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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10463 OF 2014

Shri. Rakesh Jain		... Petitioner
	Versus	
District Deputy Registrar Co-operative Societies and Ors.		... Respondents

**ALONGWITH
WRIT PETITION NO. 10464 OF 2014**

Shri. Devang Choksi		... Petitioner
	Versus	
District Deputy Registrar Co-operative Societies and Ors.		... Respondents

**ALONGWITH
WRIT PETITION NO. 10465 OF 2014**

Shri. Prabodh Shah		... Petitioner
	Versus	
District Deputy Registrar Co-operative Societies and Ors.		... Respondents

**ALONGWITH
WRIT PETITION NO. 10466 OF 2014**

Smt. Kikila Shah		... Petitioner
	Versus	
District Deputy Registrar Co-operative Societies and Ors.		... Respondents

**ALONGWITH
WRIT PETITION NO. 10490 OF 2014**

Smt. Neeta Kanungo		... Petitioner
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Versus

District Deputy Registrar Co-operative
Societies and Ors.

... Respondents

Mr. Yakshay Chheda for the petitioners in all the petitions.

Mr. T.D. Deshmukh along with Mr. N.R.T. Kothari for respondent nos. 3 in all the petitions.

Ms. P.S. Cardozo, A.G.P. for respondent no. 1.

CORAM : ANOOP V. MOHTA,J.

DATED : 23 FEBRUARY, 2015

ORAL JUDGMENT :

Rule. Rule is made returnable forthwith. Heard finally by consent of the parties.

2. All these writ petitions, I am inclined to dispose of by a common order as all the contesting respondents and issues so raised are same. The petitioners are members of respondent no. 3 society. The society dues were remained unpaid and therefore, the proceedings under section 101 of the Maharashtra Cooperative Societies Act (MCS Act) were initiated against respective petitioners. The order passed by the Sub Registrar on 24th January, 2013 clearly records the fact of petitioner's Advocate's duly withdrawal of appearance after seeking appropriate permission of the Sub Registrar which was granted and duly recorded in the order passed under section 101 of the MCS Act on 24th January, 2013 and recovery certificate under section 101

came to be issued wherein it was mentioned that none present respondent (Petitioners) and the recovery order/certificate is issued against the petitioners.

3. I have already observed in **Balasaheb Dhondiram Naikam Versus The Joint Registrar, Cooperative Societies, Kolhapur and Others in Writ Petition No. 2183 of 2014 delivered on 13th February, 2015** in paragraphs 3 and 5 that a requisite opportunity needs to be given before passing an order under section 101 of the MCS Act. Paragraph nos. 3 and 5 read thus :

“3. The learned counsel appearing for the Petitioner has pointed out the provisions specifically Rule 86-F (Chapter VIII-A) of the Maharashtra Co-operative Societies Rules, 1961 (for short, the MCS Rules), which is reproduced as under:-

“86-F. Judgments, Order and Certificate:- After hearing the arguments of the parties, the Registrar shall issue a reasoned judgment and pass an order for the grant of the rejection of the application. The Registrar, thereafter, shall issue a Certificate in Form “V”. The judgment and the certificate shall bear his seal, signature and date.”

and further submission is placed, by referring to the basic notice issued under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short, the MCS Act”) for recovery of the amount due dated 25 July 2011, in which there are no reasons whatsoever mentioned which is required in view of the Rules so referred. I am inclined to accept the submission, as in pursuance to the Rules, it is necessary for the Assistant Registrar and/or other Officers to give reasons, after giving opportunity to the borrowers

and/or guarantors, before passing such order of recovery.

5. The learned counsel appearing for the Petitioner strongly relied upon the Judgment of the Division Bench of this Court Sundeeep Polymers Pvt. Ltd. & Ors. Vs. State of Maharashtra & Ors.¹, whereby this Court, as the recovery certificate was issued without following due procedure and as the principles of natural justice were violated, interfered with the recovery certificate and directed the concerned officer to reconsider the same and to conduct de-novo inquiry as per the Rules.”

4. The facts in the present case therefore, shows that practically an exparte order is passed against the petitioners. That definitely is not the mandate of the provisions of law as well as the natural justice. Reasonable opportunity ought to have been given even after recording the fact of the discharge of the advocate on 24th January, 2013.

5. In the above background and also in view of the fact that the petitioners were arranging for the requisite amount which was necessary to be deposited, and they are unable to do so in time. Therefore, they filed the revision application along with an application for condonation of delay. The respondents filed their reply to the application and resisted the same. Rejoinder was also filed by the petitioners referring to the background of earlier proceedings including the order of discharge in view of the application filed by their advocate. The Revisional Authority however,

rejected the application stating that the same was not supported by sufficient reasons and no case was made out to condone the delay. Therefore, taking over all view of the matter and also the above background, I am inclined to grant opportunity to the petitioner to contest the proceedings so initiated by the respondent society for recovery of the amounts stated in the certificate.

6. Even otherwise, petitioners would not have earned anything by delaying the proceedings specifically when they are members of the society and occupying the premises in question till this date. The aspects of maintenance and or necessary charges thus neither be overlooked by the petitioners nor by the society. Both are under an obligation to fulfill their respective part. The society is under an obligation to demand for arrears of dues and member petitioners are under obligation to pay their arrears so demanded subject to provisions of law. The challenge therefore, so raised and yet required to be decided after giving equal opportunities to the parties. That in my view is missing in the present matter. Therefore, I am inclined to observe that this is not a case of intentional or deliberate delay.

7. The petitioners in pursuance of the order passed by this court on 26th November, 2014 have already deposited 50% of the recoverable dues in the recovery certificate in question.

8. I, therefore, pass the following order :

ORDER

(a) Impugned order dated 7th August, 2014 is quashed and set aside. The application for condonation of delay filed by the petitioner is allowed. Respondent no. 1 District Deputy Registrar Cooperative District, Mumbai city Mumbai is directed to re-hear the revision application on merits as early as possible preferably within eight weeks from the date of communication of this order. Parties to take steps accordingly. The application for condonation of delay is allowed subject to cost of Rs.3,000/- each to be deposited by the petitioners in the account of the society within a week. It is made clear that revision application to be decided on its own merits uninfluenced by the observations made in this order. Petition is accordingly allowed. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(ANOOP V. MOHTA,J.)