

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.1259/2017

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Sandeep S. Sharma for the Petitioner
Mr. Harish Pawar for the Respondent No.1.
Ms. Jyoti Chavan, AGP for respondent No.2.

CORAM : K. K. TATED, J.

DATE : MAY 5, 2017

P.C.:

1. Mentioned. Not on board. At the request of learned counsel for the petitioner, the matter is taken on board for urgent orders.

2. By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 08.05.2012 passed by the Dy. Registrar, Cooperative Societies on the ground that the Authority has exceeded its jurisdiction at the time of passing the impugned order.

3. It is to be noted that in the present proceedings the respondent Cooperative Bank filed a recovery application u/s. 101 of the Maharashtra Cooperative Societies Act, 1960 for recovery of

sum of Rs.4,14,012/- with interest from the petitioner. After considering the evidence on record the Authority has passed the order and issued recovery certificate dated 08.05.2012 for recovery of Rs.3,33,907/- with 15% interest from 29.03.2011 till realization of the same.

4. As the petitioner failed and neglected to pay the said amount, the Recovery Officer issued notice of attachment dated 20.05.2016 calling upon the petitioner to pay sum of Rs.6,64,252/- inclusive of interest upto 20.05.2016, cost of proceedings and surcharge etc and further interest @ 15% from 21.05.2016 till the amount is paid.

5. It is to be noted that the Recovery Certificate issued by the Authority was challenged by the petitioner before the Divisional Joint Registrar, Cooperative Societies u/s. 154 of the said Act by filing Revision Application No.102/2017.

6. As there was delay on the part of the petitioner to file the Revision Application, they made an application for condonation of delay, which was dismissed by the Divisional Joint Registrar, Cooperative Societies, Mumbai Division, Mumbai by order dated 20.3.2017.

7. Said order was challenged by the petitioner by filing Appellate Side Writ Petition No.2776/2017 before this court on 28.03.2017. Whereas the present Writ Petition was filed on 02.05.2017. Bare reading of the petition shows that the petitioner has suppressed the fact that they have already filed Appellate Side Writ Petition No.2776/2017 before this court challenging the order passed by the Divisional Joint Registrar dated 20.03.2017 rejecting their application for condonation of delay.

8. The learned counsel for the petitioner raised several objections for invalidating the impugned order dated 08.05.2012 passed by the learned Dy. Registrar, Cooperative Societies. Said order was also challenged by the petitioner on following grounds as stated in the Writ Petition.

“(a) That the learned Dy. Registrar has absolutely erred in entertaining Recovery Application of Bank and in granting recovery order in favour of respondent No.1 beyond its power and negligence.

(b) That the learned Dy. Registrar also has absolutely erred in dismissing said Recovery Application of respondent No.1 as is also time barred u/s.3 of Limitation Act, 1963, as bank filed application for recovery after 3 years and 6 months from the date of last renewed.

(c) *That the impugned order is void ab initio and therefore the same deserves to be set aside as it suffer from the total no application of mind.*

(d) *That the learned Dy. Registrar has passed cryptic and non reasoned order holding that the petitioner No.1 and its sureities are liable to pay the defaulted amount.*

(e) *It is pertinent to note that the respondent No.1 was supposed to file recovery proceedings before the Debt Recovery Tribunal and not before the respondent No.2, as the respondent No.2 has no authority to pass recovery order.*

(f) *That the learned Dy. Registrar;s order is miscarried by non application of mind, because as per the provisions of RDB Act, 1993 the DRT has authority to issue Recovery Certificate and not the Learned Dy. Registrar of Cooperative Societies.*

(g) *It is pertinent to note that the learned Dy. Registrar has passed the order beyond its scope and therefore the same is liable to be set aside.*

(h) *That the learned Dy. Registrar has decided the application without using his wisdom and application of mind.*

(i) *That the learned Divisional Registrar has misconstrued the facts of the case and documents on record.*

(j) *That the impugned order is harsh, perverse and liable to be set aside and or quashed.”*

9. It is to be noted that in the present proceedings, the Dy. Registrar of Cooperative Societies passed order on 08.05.2012 u/s. 101 of the Maharashtra Cooperative Societies Act, 1960. The alternate efficacious remedy is available to the petitioner and that was availed by the petitioner by making a Revision Application. As there was delay on the part of the petitioner to file Revision, they made an application for condonation of delay and that was dismissed by the Revisional Authority.

10. Considering the fact that the petitioner has already availed an alternate remedy, the present petition is not maintainable. Same is dismissed.

JUDGE