

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.989 OF 2014

Sou. Sangeeta Bhauso Chavan .. Petitioner
-Versus-
Divisional Joint Registrar,
Coop. Societies Kolhapur
Division, at Kolhapur & Ors. .. Respondents

Mr.S.R.Borulkar i/b. Manoj Patil for petitioner
Mr.A.B.Vagyani, GP with S.D.Rayrikar, AGP for respondent No.1
Mr.S.S.Patwardhan i/b. Raturaj P. Parkar for respondent No.2

CORAM : R.M.SAVANT, J

DATE : 16th APRIL 2015.

PC.

1] At the outset, the learned Counsel for the petitioner seeks deletion of the respondent Nos. 3 to 5 and 7 as in the context of the challenge raised in the above petition, they are formal parties. The said respondents are accordingly deleted from the array of respondents.

2] Rule. With the consent of the learned Counsel for the parties, made returnable forthwith and heard.

3] The writ jurisdiction of this court under Article 227 of the

Constitution of India is invoked against the order dated 3rd January 2014 passed by the Divisional Joint Registrar, Cooperative Societies, Kolhapur (for short the Authority), by which order the application for condonation of delay of 8 years, 8 months and 13 days in filing the Revision Application under section 154 of the Maharashtra Cooperative Societies Act, 1960 (for short the Act) came to be allowed and resultantly, the said delay of 8 years 8 months and 13 days came to be condoned.

4] It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the respondent No.2 was a borrower from the respondent No.4 Bank i.e. Ichalkaranji Urban Cooperative Bank Ltd., Ichalkaranji (for short the Bank). On default being committed by the respondent No.2, proceedings came to be initiated under section 101 of the said Act against the respondent No.2 for recovery of the loan amount. A certificate came to be issued under section 101 on 5th March 2001. Pursuant to the said certificate, in view of the non compliance of the same, the respondent No.4 decided to auction the property which was given as security by the respondent No.2. The auction took place on 26th February 2004. The petitioner herein, being the highest bidder, her offer was accepted and the sale certificate came to be issued in favour of the petitioner on 24th November 2005 and, thereafter, the sale deed came to

be executed in favour of the petitioner on 28th December 2005. It is long thereafter on 7th January 2013 that the respondent No.2 filed proceedings to challenge the certificate issued under section 101 of the Act. Since there was a delay of 8 years, 8 months and 13 days, the application for condonation of delay came to be filed. The justification for delay which was sought to be given was on the ground that the respondent No.2 was under the treatment of Dr.Dilip Joshi, Psychiatrist between 27th March 2001 to 27th December 2011. The certificates on which reliance was placed have been annexed to the petition and are dated 10th April 2013 and 2nd February 2012. The said application for condonation of delay was considered by the Authority who by his order dated 2nd May 2013 allowed the application by accepting the explanation given by the respondent No.2 for the said delay of over 8 years. The Authority was of the view that the delay was required to be condoned in the interest of justice. The said order dated 2nd May 2013 was taken exception to by the petitioner by way of Writ Petition No.5817 of 2013. A learned Single Judge of this Court by order dated 19th July 2013 set aside the said order and remanded the application for condonation of delay, back to the Revisionary Authority for a de novo consideration in terms of the directions contained in the said order. The learned Judge has observed in the order that the Authority has not stated in the order whether he accepts the submissions made on

behalf of the respondent and apart from the said fact the Authority has not considered the reply filed by the petitioner. The learned Judge observed that the Authority ought to have decided the application by giving cogent reasons and since the order is sans reasons, the order was required to be set aside and the matter relegated back to the Authority for a de novo consideration.

5] It is upon remand that the Authority has once again considered the application for condonation of delay. A plain reading of the order discloses that the directions issued by the learned Single Judge of this Court Writ Petition No.5817 of 2013 have not been complied with. The impugned order cannot be said to be any different than the order which was passed in the earlier round and merely by stating the case of the respondent No.2, without recording any finding in respect of the same, the Revisionary Authority has allowed the application for condonation of delay. It is required to be noted that insofar as the certificates issued by Dr.Dilip Joshi are concerned, by a letter dated 10th April 2013, the said Dr.Dilip Joshi has informed the Revisionary Authority that there are some erasures in the certificates issued by him, the said certificates should not be treated as valid and acceptable. However, significantly, the Authority has not adverted to the said letter dated 10th April 2013 which was

addressed to it by Dr.Dilip Joshi. Since the entire case of the respondent No.2 is based on the certificates issued by Dr.Joshi the Revisionary Authority was required to carry out a proper enquiry and, thereafter, come to the conclusion as to whether the reasons mentioned in the application seeking condonation of delay, commend acceptance. In my view, the Authority in a matter like the present one is required to frame the appropriate issues and, thereafter, answer the said issues in the light of the material that is before it. However, what has been done in the instance case is that in the Roznama sheet itself the order is hand written disposing of the application. The Authority was required to keep in mind that it is exercising the revisionary jurisdiction under section 154 of the said Act and in doing so, it is required to follow a modicum procedure whilst dealing with the application in question. As indicated above, the adjudication of the said application for condonation of delay does not meet the requirements mandated by the order dated 19th July 2013 passed by the learned Single Judge of this Court in Writ Petition No.5817 of 2013.

6] In my view, therefore, the impugned order is required to be quashed and set aside and is accordingly quashed and aside. The application for condonation of delay is required to be relegated back to the Revisionary Authority for a de novo consideration in terms of the directions as

contained in the said order dated 19th July 2013 passed in Writ Petition No.5817 of 2013 and the instant order.

7] The petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the petition.

8] On remand, since this being the second remand the Authority is directed to hear and decide the said application latest by 31st May 2015.

(R.M.SAVANT, J.)