

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

937 WRIT PETITION NO. 1736 OF 2015

CHANDRAKANT BHAVANI SHINDE
VERSUS
THE DIVISIONAL JOINT REGISTRAR CO OPERATIVE SOCIETIES,
NASHIK AND OTHERS

...
Advocate for Petitioners : Shinde Abasaheb D.
AGP for Respondents 1 and 2 : S.K. Tambe
Advocate for Respondents 3 and 4 : B.A. Shinde
...

CORAM : T.V. NALAWADE, J.
DATED : 7th December, 2016.

ORDER :

1. The petition is filed to challenge the judgment and order of learned Divisional Joint Registrar, Cooperative Societies, Division Nashik in Revision No. R-192 of 2014. Both the sides are heard.

2. The proceeding was filed for condonation of delay along with revision proceeding by the present petitioner. Respondent is a Cooperative Society and loan was given in the year 2001 to the petitioner by the Society. As the petitioner became defaulter, the Society moved Assistant Registrar, Cooperative Societies and in the year 2004 certificate under section 101 of the Maharashtra Cooperative Societies Act, 1960

was issued in favour of Society. Even steps were taken like auctioning the immovable property which was mortgaged with the Society. But the Society could not sell the property and then the Society took the steps to enter its name in the revenue record of the property mortgaged. After that step present petitioner filed Writ Petition No. 4368/2011 to challenge the certificate issued under section 101 of the Cooperative Societies Act. This Court dismissed the petition on 24.1.2012 by holding that there was alternate remedy like revision and writ petition could not have been entertained.

3. After giving of the decision of the writ petition by this Court, the petitioner filed application for condonation of delay and proceeding of revision along with delay condonation application before the Divisional Joint Registrar. It was submitted that the first proceeding was returned by the authority by observing that 50% amount as required by section 154 (2)(a) of the aforesaid Act was not deposited by the petitioner. Then the petitioner deposited the amount and again presented the proceeding. The authority has dismissed the application by holding that the delay caused is not explained and no sufficient cause is shown.

4. The learned counsel for petitioner submitted that the period for which writ petition was pending in this Court ought to have been excluded under section 14 of the Limitation Act. He submitted that this Court had given liberty to the petitioner to file revision and this circumstance ought to have been considered by Divisional Joint Registrar. These submissions are not at all acceptable in law. Writ Petition was not the proceeding which is contemplated in section 14 of the Limitation Act. Further, when the certificate was issued in the year 2004, writ petition was filed in the year 2011, after seven years and for these years there is virtually no explanation with the petitioner. This Court holds that it was necessary for the petitioner to explain all this delay. Though the authority has observed that delay which was caused after dismissal of the writ petition ought to have been explained, this Court holds that the entire delay from the year 2004 ought to have been explained by the petitioner.

5. Condonation of delay is within discretion of the authority and the Court. The petitioner did not pay the amount when the loan was taken in the year 2001 and he took the steps only when the name of Society was entered in the revenue record of the property mortgaged. Considering this conduct of

the petitioner and aforesaid circumstances, this Court holds that such person does not deserve the use of discretionary power in his favour. This Court holds that no error is committed by the Revisional authority in rejecting the application. The proceeding is dismissed.

[T.V. NALAWADE, J.]

ssc/