

(2024) 02 CHH CK 0075
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1514 Of 2012

Samta Griha Nirmaan Sahakari Samiti Maryadit	APPELLANT
Vs	
Dr. P.S. Soan	RESPONDENT

Date of Decision : 29-02-2024

Acts Referred:

Co-operative Societies Act, 1960 — Section 64, 77(2), 78
Limitation Act, 1963 — Section 5

Citation : (2024) 02 CHH CK 0075

Hon'ble Judges : Sanjay S. Agrawal, J

Bench : Single Bench

Advocate : Raja Sharma

Final Decision : Allowed

Judgement

1) By way of this petition, the petitioner is questioning the legality and propriety of the order dated 08.05.2012 (Annexure P-1) passed by the Hon'ble Minister In-charge of Co-operative Department, State of Chhattisgarh at Raipur in Revision Case No.78/29/2011, whereby the order dated 02.09.2011 passed by the Registrar, Co-operative Societies in Second Appeal No.77(2)(1)12/2010 dismissing the appeal on the point of limitation, has been affirmed.

2) From perusal of the record, it appears that Respondent No.1-Dr. P.S. Soan initiated the proceedings as per the provision prescribed under Section 64 of the Co-operative Societies Act, 1960 (hereinafter referred to as 'the Act, 1960') by submitting inter-alia that his father, who was the member of the petitioner's society, namely, Samta Griha Nirmaan Sahakari Samiti Maryadit, Raipur, died in February, 1972 and thereafter his rights and shares were transferred to him and, thereafter the Plot No. D-15 was allotted to him by the competent authority of the society on 22/06/1992. Further contention of the Respondent No.1 was that after the alleged allotment, the symbolic possession of it was handed over to him, but the registered deed of sale was not executed in his favour, therefore, he has been constrained to initiate the proceedings under the said provision of the

Act, 1960 before the Deputy Registrar, Co-operative Societies, Raipur seeking issuance of direction against the society for execution of the registered deed of sale in his favour with regard to the plot in question, i.e. Plot No. D-15 and, praying further for issuance of injunction against the Respondent No. 2-Shri Narayan Das Daga from interfering in his peaceful possession.

3) The aforesaid claim was denied by the petitioner and after considering the claim, it was dismissed by the Deputy Registrar, Co-operative Societies, Raipur vide its order dated 05.01.2001 (Annexure P-4) passed in Case No. 64-117/1994-95, on finding that since the alleged order of allotment dated on 22.06.1992, is passed by an incompetent authority in contrary to the circular No. 465 dated 26.06.1989 issued by the Registrar, Co-operative Societies, Bhopal (M.P.), therefore, it cannot be sustained and, accordingly, the claim of the said respondent was dismissed.

4) Being aggrieved with the aforesaid order, an appeal, being Appeal No. 78-05/R/2001, was preferred by the Respondent No.1 before the Joint Registrar, Co-operative Societies under Section 78 of the Act, 1960, who in turn, vide its order dated 29.01.2003 (Annexure P-6) has allowed the same by holding inter-alia that the plot in question was in fact allotted by the prescribed authority in compliance of the resolution dated 18.06.1992, which was passed by the Managing Committee of the Society, therefore, it cannot be said that it was passed by an incompetent authority. In consequence, the claim of the respondent No. 1 was allowed.

5) Being aggrieved with the aforesaid order, a petition, being Writ Petition(227) No.1892 of 2010, was filed by the petitioner before this Court and vide order dated 26.04.2010, it was withdrawn with liberty to avail the alternative remedy as provided under the Act, 1960. It appears that an application for obtaining the certified copy of the same was made on 29.04.2010 and in pursuance thereof, it was prepared on 01.05.2010, and after obtaining the copy of the same on 04.05.2010, a Second Appeal was preferred by the petitioner under Section 77(2) of the Act, 1960 before the Registrar, Co-operative Societies, Raipur on 07.05.2010, along with an application for condonation of its delay under Section 5 of the Indian Limitation Act, 1963. It was stated by the petitioner therein that after passing of the order by the Joint Registrar on 29.01.2003 in appeal preferred by the respondent No. 1, a negotiation was going on between the parties on several occasions for amicable settlement of their disputes, but it could not be materialized. The explanation so offered was denied by Respondent No.1 by saying that even before filing of the said writ petition by the petitioner, he had already filed an application on 03.06.2009 for execution of the said order dated 29.01.2003 passed by the Joint Registrar, Co-operative Societies, therefore, explanation offered by the petitioner is fabricated and, deserves to be rejected. The Registrar, Co-operative Societies after considering the said application has rejected the same vide its order dated 02.09.2011 (Annexure P-12) by observing, inter-alia, that the explanation offered by the petitioner is

not proper and, accordingly, the appeal was held to be dismissed on the point of limitation and, the revision preferred there against was affirmed by the revisional authority vide its order impugned dated 08.05.2012 and, being aggrieved, the instant petition has been filed.

6) Mr. Raja Sharma, learned counsel appearing for the petitioner submits that the finding of the Court below dismissing his appeal on 02.09.2011, holding it to be barred by time, affirmed in revision by the revisional authority, is apparently contrary to law. It is contended further that the explanation as offered by the petitioner is also fortified by the conduct of the respondent no. 1 as he himself initiated the execution proceedings much after the passing of the order dated 29.01.2003, which itself shows that since the parties were trying to settle their disputes amicably, therefore, the alleged execution proceeding was not initiated immediately passing of the said order dated 29.01.2003. Even otherwise, while entertaining the application for condonation of delay in filing the second appeal, a liberal view ought to have been adopted in order to provide substantial justice to the parties. In support, he placed his reliance upon the decision rendered by Hon^{ble} the Supreme Court in the matter of *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji And Others?*, and *Bhivchandra Shankar More Vs. Balu Gangaram More and Others?*, reported in (1987) 2 SCC 107 and (2019) 6 SCC 387, respectively.

7) No one appears on behalf of the Respondents, despite service of notice upon them.

8) From perusal of the record, it appears that a proceeding was initiated by the Respondent No.1 under Section 64 of the Act, 1960, before the Deputy Registrar, Co-operative Societies, Raipur, where the claim of the petitioner was dismissed by the said authority vide its order dated 05.01.2001. It, however, reversed by the Joint Registrar, Co-operative Societies vide its order dated 29.01.2003 in an appeal preferred by the respondent no.1 under Section 78 of the Act, 1960 and, being aggrieved with the said order, it was questioned by the petitioner before this Court in Writ Petition (227) No. No.1892 of 2010, where it was withdrawn on 26.04.2010 in order to avail the alternative remedy as available under the law and, after obtaining the liberty as such, an appeal was preferred by the petitioner before the Registrar, Co-operative Societies, Raipur under Section 77(2) of the Act, 1960, along with an application for condonation of delay under Section 5 of the Indian Limitation Act, 1963, by submitting, inter-alia, that since a negotiation was going on between the parties for amicable settlement of their disputes after passing of the order dated 29.01.2003, by the Joint Registrar and that was the reason why, appeal could not be preferred in time. The explanation so offered was, however, not accepted by the said appellate authority vide its order dated 02.09.2011 and, was found to be affirmed further by the revisional authority vide its order impugned dated 08/05/2012.

9) It is, however, to be seen that the explanation as offered by the petitioner appears to be fortified by the conduct of the respondent no.1, else he would have

initiated the execution proceedings immediately after passing of the said order dated 29.01.2003 as passed by the Joint Registrar, Co-operative Societies. It, thus, appears that the parties were trying to settle their disputes amicably and that was the reason why, neither the appeal was preferred immediately by the petitioner nor the execution proceeding was initiated promptly by the respondent no. 1. It, however, appears that after adopting a hyper-technical view, the Registrar, Co-operative Societies, vide its order dated 02.09.2011 has rejected the same and the revision preferred there against was rejected by the State Government vide its order impugned, though under such circumstances, a liberal view was required to be taken by the said authorities for providing substantial justice to the parties.

10) It is to be seen at this juncture, the principles laid down by the Supreme Court in the matter of Collector, Land Acquisition, Anantnag and Another (supra) as relied upon by Mr. Sharma, wherein, it has been observed by Hon^{ble} the Supreme Court at para 3 which, reads as under :-

¶3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to

legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.?

11) Similar was the view taken by Hon^{ble} the Supreme Court in the matter of Bhivchandra Shankar More (supra), wherein it has been held at paragraphs 15 and 16 as under :-

?15. It is a fairly well-settled law that ?sufficient cause? should be given liberal construction so as to advance sustainable justice when there is no inaction, no negligence nor want of bona fides could be imputable to the appellant. After referring to various judgments, in B. Madhuri Goud V. B. Damodar Reddy (2012) 12 SCC 693, this Court held as under: (SCC p. 696, para 6)

?6. The expression ?sufficient cause? used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and- fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years courts have repeatedly observed that a liberal approach needs to be adopted in such matters so that substantive rights of the parties are not defeated only on the ground of delay.?

16. Observing that the rules of limitation are not meant to destroy the rights of the parties, in N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123, this Court held as under: (SCC pp. 127-28, para 11)

?11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.?

12) In view of the principles laid down by the Supreme Court in the above referred matters, it is, thus, settled that while considering the application for condonation of delay in filing the appeal, the Court below ought to have adopted the liberal view in order to provide substantial justice to the parties.

13) Applying the aforesaid principles to the case in hand, considering the facts and circumstances of the case, considering further the fact that the parties were

trying to settle their disputes amicably after passing of the order dated 29.01.2003, though, could not be materialized some how or the other, but it cannot be said that the explanation as offered by the petitioner in preferring the second appeal under Section 77(2) of the Act, 1960 against the order dated 29.01.2003, suffers from any kind of malafide intention of the petitioner and, which rather appears to be bonafide and satisfactory in nature, therefore, it deserves to be and is hereby condoned.

14) Consequently, the petition is allowed and, the order impugned dated 08.05.2012 passed by the Hon?ble Minister In-charge of Co-operative Department, State of Chhattisgarh at Raipur in Revision Case No.78/29/2011, is hereby set-aside and the matter is remitted back to the concerned Registrar, Co-operative Societies, Raipur with a direction to restore the said second appeal preferred by the petitioner in its original number i.e. Appeal Case No. 77(2) (1)12/2010 and decide the same in accordance with law.

No order as to cost(s).