

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**Writ Petition NO. 362 OF 2013**

Sou. Savitra Dnyuandeo Chavan  
& Anr.

...Petitioners

*Versus*

The Divisional Joint Registrar  
Co-operative Societies, Kolhapur  
and others.

...Respondents

....

Mr.Ramesh Tripathi, Advocate for the Petitioners.

Ms. Geeta Sonawane, Advocate for respondents No.1 & 5.

Mr. Samarth More, Advocate for Respondents No.2 & 3.

....

CORAM : R. G. KETKAR, J.

DATE : 05<sup>th</sup> OCTOBER, 2017

P.C.

1. Heard Mr.Tripathi, learned counsel for the petitioners, Ms. Sonawane, learned A.G.P. for respondents No.1 & 5 and Mr.More, learned counsel for respondents No.2 & 3, at length.

2. On the oral application made by Mr. Tripathi, leave to delete respondent No.4 is granted as respondent No.4 is the surety and no relief is claimed against him. Amendment shall be carried out forthwith.

3. Rule. Learned Counsel for the respondents waive

service. Having regard to the narrow controversy raised in this Petition and at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 8.7.2011 passed by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Region, Kolhapur in an application for condonation of delay filed in Revision Application No.94/2011. By that order, the Divisional Joint Registrar rejected the application for condonation of delay of nearly about four years in filing Revision Application.

5. Recovery certificate under Section 101 of the Maharashtra co-operative Societies Act, 1960 (for short, 'Act') was obtained by respondent No.2 Bank against the petitioners and the fourth respondent on 10.7.2006. The petitioners filed Revision Application on 18.2.2011 challenging the recovery certificate. As there delay of nearly about four years in filing Revision Application, application for condonation of delay was taken out. One of the grounds set out for condonation of delay

was that the petitioners were trying to settle the account under Ont Time Settlement (for short, 'OTS'). Application was rejected on the ground that the petitioners were aware of issuance of recovery certificate and despite that they did not file Revision Application within the prescribed period and in the process there was delay of four years. The petitioners did not make out sufficient cause for condoning the delay.

6. In support of this Petition, Mr. Tripathi submitted that the petition was dismissed in default. In view thereof, Civil Application No.2427/2016 was taken out by the petitioners for recalling the order dated 16.8.2016 thereby restoring the Writ Petition to its original position. In that Civil Application, the petitioners filed affidavit dated 25.7.2017. In paragraph-3 of that affidavit, the petitioners have contended that in the Customer Ledger account for the period 11.4.2005 to 21.6.2017, the outstanding amount shown was Rs.2,54,544/- against the recovery certificate amount of Rs.82,317/-. In paragraph-4, the petitioners have contended that the diverse amounts paid by them are not given credit. In other words, Mr. Tripathi submitted that in terms of paragraph-4 of the reply Rs.2,75,000/- is deposited. As against this, Mr. More has disputed the

assertions made in paragraphs-3 and 4 of the petition. He submitted that the amount paid by the petitioners is firstly adjusted towards the principal amount and thereafter towards the interest component. In any case he submitted that as this is a disputed question of fact, same may be ordered to be gone into by the Divisional Joint Registrar.

7. After perusing the material on record as also the assertions made in paragraphs-3 and 4 of the affidavit, it appears that the petitioners have claimed to have paid the substantial amount. This fact is disputed by the respondents. As the delay is of four years in filing Revision Application and the ground taken is that the petitioners were trying to settle the entire controversy by availing benefit under OTS, I find that the Divisional Joint Registrar could have condoned the delay and decided the Revision Application on merits.

8. In view thereof, the Petition is allowed in the following terms:

- (i) Impugned order dated 8.7.2011 is set aside. Delay in filing Revision is condoned. Revision Application now shall be decided on its own merits.

- (ii) All contentions of the parties including the contentions raised in paragraphs-3 and 4 of the affidavit dated 25.7.2017 filed by the petitioners in Civil Application No.2427/2016 and the contentions of the Bank in that regard are expressly kept open.
- (iii) While disposing the Revision Application, the Divisional Joint Registrar shall deal with these contentions.
- (iv) Liberty is reserved to the petitioners to file application for interim relief in the pending Revision Application.
- (v) Petition is disposed of in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)