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SLP(C)No. 15359 OF 2000
ITEM No.2

Court No. 4

SECTION XIV
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.15359/2000

(From the judgement and order dated 12/05/2000 in CWP 162/99
of The HIGH COURT OF H.P AT SHIMLA)

BHAGMAL

Petitioner (s)

VERSUS

H.P.,CO-OP MKTNG.&CONSUMER FED.LTD.&ORS.
(For Final Disposal)

Respondent (s)

Date : 07/11/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.T. THOMAS
HON'BLE MR. JUSTICE S.N. PHUKAN

For Petitioner (s) Mr. J.S. Attri,Adv.
Mr. KP Singh Dalal,Adv.

For Respondent 1 Mr. Nikhil Nayyar,Adv. (Not Present)

UPON hearing counsel the Court made the following

O R D E R

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Leave granted.
Appeal is allowed in terms of the signed order.

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(N.K. Goel) (H.K. Bhatia)
Court Master Court Master
(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 7773 of 2001@@
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(Arising out of S.L.P. (Civil) 15359 of 2000)

Bhagmal

..Appellant

Vs.

M.P., Co-Op Mktng. & Consumer Fed. Ltd. & Ors. ..Respondents

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Leave granted.

The Registrar of the Co-operative Societies under the Himachal Pradesh Co-operative Societies Act, 1968 (hereinafter referred to as 'the Act') passed an Award on 29.12.1989 mulcting the appellant with a liability of 2.62 lacs which includes interest also. This related to the shortage etc. noticed in the shops of which appellant was salesman for sometime. Appellant preferred a statutory appeal challenging the said award under Section 93 of the said Act before the authority concerned but there was a long delay of above six years in filing the appeal, and therefore, appellant filed an application for condoning the delay. The authority passed an award condoning the delay and admitted the appeal. The first respondent challenged the said order before the High Court by filing a writ petition. A Division Bench of the High Court of Himachal Pradesh quashed the said order as per the impugned judgment.

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Normally the High Courts would be wary in interfering with an order passed in the exercise of a discretion conferred by law particularly when such discretion was exercised to enable a party to pursue his statutory remedy of appeal. No doubt the discretion has to be exercised judicially. There is again no doubt that the delay in filing the appeal was apparently very long. Nonetheless the High Court in exercising writ jurisdiction should have been slow to upset a benefit granted to a party in having his statutory remedy to be pursued by condoning the delay albeit its length

The Division Bench of the High Court has stated in the impugned judgment that appellant cannot be permitted to say that he was prevented by sufficient causes to file the appeal within time. It is too hard a proposition that an appellant cannot be permitted to say so. We also have no doubt that appellant could have filed the appeal within time. If he had filed the appeal within time there is no question of exercising discretion under Section 5 of the Limitation Act. Such a contingency arose because appellant did not file the appeal within time. But learned counsel for the appellant has narrated many events which intervened between the date when the Registrar passed the award on 29.12.1989 and the date when appellant filed the appeal before the Appellate Authority on 31.10.1986. Much water had flowed beneath the bridge during the period of this long delay. Appellant was not sitting idle

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during the period in respect of the liability imposed on him by the cooperative society. Appellant was actively taking all steps challenging the conviction and sentence imposed on him on account of the shortage attributed to him. Ultimately he succeeded when the High Court set aside the conviction and sentence on 22.10.1992. First respondent brought the matter to this court by way of a special leave petition in challenge of the said judgment of the High Court acquitting the

appellant. But that special leave petition was dismissed in May, 1995. Thereafter appellant moved the Managing Director for exonerating him from the financial liability. Though he succeeded to a certain extent in that endeavour he was not able to tide over the liability in its entirety. All these things happened during the interval between the date of passing the award and the date of his filing the appeal.

Whether those events were not sufficient for condoning the delay or not was considered by the Appellate Authority in exercise of its discretion and it showed inclination to accept them for condoning the delay. As the Appellate Authority had done so in its discretion it is well within the jurisdiction vested under law. In such a situation it was not proper that the High Court in exercise of its extra-ordinary jurisdiction under Article 226 or 227 of the Constitution upset such a finding granted to the appellant which only enabled him to have the statutory remedy of appeal pursued further.

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In the result we allow this appeal and set aside the impugned judgment of the High Court. Now the appeal filed by the appellant under Section 93 of the Act will be disposed of on merits by the authority concerned.

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.....J.@@
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(K.T. THOMAS)@@
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NOVEMBER 7, 2001 @@
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