IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11649 OF 2015

Shri Vasudev Giridhari Suryawanshi **..Petitioner**
Vs.
The Divisional Joint Registrar
Co-op Societies & Ors. **..Respondents**

Mr. Manoj Patil for the Petitioner
Mrs. M. S. Bane 'B' panel counsel a/w Mrs. V. S. Nimbalkar AGP for the Respondent Nos.1 and 2
Mrs. Varsha Palav i/b The Laureate for the Respondent Nos.3 and 4

CORAM : R. M. SAVANT, J.
DATE : 3rd FEBRUARY, 2017

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 20-8-2015 passed by the Divisional Joint Registrar, Co-operative Societies Pune Division, Pune, by which order, the application for condonation of delay filed by the Petitioner came to be rejected.

2 The Petitioner herein was a surety for the loan of Rs.15 lakhs availed by the borrowers i.e. the Respondent Nos.5 and 6 herein. On the said Respondents committing a default in repayment of the said loan, proceedings under Section 101 of the Maharashtra Co-operative Societies Act came to be initiated against them. The amount claimed under the said application was a sum of Rs.15,23,749/-. In so far as the said proceedings are concerned, the Petitioner herein was arrayed as the Respondent No.3 whereas the principal

borrowers were arrayed as the Respondent Nos.1 and 2. In so far as the Respondent Nos.1 and 2 are concerned, they had filed their reply, however, the Petitioner did not filed his reply though he was served. The Respondent Nos.1 and 2 towards securing the loan had mortgaged the property being flat No.6, 1st floor, Mantri Avenue-II, 'H' building, admeasuring 647 sq.ft. During the course of the recovery proceedings under Section 101, the Respondent No.4 Bank and the borrowers arrived at a settlement pursuant to which the borrowers were permitted to sell the mortgaged flat on the condition that the proceeds would be deposited by the borrowers with the Respondent No.4 Bank. The amount realised out of the said proceeds it seems was appropriated towards the amount due from the borrowers. Accordingly a Release Deed dated 14-12-2006 came to be issued in favour of the borrowers as also a Tripartite Agreement came to be executed between the borrowers, the Respondent No.4 Bank and the purchasers of the said flat who are the Respondent Nos.9 and 10 herein. According to the Learned Counsel appearing for the Respondent No.4 Bank the amount appropriated was Rs.10,50,000/-.

3 After the appropriation of the said amount, the recovery proceedings were continued in respect of the balance amount remaining. It is pertinent to note that the said recovery proceedings were continued against the principal borrowers as also the Petitioner and ultimately culminated in the order dated 25-2-2008 passed by the Assistant Registrar of Co-operative

Societies. The amount covered by the said certificate which was issued in favour of the Respondent No.4 Bank was a sum of Rs.15,32,868/-. It seems that pursuant to the said certificate, the current account of the Petitioner herein who is carrying on business in the name and style of Virendra Fabrication, was attached and an amount of Rs.6,35,000/- was recovered from the said account on 22-5-2008. Significantly inspite of such coercive steps being taken against the Petitioner, the Petitioner did not take any steps to question the recovery certificate or even the recovery of the said amount of Rs.6,35,000/- recovered from his account. According to the Petitioner, he under legal advise had sought certain documents from the Respondent No.4 Bank in respect of which he entered into correspondence with the Respondent No.4 Bank. It is also the case of the Petitioner that he was advised that unless the permission was granted by the Registrar of Co-operative Societies, he could not initiate steps to challenge the recovery certificate as also the attachment of his bank account. The Letters addressed by the Petitioners have been referred to in the application for condonation of delay filed by the Petitioner before the Divisional Joint Registrar. The said letters have been referred to in paragraph 9 of the said application. It is also the case of the Petitioner that after considerable period of time he discontinued the services of his consultant who was till then advising him and in view thereof the Petitioner had faced difficulty in getting the papers from the said legal consultant. It is therefore the case of the Petitioner that some time was lost by him in accumulating the papers and thereafter taking steps by engaging another Advocate to challenge the recovery certificate as also the attachment of his bank account by the Special Recovery Officer of the Respondent No.4 Bank.

4 The aforesaid is the foundation of the case of the Petitioner for seeking condonation of delay of 2348 days in challenging the recovery certificate and 2269 days in challenging the attachment of his account and recovery by the Special Recovery Officer. On behalf of the Respondent No.4 a reply was filed to the said application filed by the Petitioner. The claims and contentions as raised by the Petitioner in his application were dealt with on behalf of the Respondent No.4. The Divisional Joint Registrar has by the impugned order dated 20-8-2015 has rejected the said application filed by the Petitioner on the ground that the Petitioner has not made out any case for condonation of the said huge delay of 2348 and 2269 days in challenging the recovery certificate and the attachment of his account. As indicated above, it is the said order dated 20-8-2015 which is taken exception to by way of the above Petition.

5 On behalf of the Respondent No.4 Bank, an affidavit in reply has been filed in the above Petition to which is annexed the recovery certificate as well as the order passed by the Special Recovery Officer attaching the bank account of the Petitioner as also the notice issued to the principal borrowers.

6 It was the submission of Mr. Patil the Learned Counsel for the Petitioner that having executed a Release Deed in favour of the original borrowers on 14-12-2006, the Respondent No.4 Bank could not have proceeded against the Petitioner. It was also the submission of the Learned Counsel Mr. Patil that in the absence of the documents the Petitioner was helpless and therefore he had to enter into the correspondence with the Respondent No.4 Bank which has resulted in the said huge delay in filing the Revision Application. It was the submission of the Learned Counsel Mr. Patil that the Petitioner has an excellent case on merits and therefore discretion ought to be exercised in favour of the Petitioner by condoning the said delay of 2348 and 2269 days.

7 Per contra the Learned Counsel Mrs. Palav appearing on behalf of the Respondent No.4 Bank would support the impugned order. It was the submission of Mrs. Palav that the amount released out of the sell of the flat in question was appropriated towards the outstanding amount due from the principal borrowers and the Release Deed though records that the outstanding loan amount has been paid was in fact in respect of the amount which was realised out of the sale of the flat in question. It was the submission of the Learned Counsel that the account of the Petitioner has been attached on 25-4-2008 and the recovery has been made on 22-5-2008 and having regard to the

said fact, as also the fact that the Petitioner was served with the notice in the said Section 101 proceedings, the Petitioners case as stated in the application could not be accepted. The Learned Counsel lastly submitted that the entire outstanding loan amount now stands recovered from the principal borrowers as well as the Petitioner herein.

8 Having heard the Learned Counsel for the parties, I have considered the rival contentions. The issue that arises is whether the delay of 2348 and 2269 days is required to be condoned so as to enable the Petitioner to prosecute the Revision Application filed by him on merits. There is no dispute about the fact that the Petitioner was a guarantor to the loan taken by the principal borrowers i.e. Respondent Nos.5 and 6 herein. The proceedings under Section 101 were initiated against the principal borrowers as well as the Petitioner on 7-7-2006 which as indicated above was for recovery of an amount of Rs.15,23,749/- no doubt that there was a settlement whilst the proceedings were pending but the settlement was only in respect of the permission granted by the Respondent No.4 Bank to the Respondent Nos.5 and 6 to sell the mortgaged flat so as to appropriate the sale proceeds towards the outstanding loan amount. After appropriation, the said 101 proceedings continued against the principal borrowers and the Petitioner herein. Hence this is not a case where any favour have been shown to the principal borrowers by deleting them from the said proceedings. As indicated above, the said

proceedings have culminated in the recovery certificate being issued on 25-2-2008 for an amount of Rs.15,23,868/-, pursuant to the said recovery certificate, the Petitioner's account was attached on 25-4-2008 and the recovery of amount Rs.6,35,000/- was effected on 22-5-2008. Hence apart from the fact that the Petitioner was noticed in the said 101 proceedings coercive action was also taken against the Petitioner by recovering an amount of Rs.6,35,000/- from his account. Hence the explanation of the Petitioner that he thereafter entered into a correspondence with the Respondent No.4 Bank or that he was given a wrong legal advise and only after obtaining the correct legal advise that he has filed the proceedings challenging the recovery certificate as also the attachment of his property, do not commend acceptance. Assuming that the Petitioner was required to enter into a correspondence with the Respondent No.4 Bank the Petitioner ought to have proceeded with reasonable despatch once having come to know the inclination of the Respondent No.4 Bank. However, the record discloses that the Petitioner entered into an endless correspondence with the Respondent No.4 Bank and the authorities thereby jeopardising his right to claim any relief by adopting the remedy provided under the said Act. It is well settled that the law only protects those who are vigilant and looks down upon the litigants who are found to be indolent and careless. The Petitioner as indicated above is a businessman carrying on business in the name and style of Virendra Fabrication. The Petitioner therefore cannot be said to be a layman who was not aware about the consequences of a recovery certificate or the attachment of his bank account and withdrawal of the amount of Rs.6,35,000/- therefrom. It is well settled that in the matters of condonation of delay a highly technical and pedantic approach should be avoided and an approach which further the cause of substantial justice should be adopted. However, the facts remain that the approach has to be judicious having regard to the facts and circumstances of the case. The prejudice to the other side as also the fact that a right which has accrued to the other side on account of the inordinate delay, being taken away would also be a relevant consideration. Applying the said yardstick, in my view, discretion cannot be exercised in favour of the Petitioner. The judgment of the Apex Court in the matter of **Perumon Bhagvathy Devaswaom Vs. Bhargavi amma (Dead) by LRS & Ors.**[1] , in my view would not further the case of the Petitioner having regard to the facts and circumstances of the instant case. Hence no case for interference with the impugned order is made out, the Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]

1 **2009(2) MhLJ 1**