

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

912 WRIT PETITION NO. 9853 OF 2016

ARUNA SUNIL DAUND AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Shri. Shrigopal G. Dodya and Shri. Pramod N. Mule,
Advocates, for petitioners.

Shri. B.A. Shinde, Assistant Government Pleader, for
respondent Nos.1 and 2.

With

913 WRIT PETITION NO. 9854 OF 2016

ARUNA SUNIL DAUND AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Shri. Shrigopal G. Dodya and Shri. Pramod N. Mule,
Advocates, for petitioners.

Shri. B.A. Shinde, Assistant Government Pleader, for
respondent Nos.1 and 2.

CORAM: T.V. NALAWADE, J.

DATE : 30 NOVEMBER 2016

ORDER:

1) Writ Petition No.9853/2016 is filed to challenge the certificate issued under section 101 of the Maharashtra Cooperative Societies Act, 1960 by learned

Assistant Registrar Cooperative Societies (On Deputation),
Aurangabad. Heard learned counsel for the petitioner.

2) The order by which the certificate was issued was dated 22-5-2013. The proceeding was started in 2011 by the bank against the petitioners and time of almost one year was given to the present petitioners in the said proceeding. The petitioners were represented by one Advocate. Relevant record was considered by the learned Assistant Registrar and on that basis the order is made. Surprisingly this order was challenged by filing a civil suit by the present petitioners but the suit ultimately came to be dismissed on 15-12-2014. Present petition came to be filed on 26-8-2016. The submission made by the learned counsel for the petitioners shows that there is apparent collusion between the body managing the affairs of the bank and the present petitioners. Though the certificate was issued in the year 2013, no steps are taken to recover the amount. In any case, order of issuance of certificate can be challenged in appropriate proceeding like revision under section 154 of the Act. Learned counsel for the petitioners submitted that when the procedure is not

followed and principles of natural justice are not followed, this Court can entertain the writ petition. He submitted that delay and laches also cannot defeat the justice. He placed reliance on the cases reported as **2010(6) ALL MR 550 (Sundeeep Polymers Pvt. Ltd. v. State of Maharashtra)**; and, **AIR 1993 SC 802 (M/s. Dehri Rohtas Light Railway Company Limited v. District Board, Bhojpur)**. In the first case some observations are made with regard to the procedure which needs to be followed at the time of issuance of certificate. This Court is avoiding to discuss this point as relevant facts of the present case are already mentioned and they show that time of almost one year was given to the present petitioners to file say and the written say was filed. Then on the basis of the record the order was made by the learned Assistant Registrar. In the second case the Apex Court has discussed the point of delay. It is true that delay cannot defeat the justice. But the aforesaid facts of the present case show that there is apparent collusion between the bank and the present petitioner and due to that the present petitioner is successful to avoid making repayment of the loan. Learned counsel submitted that

copy of the same property is shown in both the documents of the loan transactions. This circumstance is sufficient to create probability that there is apparent collusion between the bank and the present petitioner. In view of these circumstances, this Court holds that there is no need to issue notice to the respondent. This Court holds that it is not possible to entertain the writ petition. In the result, Writ Petition No.9853/2016 stands dismissed.

3) In Writ Petition No.9854/2016 submission was made by the learned counsel for the petitioners that there are many discrepancies. He submitted that in the previous proceeding there was resolution of sanction of loan and the resolution of the year 2000 is mentioned in the record of the present petition when the loan was shown to be sanctioned in the year 2004. He submitted that there are also discrepancies with regard to the amount sanctioned and the amount shown in the account. He submitted that the counsel appointed by the petitioners was not available and there was no opportunity to argue the matter. It appears that in the Roznama the authority had mentioned that the Advocate had informed that the written

submission was filed and it can be treated as the arguments. Now submission is made that the said Advocate is dead. Thus, there is nothing in support of the contention made for the petitioners that sufficient opportunity was not given by the authority to contest the matter. This Court has already observed that there are irregularities but the petitioners are benefited due to the so called irregularities and the petitioners now want to use those irregularities against the bank. That cannot be allowed. For the reasons already given, this Court holds that the present petition cannot be entertained. In the result, the petition stands dismissed as not tenable.

Sd/-
(T.V. NALAWADE, J.)

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