

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

WRIT PETITION NO.711 OF 2019

OMKAR SHOPPE THROUGH ITS PROPRIETOR AND ORS.
VS
THE DIVISIONAL JOINT REGISTRAR, CS, LATUR AND ORS.

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Mr. LH Kawale and Mr. Avinash A.Khande, Advs. For
Petitioners;
Mr.KB Jadhavar, Adv. For Resp.No.1;
Mr. VP Golewar, Adv. h/for Mr. AR Joshi, Adv. For
Resp.No.3 & 4.

CORAM : P.R. BORA, J.
DATED : 9th April, 2019.

PER COURT:-

1. Heard Shri Kawale, learned counsel appearing for petitioners. Perused the impugned order.

2. It is the grievance of the petitioners that learned Divisional Joint Registrar, Co-operative Societies, Latur, has dismissed the revision application filed by the present petitioners on erroneous ground that the petitioners failed to deposit 50% of the amount as per the Recovery Certificate issued against the petitioners under Section 101 of the Maharashtra Co-operative Societies Act, 1960.

(2)

3. The learned counsel, relying upon the judgment of this court in the case of Dilawar Hakim Shah Vs. Special Recovery Officer, Chiplun Urban Co-operative Bank Ltd., - 2006 (3) Mh.L.J. 256, submitted that, the application, which was pending before the learned Divisional Joint Registrar, was for condonation of delay and the revision is not yet registered. The learned counsel further submitted that for considering the application for condonation of delay, the petitioners were not required to deposit 50% amount; however, the learned Divisional Joint Registrar, ignoring the relevant provisions, has declined to consider the application for condonation of delay and has straight way dismissed the revision. The learned counsel, in the circumstances, prayed for setting aside the said order.

4. Learned counsel appearing for the respondent Bank, has opposed the submissions made on behalf of the petitioners, stating that the Divisional Joint Registrar has passed a legal and correct order and no interference is required in

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the impugned order.

5. There seems no dispute that the application which was first liable to be considered by the Divisional Joint Registrar, was the application for condonation of delay. As has been held by this Court in the case of Dilawar (cited supra), deposit of 50% of the amount, as shown in the Recovery Certificate issued under Section 101 of the Maharashtra Co-operative Societies Act, is not a condition precedent for considering the application for condonation of delay. The revision applicant, however, would be certainly required to deposit the 50% of the amount, as aforesaid, if his revision application is to be heard on merits. In the circumstances, the impugned order passed by the Divisional Joint Registrar, dismissing the application for condonation of delay on the ground that the petitioner did not deposit the 50% of the amount as aforesaid, cannot be sustained and deserves to be set aside. It is accordingly set aside.

6. In view of the fact that the impugned order is set aside, normal course would have been

(4)

to remit the matter to Divisional Joint Registrar to decide the application for condonation of delay on its own merits. However, I am not inclined to remit the matter for the said reason and I deem it appropriate to condone the delay, which has occasioned in filing the revision application by the present petitioner under Section 154 of the Maharashtra Cooperative Societies Act before the Divisional Joint Registrar, in the present writ petition itself for the reason that the another petition bearing Writ Petition No.691/2019, wherein he had challenged the order of attachment, has been disposed of by this court today itself being infructuous, meaning thereby that the attachment over the property owned by the present petitioner stands as it is. In view of the fact that interest of the lender cooperative society has been sufficiently protected, there may not be any difficulty in hearing the revision application filed by the petitioner. The order of attachment in such circumstances can be made subject to final outcome of the revision application.

7. For the reasons stated above, I deem it

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appropriate to pass following order, -

ORDER

i. The application for condonation of delay filed by the present petitioners before the Divisional Joint Registrar Co-operative Societies, Latur, is allowed;

ii. The revision application be registered in accordance with law.

iii. The petitioners shall deposit 50% of the amount as per the Recovery Certificate issued against the petitioners under Section 101 of the Maharashtra Cooperative Societies Act, 1960 within four weeks from today.

iv. If the petitioners deposit the amount within the stipulated period, the Divisional Joint Registrar shall hear and dispose of the revision application in accordance with law.

v. The respondent-bank may continue the further process in respect of the property attached by it, but the entire process shall be subject to

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decision of the revision application, to be decided by the Divisional Joint Registrar and till then, the respondent Bank shall not issue Sale Certificate.

vi. The parties to appear before the learned Divisional Joint Registrar on 14th May, 2019.

vii. The petition stands disposed of in the aforesaid terms.

(P.R. BORA)
JUDGE

BDV