

Original Judgment kept in
Revision Application No.01 of 2022

Received on 01-01-2022
Registered on 01-01-2022
Decided on 01-02-2022
Duration Year Month Days
00 01 00

Exhibit No. 12

THE MAHARASHTRA STATE CO-OP. APPELLATE COURT, MUMBAI
BENCH AT PUNE

(BEFORE SMT. S.R.PAWAR, MEMBER)

Revision Application No. 01 of 2022

(Arises out of the order dated 07-12-2021, passed 'Below Exh.No.40' by the Ld. Judge, Co-op. Court No.2, Pune in Dispute bearing No. 31 of 2016.)

Smt. Indira Shirish Gandhi,
Age 74 years, Occup. Household,
R/at. CTS No.371, House No.118,
Datta Niwas Building, First Floor,
Kothrud, Pune 411038.

..... Applicant
(Original Disputant)

V/s.

- 01] Vidya Sahakari Bank Ltd.
1355, Shukrawar Peth, Pune 411002.
Through Chairman/ Chief Executive Officer.
- 02] Branch Manager,
Vidya Sahakari Bank Ltd.
Sahakarnagar Branch, Sahakarnagar, Pune 411009.
- 03] The Special Recovery Officer,
Vidya Sahakari Bank Ltd.
Shukrawar Peth, Pune 411002.
- 04] Mr. Purushottam M. Swami,
Proprietor M/s. Soft Deal Computers,
Age Adult, Occup. Business,
R/at. 301, Indira Chambers, 1549,
Sadashiv Peth, Tilak Road, Pune 411030.
- 05] Mr. Ninad Balkrishna @ Balasaheb Jadhav,
Age adult, Occup. Business,
R/at. Flat No.4, Mantri Park, Tejas Nagar,
Kothrud, Pune 411029.
- 06] Mr. Balkrishna @ Balasaheb M. Jadhav,
Age adult, Occup. Business,
R/at. Flat No.4, Mantri Park, Tejas Nagar,

*Kothrud, Pune 411029.**.....Respondents
(Original opponents)**Mr. S.B.Khurjekar, Ld. Advocate for the applicant.**Mr. S.C.Natu, Ld. Advocate for the respondent No. 1 and 2.**Respondent No. 3 to 6 are deleted as per pursis Exh. 11.*

Received on	07-01-2022
Registered on	07-01-2022
Decided on	01-02-2022
Duration	Year Month Days
	00 00 24

Revision Application No. 03 of 2022

- 01] *Vidya Sahakari Bank Ltd.
1355, Shukrawar Peth, Pune 411002.*
- 02] *Branch Manager,
Vidya Sahakari Bank Ltd.
Sahakarnagar Branch, Sahakarnagar,
Pune 411009.*

*..... Applicants
(Original Opp. No. 1 & 2)****V/s.***

- 01] *Indira Gandhi,
Age Adult, Occup. Household,
R/at. CTS No.371, House No.118,
Datta Niwas Building, First Floor,
Kothrud, Pune 411038.*
- 02] *The Special Recovery Officer,
Vidya Sahakari Bank Ltd.
Shukrawar Peth, Pune 411002.*
- 03] *Mr. Purushottam M. Swami,
Proprietor M/s. Soft Deal Computers,
Age Adult, Occup. Business,
R/at. 301, Indira Chambers, 1549,
Sadashiv Peth, Tilak Road, Pune 411030.*
- 04] *Mr. Ninad Balkrishna @ Balasaheb Jadhav,
Age adult, Occup. Business,
R/at. Flat No.4, Mantri Park, Tejas Nagar,
Kothrud, Pune 411029.*

...(Original Disputant)

- 05] *Mr. Balkrishna @ Balasaheb M. Jadhav,
Age adult, Occup. Business,
R/at. Flat No.4, Mantri Park, Tejas Nagar,*

Kothrud, Pune 411029.

.....Respondents
(Original Opp. No. 3 to 6)

Mr. S.C.Natu, Ld. Advocate for the applicants.

Mr. S.B.Khurjekar, Ld. Advocate for the respondent No. 1.

Respondent No. 2 to 5 are deleted as per pursis Exh.7.

PUNE

DATE 01-02-2022

ORAL JUDGMENT

(Dictated and pronounced in the open court)

Both these revision applications are directed against the order dated 07-12-2021, passed 'Below Exh.No.40' by the Ld. Judge, Co-op. Court No.2, Pune in Dispute bearing No. 31 of 2016. As parties of both the revision applications are similar, common question of law involved and common arguments are advanced by the Ld. Advocates for the respective parties, I am disposing off both these revision applications by way of common order.

2. The applicant in Revision Application No.01/2022 was the disputant before the trial Court. She has filed the dispute for recovery against the respondents therein.

3. By the impugned order, the Ld. Trial Judge has allowed the application filed by the opponent No.1 and 2 for condonation of delay of 1160 days in filing the W.S. on record subject to cost of Rs.10,000/- (Rs. 5000/- each) payable to the disputant.

4. As the Ld. Trial Judge has allowed the application filed by the opponent No.1 and 2, Revision Application bearing No.01/2022 has been filed by the original disputant and as the Ld. Trial Judge allowed the application subject to cost of Rs.10,000/- the opponent No. 1 and 2 have filed Revision Application bearing No. 03/2022.

5. The fact gave rise for filing the present revision in nutshell are as under; [For the sake of brevity parties are referred as per dispute]

6. The disputant has filed dispute bearing No.31/2016 and thereby prayed for the recovery of an amount of Rs.1,10,06,067/- alongwith interest. In the said matter pursuant to the summons issued by the trial

Court, the opponents have appeared before the trial Court. The opponent No.1 and 2 filed V.P. of Ld. Advocate on 21/07/2016. As they failed to file W.S. on record, on 24/08/2016 'No W.S. order' was passed against the opponent No. 1 and 2, and *exparte* order was passed against rest of opponents. Thereafter on 18/06/2016 and 16/11/2016 the opponent No. 1 and 2 have filed an application under Sec.9(a) of C.P.C. as well as U/Order VII, Rule 11 of C.P.C.. The said applications were disposed off by the trial Court.

7. Thereafter on 04/10/2019 the opponents No. 1 and 2 have filed an application 'Below Exh.No.40' for condonation of delay for filing the W.S. contending that, 'in the said matter, after appearance they have filed two different application U/sec. 9(a) of C.P.C. and U/Order VII, Rule 11 of C.P.C.. The Ld. Trial Judge has rejected the application filed by the opponent No. 1 and 2 on 21/12/2017, and thereafter preliminary issue was framed U/sec. 9(a) of C.P.C.. The disputant completed her examination in chief on 09/04/2018, but during the pendency of hearing of that application, the Maharashtra Government has issued notification in Gazette and deleted the provisions of Sec.9(a) of C.P.C. In view of the changed circumstances the trial Court has passed order on 19/01/2018 and matter was proceeded further, and accordingly preliminary issue was disposed off.

8. It is the contention of applicant that, they were under the bonafide believe that, 'the matter may still fix for hearing of preliminary issue in view of the subsequent notification issued by the Maharashtra statement Government on 15/12/2018 regarding pending applications U/sec. 9(a) of C.P.C. before the Court. They have also filed an application 'Below Exh.No.35' for reopening the said issue which the trial Court has rejected on 18/06/2019 and thus the applicant find it necessary to file W.S. on record, and at that time they realize that, 'there is 1160 days delay in filing an application for setting aside 'no W.S. order', and thus by filing application 'Below Exh.No.40' they urged for condonation of delay on the ground that, "they bonafidely regularly contesting the matter without causing any delay".

9. This application was strongly resisted by the disputant on various grounds contending that, 'the application filed 'Below Exh.No.40' is not legal and valid. The opponents No.1 and 2 never asked the Court time for filing the W.S., and no such liberty was granted by the trial Court. In spite of the knowledge of the 'No W.S. order', they immediately did not take any step to get the order set aside. Pending of other applications cannot be a ground for condonation of delay. Indeed the application is filed only with a view to prolong the matter. There is no proper and valid explanation given by the opponents, as to why they did not file the W.S. within a time limit prescribed by the statute, and no sufficient cause explained by them for condonation of delay. The ground raised by them are not legal and bonafide. Thus the disputant urged for dismissal of application.

10. After hearing both the Ld. Advocates for respective parties, the Ld. Trial Judge was of the opinion that, 'the grounds raised by the applicants are bonafide one. If the application allowed, no harm or prejudice caused to the disputant. The claim of disputant needs to be decided on merits, and thus she has allowed the application subject to cost of Rs.10,000/- (Rs.5000/- each) to be paid by the opponents No.1 and 2 to the disputant.

11. Aggrieved by the impugned order passed, the Revision Application No.01/2022 has been filed by the disputant on the grounds more set out in the Revision Application contending that, 'the order passed by the Ld. Trial Judge is against the principles of natural justice and equity as well as the provisions of law. It suffers from serious infirmity, and therefore interference of this Court is warranted.

12. As the Ld. Trial Judge directed the opponent No. 1 and 2 to pay the cost of Rs.10,000/- (Rs.5000/- each) to the disputant. The Revision Application bearing No.03/2022 has been filed by the opponent No. 1 and 2 contending that, 'the cost imposed by the Ld. Trial Judge was not legal and proper. The Ld. Trial Judge failed to appreciate the fact that, "since beginning the opponents No.1 and 2 regularly contesting the matter, and there is no negligence on their part. The cost imposed by the trial Court is exorbitant, excessive and unreasonable. Therefore interference of this Court is warranted.

13. Pursuant to the summons issued by this Court Mr. Nattu has appeared on behalf of the contesting opponents No. 1 and 2 in Revision Application bearing No. 01/2022 and Mr. S.B.Khurjekar has appeared on behalf of disputant in Revision Application bearing No. 03/2022.

14. Heard Ld. Advocates for the respective parties at length.

15. After considering the pleadings of parties, the grounds raised in Revision Applications and the arguments advanced by Ld. advocates for respective parties, following points arise for my consideration, and I record my findings to the said points for the reasons assigned there under;

<u>Point</u>	<u>Findings</u>
1. Whether the impugned order is in accordance with law?	No.
2. Whether the cost imposed by the Trial Court upon opponent No. 1 and 2 'Below Exh.No.40' was reasonable?	Does not survive in view of findings to Point No.1.
03. Whether interference of this Court is called for in the impugned order?	Yes.
04. What order what relief ?	As per final order.

REASONS

Point No. 1 to 4:-

16. Mr. S.B.Khurjekar Ld. Advocate for the disputant (applicant in Revision Application No.01/2022) has submitted that, "on 08/07/2016 the disputant has filed the dispute for recovery of deposit amount which she has deposited under auction purchase with opponent No. 1 and 2 way back in the year 2003 and 2005. When the dispute was filed, the age of disputant was 69 who is now about 75 years old widow. The dispute was filed by her for recovery of an amount of Rs.1,10,06,067/- alongwith interest. Admittedly, all the opponents were duly served with summons as well as show cause notice issued by the trial Court. The opponent No.1 and 2 have appeared through their advocate on 21/07/2016 before the trial Court. On the said date the Ld. Trial Judge has passed 'exparte order' against the opponents No. 3 and 4, and matter was adjourned on 24/08/2016 for filing W.S. by rest of the opponents. As the opponents No. 1, 2, 5 and 6 failed to file their reply as well as W.S. on record, on the said

date the Ld. Trial Judge pleased to pass 'No say' and 'No W.S. order' against the above mentioned opponents.

17. It is further submitted that, the opponent No.1 and 2 were fully aware about the 'No W.S. order' passed by the trial Court. Filing of other application U/sec. 9(a) of C.P.C. or U/Order VII, Rule 11 of C.P.C. does not preclude the opponent No.1 and 2 to file W.S. on record. The only ground contended by the applicants is regarding hearing of those applications filed by the applicants, which is not a sufficient and bonafide ground. The applicants can very well sought time from the trial Court for filing the W.S. on record on this ground or after passing of 'No W.S. order' immediately urged for setting aside the same for which they failed. There is huge delay of 1160 days which is not properly explained by the applicants, and thus the application deserves to be dismissed by the trial Court. The Ld. Trial Judge failed to appreciate the fact that, "no sufficient ground is mentioned by the applicants for condonation of delay, which is a prerequisite for allowing the application of condonation of delay, and then also, condone the delay". Thus interference of this Court is warranted.

18. To support his submission Mr. Khurjekar has relied upon following authorities.

- 01] Balvant sing V.s Jagdish sing Reported in A.I.R. 2000 SC, Page 3043,
- 02] Molena Developers Pvt. Ltd. Vs Umesh N. Shah, Writ Petition bearing No.2422 of 2019.
- 03] Omprakash Gupta Vs Union of India, 2000(3) Mh.L.J. Page 154 S.C.
- 04] Majji Sannemma @ Sanyasirao Vs Reddy Sridevi and ors. passed by the Hon'ble Apex Court in Civil Appeal No. 7696 of 2021.

19. Per contra it is submitted by Mr. Natu Ld. Advocate for the opponent No. 1 and 2 that, 'the order passed by the Ld. Trial Judge is proper and legal. So far as the condonation of delay is concerned, the Ld. Trial Judge in her findings specifically mentioned that, 'if the Court does not allow the application of opponents, the opponents will lose their right by filing W.S., and in the interest of justice the order was passed'.

20. *Mr. Natu Ld. Advocate further submits that, the Ld. Trial Judge erred while imposing the cost of Rs.10,000/- only on the ground that, 'inconveniencies caused to the disputant, and to that extent the order needs to be modified.*

21. *While re-appreciating the case of respective parties, I have gone through the Roznama of the matter as well as the documents attached by respective revision applicants alongwith their proceedings, and I find, few facts are specifically admitted or became deemed to be admitted for want of denial, and those needs to be reproduced first.*

1] *It is an admitted fact that, 'on 08/07/2016 the dispute bearing No. 31/2016 was filed by the disputant for recovery of an amount of Rs.1,10,06,067/- alongwith interest. By filing the dispute, the disputant contended that, 'she is member of opponent No.1 bank. The opponent No.2 is the branch manager of opponent No.1 bank. The opponent No.4 is also the member of opponent No.1 bank and he had availed certain loan facilities from the opponent No.1 bank, for which opponent No. 5 and 6 stood as guarantors. They have mortgaged their property towards the loan account of opponent No.4. As they failed to repay the loan amount, the opponent No.1 bank has obtained recovery certificate against opponent No.4 to 6 and pursuant to that recovery certificate, opponent No.3 who is the S.R.O. attached mortgaged property. He has published sale proclamation. The present disputant is the auction purchaser, and highest bidder. She has deposited 15% of price of property in the auction itself and as per the S.R.O's direction the remaining 85% amount was deposited by her in later stage. The total amount deposited by her is Rs.10,11,000/-. For one reason or other, the authorities under the act did not confirm the sale, and she has raised her grievances on the said issue till the Hon'ble Apex Court. She has incurred Rs. 8 Lacks towards legal expenses. The opponent No.1 bank and opponent No.2 the Manager of bank neither delivered her the possession of suit property, nor refunded her the amount which she has deposited inspite of her persistent demands. It is her contention that, 'she has acted in good faith. There is no wrong on her part. Lastly she asked the bank to refund of amount, but on one reason or*

other, the opponent No.1 and 2 refused to refund the amount deposited by her. Hence she had no other alternative left than to file the dispute”.

2] It is an admitted fact that, ‘the opponent No.1 and 2 have appeared before the trial Court on 21/07/2016 through Ld. Advocate.

3] It is an admitted fact that, ‘No W.S. order’ was passed against them on 24/08/2016.

4] It is an admitted fact that, ‘for the first time, they have filed an application for setting aside ‘No W.S. order’ on 04/10/2019’.

22. *On these admitted facts, I have perused the application filed by the applicant 'Below Exh.No.40', and I find that, “nowhere in the entire application the opponent No.1 and 2 contended that, “when the ‘No W.S. order’ was passed and when they have got knowledge of the same. The only contention of opponent No.1 and 2 is that, “on 16/10/2016, they have filed an application U/Order VII, Rule 11 of C.P.C. and U/sec. 9(a) of C.P.C.”. Admitted fact is that, ‘the Ld. Trial Judge has rejected the application filed by the opponent No.1 and 2 U/Order VII Rule 11 of C.P.C. on 02/05/2017, and on the said date, preliminary issue was framed, which could not proceed further in view of the Maharashtra state Government notification MAHENG/2009/35528, by which the provisions of Sec. 9(a) was deleted, and thus the trial Court on 19/07/2018 passed an order to that effect. Hence practically both the applications filed by the opponent No.1 and 2 were disposed off on 19/07/2018.*

23. *It is to be noted here that, “apart from pendency of these two applications, no any other ground has been contended by the opponents No.1 and 2 in their entire application”. It is not the case that, they are not aware about the ‘No W.S. order’ dated 24/08/2016 passed against them. In view of the provisions of Order VIII Rule 1 of C.P.C. it was mandatory on the part of the defendant/opponent to file their W.S. on record within 30 days from the date of service of summons. If the defendant failed to file the W.S. within the time prescribed, then the Court may permit defendant to file the W.S. within 90 days by recording reasoned order, and in exceptional*

circumstances further time can also be extended. The main intention of legislature to frame this provision to expedite the trial.

24. *Here in the present case at hand, there is no single application on record filed by the opponents No.1 and 2 seeking time to file W.S.. Even they did not bother to get the 'No W.S. order' set aside since 24/08/2016. In spite of knowledge and their regular attendance before the trial Court in the same Court. They defended the claim of respondent on technical grounds. If it is a plea of the opponent No.1 and 2 that, "they contested the matter without causing delay, then it was their equal responsibility to take care and submit their defence on record. Pendency of application U/sec. 9(a) or U/Order VII Rule 11 of C.P.C. cannot be a ground for non filing an application for setting aside 'No W.S. order'. Thus I find, from the above mentioned conduct of the opponents No.1 and 2, it is clear that, "they want to protract the trial". Indeed it is not disputed fact that, 'the disputant has deposited sale proceed with opponent No.1 bank. Thus the cause mentioned by the opponents for delay in filing setting aside application is not sufficient and bonafide. In this contest I have gone through the citations upon which the Ld. Advocate for the disputant has relied upon.*

25. *In case **Balvant sing V.s Jagdish sing Reported in A.I.R. 2000 SC, Page 3043**, it is observed by their Lordship that,*

*Even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time & proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation. **The law of limitation is a substantive law & has definite consequences on the right & obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts & circumstances of a given case.** Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause & its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. If a party has been thoroughly negligent in implementing its rights & remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly'.*

26. *I find, the ratio of above cited case law is rightly applicable in the present case at hand. Here in the present case at hand also, the applicant failed to explain, 'why they did not take immediate steps to get the 'No W.S. order' set aside, and from the conduct of opponents No.1 and 2 in filing the application after applications, it is evident that, "they are not interested to have speedy adjudication of the matter". Even though one presume that, "till 18/06/2019, the applicants were under the bonafide beliefs that, "the matter can go on 9(a) application, then also there is no sufficient ground explained by the opponents No.1 and 2 for delay of further period from 18/06/2019 till 04/10/2019. Indeed once the Ld. Trial Judge has passed an order on 9(a) application on 19/07/2018, the Court cannot reopen the application on similar issue. Thus according to me the opponents No.1 and 2 have to explain delay from 19/07/2018 for which there is no explanation on the part of opponents No.1 and 2. Thus the application deserves to be dismissed.*

27. *In case of **Omprakash Gupta Vs Union of India, 2000(3) Mh.L.J. Page 154 S.C.** the similar facts arises. The suit was filed before the Hon'ble Delhi High Court against the Union of India and others. The plea of first respondent i.e. the Union of India for non filing of W.S. on record was on the ground that, 'the contesting party i.e. the National Capital Territory of Delhi has not filed W.S. on record and therefore they did not file the W.S. was rejected by the Hon'ble High Court Delhi and allow the application filed by the appellant U/Order VIII Rule 10 of C.P.C. and close the matter for judgment. Though the facts of above cited case law is different than the present case at hand, the ratio as laid down by the Hon'ble High Court Delhi is rightly applicable.*

28. *In case of **Majji Sannemma @ Sanyasirao Vs Reddy Sridevi and ors. passed by the Hon'ble Apex Court in Civil Appeal No. 7696 of 2021.** The Hon'ble High Court of Delhi has allowed the application for condonation of delay of 1011 days which was a subject matter of Civil Appeal No. 7696 of 2021 before the Hon'ble Apex Court, and it is observed by the Hon'ble Apex Court that,*

“While considering the delay applications, it is relevant to bear in mind two important consideration [1] expiration of period of limitation prescribed for making an appeal gives rise to right in favour of decree holder to treat the decree as binding between parties, and [2] if sufficient cause for excusing delay is shown discretions is given to the Court, this desecration has been deliberately conferred to the Court in order that, the judicial power and desecration in that behalf should be exercised to advance substantial justice and unless there is sufficient cause delay cannot be condone”.

29. *Applying the ratios as laid down by the Hon'ble Apex Court as well as Hon'ble High Court to the facts of the case on hand and considering the averments in the application filed by the opponents No.1 and 2 for condonation of delay I am of the opinion that, “no such explanation much less a sufficient or a satisfactory explanation has been offered by the opponent No. 1 and 2 herein before the trial Court for condonation of delay of 1160 days in filing the application for setting aside ‘No W.S. order’. The Ld. Trial Judge is not justified in exercising its desecration to condone the huge delay judiciously. After perusal of the impugned order passed by the Ld. Trial Judge, it is seen that, ‘the trial Court has not recorded any satisfactory reason, that the explanation of delay was either reasonable or satisfactory, which is an essential prerequisite for condonation of delay.*

30. *Another important aspect of the matter is also that, alongwith Exh.40, the opponents No.1 and 2 have filed an independent application at Exh.41 for setting aside ‘No W.S. order’. While passing the impugned order the Ld. Trial Judge recorded her findings that, “after payment of cost of Rs.10,000/- the W.S. will be taken on record”. Meaning thereby she has allowed the subsequent application also without offering an opportunity to the disputant to argue on merits on the subsequent application, which is pending for hearing. Thus it is not explained the cost imposed was whether for condonation of delay or for setting aside ‘No W.S. order’. Thus I find, the order passed by the Ld. Trial Judge is not proper and in accordance with law. Hence interference of this Court is warranted.*

31. *In view of the above mentioned findings, the Revision Application No.01/2022 filed by the disputant needs to be allowed by setting aside the*

order passed 'Below Exh.No.40' by the Ld. Trial Judge in dispute bearing No.31/2016 by substituting the same holding that, "the application filed by the opponents No.1 and 2 'Below Exh.No.40' stands rejected'.

32. In view of the above mentioned findings recorded by this Court the Revision Application No. 03/2022 filed by the opponents No.1 and 2 deserves to be dismissed.

33. Considering the above observations, I record my findings to the aforesaid points accordingly and following order is passed;

ORDER

01. The Revision application No. 01 of 2022 is allowed.
02. The order dated 07-12-2021, passed 'Below Exh.No.40' by the Ld. Judge, Co-op. Court No.2, Pune in Dispute bearing No. 31 of 2016 is set aside, and substituted as under.
 - A) The application filed 'Below Exh.No.40' by the opponents No.1 and 2 is rejected.
 - B) The cost will be cost in cause.
03. The Revision Application No. 03/2022 is rejected.
04. No order as to costs of both the Revision Applications.

(Smt. S.R.Pawar)
Member

Maharashtra State Co-op. Appellate Court
(Mumbai) Bench, Pune

Dt. 01/02/2022.

Dictated and pronounced in the open Court.

Order Dictated on 01/02/2022

Order Transcribed on 01/02/2022

Order ready on 01/02/2022