

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

WRIT PETITION NO.11423 OF 2019

Niru Ajay Chopra	... Petitioner
V/s	
District Deputy Registrar, Co-op. Societies "H/W" Ward, Mumbai and ors.	... Respondents

Ms.Rumana Bagdadi for the Petitioner.
Mr.Ankit Lohia, Mr.Vasim Shaikh i/by Mr.Pravin Mehta of Mithi
& Co. for Respondent No.5.
Mr.A.J.Jadhav with Mr.Mahimkar for Respondent No.6.
Mr.N.C.Walimbe, AGP for Respondent Nos.1,3 and 4.

**CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 06, 2019.**

P.C.:-

1. Heard Ms.Rumana Bagdadi, learned counsel for the petitioner; Mr.N.C.Walimbe, learned AGP for respondent Nos.1,3 and 4 and Mr.A.J.Jadhav, learned counsel for respondent No.6.

2. Considering the subject matter of the writ petition and the order that is proposed to be passed, court is of the view that issuance of formal notice is not

necessary and that the case can be disposed of at this stage itself.

3. Shorn of details, what is discernible is that petitioner is a share-holder member of respondent No.6, which is a co-operative housing society, and is occupying a flat being flat No.601-A belonging to the said co-operative housing society.

4. For non-payment of dues by the petitioner, respondent No.6 - co-operative housing society initiated proceedings under Section 101 of the Maharashtra Co-operative Societies Act, 1960 ("The Act" hereinafter) for recovery of an amount of Rs.8,23,415.00. After hearing the matter, Deputy Registrar of Co-operative Societies, "H" West Ward, Mumbai issued Recovery Certificate dated 3rd April, 2017 for an amount of Rs.8,23,415.00 with interest from 1st October, 2016 till realization.

5. Aggrieved by such Recovery Certificate, petitioner preferred revision application under Section

154 of the Act before the District Deputy Registrar of Co-operative Societies No.3, Mumbai alongwith an application for condonation of delay, since the revision application was barred by limitation by over 450 days. Taking the view that no proper reasons were assigned explaining the delay, Revisional Authority declined to condone the delay vide order dated 20th August, 2018. Consequently, the revision petition was dismissed as being time barred. Following the dismissal of the revision petition, respondent No.2 i.e. Special Recovery and Sales Officer issued notice dated 30th July, 2019 for auction sale of attached property.

6. Hence, the writ petition.

7. After hearing learned counsel for the parties and on due consideration, court is of the view that it would be in the interest of justice if the revision application filed by the petitioner is heard and decided on merit rather than being dismissed on the ground of delay and laches.

8. In that view of the matter, it is hereby directed that petitioner shall deposit a sum of Rs.5 lakh before respondent No.1 i.e. Revisional Authority within 30 days from today. On such deposit being made, Revisional Authority i.e. respondent No.1 shall take on board the revision application and decide the same on merit one way or the other.

9. Respondent No.6 will be at liberty to make an application before respondent No.1 for withdrawal of the aforesaid amount to be deposited by the petitioner.

10. However, it is made clear that if there is no deposit of the amount as above, no protection would be available to the petitioner.

11. Subject to the above, auction sale notice dated 30th July, 2019 and order of the Revisional Authority dated 20th August, 2018 are set aside.

12. Parties to appear before the Revisional Authority i.e. respondent No.1 on 12th December, 2019 after making deposit of the aforesaid amount by the petitioner.

13. Writ petition is disposed of.

(UJJAL BHUYAN, J.)