

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

WRIT PETITION NO.2110 OF 2017

M/s. Dhupeshwar Silk Mills Pvt. Ltd.

Through its Directors

Shri Manohar Jivatram Dhameja and ors. : Petitioners.

versus

Divisional Joint Registrar

Co-operative Societies, Konkan Division and ors. : Respondents.

Mr. Jaiwant S Chandanani for the Petitioner.

Mrs. V S Nimbalkar, AGP, for the Respondent Nos.1, 2 and 9.

Mr. Purshottam Khanchandani for the Respondent No.3.

CORAM : R. M. SAVANT, J.

DATE : 15th February 2017

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 20/01/2017 passed by the Divisional Joint Registrar, Co-operative Societies, Konkan Division, Navi Mumbai by which order the application for condonation of delay filed by the Petitioner in filing the Revision Application under Section 154 of the Maharashtra Co-operative Societies Act (for short “the said Act”) came to be rejected.

2 The Petitioners had availed of a loan facility from the Respondent No.3 Bank. On default being committed by the Petitioner, proceedings were initiated under Section 101 of the said Act by the Respondent No.3 Bank for recovery of the outstanding loan amount. The amount claimed was

Rs.52,19,639/- which was inclusive of the principal amount, the application fees and other expenses. The principal amount mentioned in the said application was an amount of Rs.4998167/-. It is an undisputed position that the Petitioners participated in the said proceedings before the Assistant Registrar of the Co-operative Societies, Ulhasnagar, Dist. Thane. The said proceedings culminated in the certificate being issued by the Assistant Registrar in the sum of Rs.5219639/- which included the principal amount of Rs.4998167/-. Immediately after the said certificate was issued, the Respondent No.3 Bank addressed a demand notice to the Petitioners on 06/10/2016 to which was annexed the certificate dated 21/09/2016 issued by the Assistant Registrar under Section 101 of the said Act. Since the demand notice was not complied with, a notice of attachment of the Petitioners business/factory premises came to be issued on 13/10/2016, and thereafter the possession came to be taken on 21/10/2016 of the business/factory premises of the Petitioners. It is long thereafter that the Petitioners sought to invoke the revisionary jurisdiction under Section 154 of the said Act by filing a Revision challenging the certificate dated 21/09/2016 as also the attachment notice and the possession of the property taken by the Respondent No.3 Bank.

3 Since the said application was belated, the Petitioners filed Misc. Application for condonation of delay. The sum and substance of the case of the Petitioners in the said application for condonation of delay was that the

Petitioners did not receive a copy of the order and certificate dated 21/09/2016 issued under Section 101 of the said Act and that the Petitioners became aware of the said order only on 06/01/2017 and thereafter have taken immediate steps to file the Revision Application.

4 The Respondent No.3 Bank filed its reply to the said Misc. Application for condonation of delay filed by the Petitioners and controverted the case of the Petitioners by relying upon the notice of attachment as also various other documents including letter dated 21/10/2016 addressed by the Petitioners to the Chairman of the Respondent No.3 Bank.

5 On a consideration of the material on record, the Divisional Joint Registrar rejected the said Misc. Application filed by the Petitioners for condonation of delay. The Divisional Joint Registrar held that assuming that the Petitioners did not receive a copy of the order/certificate dated 21/09/2016 issued under Section 101 of the said Act, the Petitioners had received a notice of attachment and thereafter the possession was also taken on 21/10/2016 and therefore it was expected of the Petitioners that they would take appropriate steps against the said order/certificate as well as the attachment within a reasonable time. The Divisional Joint Registrar has held that the Petitioners in the application filed by them have stated that save and except that the Petitioners became aware on 06/01/2017, no other justifiable

reason has been given. The Divisional Joint Registrar did not deem it fit to exercise discretion in favour of the Petitioners, and accordingly rejected the said Misc. Application filed by the Petitioners for condonation of delay in filing a Revision by the impugned order dated 20/01/2017.

6 The learned counsel appearing on behalf of the Petitioners Shri Chandanani would seek to reiterate the case of the Petitioners as urged before the Divisional Joint Registrar. It was the submission of Shri Chandanani that the Petitioners became aware of the proceedings initiated against them under Section 101 only on 06/01/2017 and it is immediately thereafter that the Petitioners proceeded to file the Revision Application. It was the submission of the learned counsel that delay being only 56 days, the revisionary authority ought to have exercised discretion in favour of the Petitioners and that this Court may therefore set aside the order passed by the revisionary authority rejecting the application for condonation of delay.

7 Per contra, the learned counsel appearing on behalf of the Respondent No.3 Bank would support the impugned order. The learned counsel would contend that the case of the Petitioners that they became aware of the order/certificate issued under Section 101 of the said Act only on 06/01/2017 is belied by the documents on record. The learned counsel drew this Court's attention to the notice of attachment dated 13/10/2016 on which

there is a stamped endorsement of the Petitioners as having received it on 13/10/2016. The learned counsel thereafter drew this Court's attention to the letter dated 21/10/2016 addressed by the Directors of the Petitioners to the Chairman of the Respondent No.3 Bank. In the first paragraph of the said letter dated 21/10/2016 itself the Petitioners acknowledge the fact that the possession of the premises was taken and the premises were sealed. It was therefore the submission of the learned counsel that the order passed by the Divisional Joint Registrar need not be interfered with by this Court in its writ jurisdiction.

8 Having heard the learned counsel for the parties, I have consider the rival contentions. The question which rises for consideration is whether discretion is required to be exercised in favour of the Petitioners. As indicated above, the Petitioners seek to challenge the order/certificate dated 21/09/2016 issued under Section 101 of the said Act by the Assistant Registrar of the Co-operative Societies, Ulhasnagar, Dist. Thane. The said order/certificate has been followed by the demand notice dated 06/10/2016 to which was annexed the order/certificate dated 21/09/2016. Since the demand notice was not complied with by the Petitioners, a notice of attachment came to be issued on 13/10/2016 on which notice as indicated herein above there is a stamped endorsement of the Petitioners of having received it on 13/10/2016. The next document which belies the case of the Petitioners is the Petitioners own letter

dated 21/10/2016 addressed to the Chairman of the Respondent No.3 Bank in which letter in the first paragraph itself mentions the factum of possession being taken and the premises being sealed is accepted by the Petitioners. Hence if the aforesaid documents are taken into consideration, then the case set out by the Petitioners in their application seeking condonation of delay on the ground that they became aware of the order/certificate dated 21/09/2016 only on 06/01/2017 is a case which is false to the knowledge of the Petitioners. In matters of condonation of delay and exercise of discretion, the conduct of the party assumes importance. In the instant case, as indicated above, the Petitioners have in spite of participating in the proceedings which culminated in the order/certificate dated 21/09/2016 and thereafter accepting the notice of attachment as also accepting the fact that the possession of the premises being taken on 21/10/2016 made it bold to state that they became aware of the order/certificate only on 06/01/2017.

9 In my view, therefore, the conduct of the Petitioners is such that it dis-entitles them to the exercise of any discretion by this Court in its writ jurisdiction under Article 227 of the Constitution of India. In that view of the matter, no case for interdiction in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]