

In the Court of Judge, Co-operative Court Thane at Thane
(Presided over by Smt. S. K. Tonpe, Judge)

Dispute No. CCT 127/2018

CNR No. MHCO04-000140-2018

Shri. Devesh Vyas

Disputant

V/S

Kohinoor CHS Ltd.

Opponent

Order

(Below application Exh. 14)

1. The present application is filed by the opponent for condonation of delay to file written statement on record. The opponent stated that the record of the society shows that disputant is in arrears of Rs. 3,31,106/- as on 01/12/2019 in respect of the four premises in his possession. Opponent is a small society and such huge arrears causes financial crunch for carrying out day to day affairs and also the frivolous litigation initiated by disputant.

2. The opponent further stated that in this dispute the disputant is trying to enforce his rights as member and therefore before he can be heard on merits, he is required to be directed to pay arrears of maintenance. The opponent therefore on 06/12/2018 filed at Exh. 9 an application seeking direction of this Court to disputant to pay opponent society the then arrears of maintenance as on before entertaining this petition further. The said application was contested and was eventually rejected by this Court only recently. As such, the written statement could not be filed before.

3. The opponent further stated that opponent is a Co-operative Housing Society. The committee members who have their independent daily schedule are working honorary for the society.

They required spending extra time from their personal activities and busy schedule. There are many other legal cases pending between the parties before various courts and before TMC as such the committee members could not pursue with its advocate for drafting written statement. As such there was delay in filing written statement. In the circumstances, the written statement could not be filed in prescribed time. The opponents have good case on merits and have fair chance of success if however written statement is not taken on record they will suffer irreparable loss and loss will be caused to the other members of the society. No such loss will be caused to disputant if the written statement is taken on record and matter is decided on merits. Hence prayed to condone the delay caused and take the written statement of the opponent on record.

4. The disputant filed reply at Exh. 15 and submitted that the application filed by opponent society dated 21/12/2019 for condonation of delay is false, frivolous and baseless and not maintainable in law. The disputant further submitted that, the opponent society has not mentioned correct facts of the case. They have suppressed material facts from this Court therefore the present application filed by opponent society be dismissed with heavy compensatory cost.

5. The disputant further submitted that the disputant has filed this dispute on 18/09/2018 against the opponent society and the notice of the said dispute has been served upon opponent society and accordingly the opponent society has appeared in this matter through their advocate. Since from their appearance to till date the opponent society has failed to file any application regarding time seeking to file written statement in this case. The disputant further

submitted that, the application filed by opponent society for demanding arrears of maintenance of amounting to Rs. 2,03,108/- on 01/11/2018 at Exh. 9 from disputant. The disputant has filed reply to the application filed by opponent society on 01/11/2018 at Exh. 9 and accordingly the said application filed by the opponent society was rejected by this court on 18/04/2019.

6. The disputant further submitted that, the opponent society is not individual capacity therefore the advocate for opponent society can receive the necessary instructions from any members from opponent society for filing written statement in this case. The disputant submits that the provisions of CPC is also applicable in this case therefore the opponent society should bound to file their written statement within period 30 days from servicing the notice of this case or with any specific reason that the opponent society satisfy the court not more than 120 days that the opponent society could not filed their written statement within prescribed time as mentioned in Civil Procedure Code, 1908. Therefore it is duty of the advocate for opponent society to take the necessary information from any member of the opponent society for filing written statement in this case which he failed to do so and therefore there is no question arising for extension of time limit to opponent society for filling their written statement in this case. Hence prayed to reject the application with heavy compensatory cost.

7. After hearing both the parties and perusing the documents on record following issues arise for my consideration.

Sr. No.	Issues	Findings
1	Whether the application is entitled to be allowed ?	In the affirmative

2	What order ?	As per final order
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REASONS

AS TO ISSUE NO. 1 AND 2

8. Perused application, proceeding, say on record. Heard both the parties.

9. After perusal of the application, say, proceeding it appears that the opponent is a Co-operative Housing Society. The opponent society has filed present delay condonation application on the ground that the committee members are working honorary for the society. They required spending extra time from their personal activities and busy schedule. There are many other legal cases pending between the parties before various courts and before TMC as such the committee members could not pursue with its advocate for drafting written statement. Therefore opponents failed to file written statement within stipulated period. Perusal of the roznama and proceeding it appears that on 01/11/2018 the opponent has appeared and filed their VP in the Court. Thereafter on 21/12/2019 filed present application along with written statement. If the application is allowed no harm will be caused to the disputant, per contra if the application is rejected then irreparable loss will be caused to the opponent. Considering reasons of opponents, considering delay, to decide the case on merits and in the interest of justice it is legal and proper to pass the following order.

Order

1. Application at Exh. 14 is allowed subject to cost of Rs. 500/- to be paid to the disputant.

2. After payment of the cost, the delay caused to file the written statement be condoned.

Place : Thane
Date : 10 / 11 / 2022

(Smt. S. K. Tonpe)
Judge
Co-operative Court, Thane