act. It has also to be shown that the order of the District Forum so pronounced was duly signed and dated by the members of the District Forum constituting the Bench and the same was communicated to the parties free of the charge. That being so, it has to be appreciated that mere pronouncement of an order in the open Court will not be enough but under the scheme of the Rules a copy of the said order has also to be communicated to the parties affected by the said order so that the party adversely affected therefrom may have a fair and reasonable opportunity of knowing the text, reasons and contents thereof so as to formulate grounds of attack before the appellate or higher forums. In the absence of such communication of signed and dated order, the party adversely affected by it will have no means of knowing the contents of the order so as to challenge the same and get it set aside by the appellate authority or the higher Forums".

8. The ratio laid down by the Hon"ble Supreme Court in the said authority is squarely applicable to the present set of facts as mere pronouncement of an order in the open Court by itself would not be the starting point for determining the period of limitation. The order has also to be communicated to the parties affected by the said order so that the

party who is adversely affected (petitioner herein) therefrom may have a fair and reasonable opportunity of knowing the text, reasons and the contents thereof so as to formulate grounds of attack before appellate or the higher forum.

9. Taking into consideration the aforesaid discussion and the law laid down by the Supreme Court in the authority (cited supra), the impugned order needs to be quashed and set aside. As such, the impugned order dated 29.9.2017 passed in Misc. Application No.12/20017/Condone and Misc. Appln. No.Unregistered/Stay/2017 are hereby quashed and set aside. The Authority is directed to decide the appeal filed by the petitioner on merits.

10. Rule is made absolute in the aforesaid terms. The petition stands disposed off accordingly.