

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

WRIT PETITION NO.13831 OF 2018

M/s. Rahi Metal Udyog Pvt. Ltd. & Ors. ...Petitioners

VS.

Dombivali Nagri Sahakari Bank Ltd. & Ors. ...Respondents

....

- Mr. Prashant P. Kulkarni, Advocate for Petitioners.
- Mr. Ashutosh Gole, Advocate for Respondent Nos.1 & 2
- Ms. M. S. Bane, AGP for Respondent Nos.3 and 4 /State.

**CORAM : C. V. BHADANG, J.
DATE : 16th DECEMBER, 2019**

P.C. :

1. The challenge in this petition is to the order dated 29/8/2018 passed by the Divisional Joint Registrar, Mumbai Division, thereby refusing to condone the delay of over two years in filing Revision Application under Section 154 of the Maharashtra Co-operative Societies Act, 1960 ('Act' for short). The petitioners sought to challenge an order / recovery certificate dated 31/3/2016 issued by the District Dy. Registrar of Co-operative Societies before the Revisional Authority.

2. A perusal of the application for condonation of delay, shows that the only ground made out was that there were parallel proceedings, under The Securitisation and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002 ('SARFAESI Act' for short) initiated by the first respondent which the petitioners were defending, as a result of which the delay has occasioned.

3. By the impugned order, the Revisional Authority has refused to condone the delay on two grounds. Firstly, that the delay has not been properly explained and secondly that the petitioner had failed to show that they had deposited 50% of the amount of the Recovery Certificate as required under Section 154(2A) of the Act.

4. I have heard learned counsel for the petitioner and the learned counsel for the first respondent and also the learned AGP for respondent Nos.3 and 4. Perused record.

5. Learned counsel for the petitioner has today produced a copy of the letter dated 9/4/2018 to show that an amount of Rs.3,07,853/- was paid to the first respondent by Pay Order dated 7/4/2018 in compliance of Section 154(2A) of the said Act. It is therefore submitted that the application for condonation of delay could not have been dismissed on the ground of non compliance of Section 154(2A) of the Act. Secondly, it is submitted that the delay has been sufficiently and properly explained as the Bank had initiated parallel proceedings under the SARFAESI Act which the petitioners were defending. For this purpose, reliance is placed on the decision of the Supreme Court in the case of **Prahlad Shankarrao Tajale Vs. State of Maharashtra AIR 2018 Supreme Court 1313** and **N. Balkrishnan Vs. M.**

Krishnamurthy (1998) 7 SCC 123 and Ram Nath Sao Vs. Gobardhan Sao & Ors. 2002 (2) ALL MR 588(SC)

6. It is submitted that in every case seeking condonation of delay there would be some lapse. However, the question in all such cases is whether the lapse or the delay has been sufficiently explained or not. It is submitted that the Courts are required to take a liberal view of the matter as it is always advisable that the matters are decided on merits, rather than on technicalities.

7. Learned counsel for the respondent No.1 has supported the impugned order. It is submitted that the proof about the deposit of the 50% of the amount of the Recovery Certificate was never produced before the Revisional Authority as has been noticed in the impugned order and secondly, the initiation of the parallel proceedings under the SARFAESI Act cannot be a ground explaining the delay satisfactorily.

8. I have considered the circumstances and the submissions made and I do not find that any case for interference is made out. The principles governing a prayer for condonation of delay are fairly well settled. The Supreme Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others (2013) 12 SCC 649** after taking a survey of several decisions holding the field has culled out the principles, which are germane while considering the

prayer for condonation of delay. It has been inter alia held that the Court can adopt a liberal view in respect of delay of short duration. However, a delay of gross nature (as in the present case) would require a stricter approach to be followed.

9. The only ground on which the condonation of delay is sought is that there were parallel proceedings initiated by the first respondent under the SARFAESI Act which the petitioner was required to defend. The said ground to my mind cannot be accepted as a sufficient cause for condonation of delay. The record discloses that the proceedings under the SARFAESI Act were initiated against the petitioner somewhere in the year 2014 i.e. much prior to the issuance of the recovery certificate. It is true that even after the issuance of the impugned certificate under Section 101 of the Act, another set of SARFAESI proceedings were initiated which the petitioners have challenged before the Debts Recovery Tribunal (DRT). The proceedings under the Act and one under the SARFAESI Act being independent proceedings, the party aggrieved has to challenge the orders if adverse, separately as per the provisions contained in the Co-operative Societies Act or the SARFAESI Act as the case may be. The ground made out cannot be accepted, particularly when there is gross delay of over two years. The impugned certificate dated 31/3/2016 was sought to be challenged for the first time on 9/4/2018. As noticed earlier, the initial proceedings under the SARFAESI Act were

initiated in the year 2014 i.e. much prior to the issuance of the impugned recovery certificate.

10. In so far as the compliance with Section 154(2A) of the Act is concerned, the perusal of the impugned order shows that the fact of the deposit of Rs.3,07,853/- was not brought to the notice of the Revisional Authority. That apart even said deposit is made on 9/4/2018, that is the day on which the revision application was sought to be filed alongwith the application for condonation of delay.

11. The reliance placed on the three decisions, to my mind is misplaced, as the said decisions turned on their own facts. For instance, in **Prahlad Tajale case** (supra) there was an application for review filed alongwith the application for condonation of delay which was dismissed by the High Court. The Supreme Court on facts found that having regard to the controversy involved, affecting lives and properties of the parties, the delay ought to have been condoned. The other decision in the case of **N. Balakrishnan** (supra) **and Ram Nath Sao** (supra) also turned on their own facts. It is evident that whether a party has made out a sufficient case or not would depend on the facts and circumstances of each case. As noticed earlier, the Supreme Court in the recent case of **Esha Bhattacharjee** (supra) has made distinction between inordinate delay and a delay of short duration and to the former a stricter approach is warranted.

12. I have gone through the impugned order and I do not find that the impugned order suffers from any infirmity so as to require interference in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The petition is without any merit and is accordingly dismissed with no order as to costs.

(C. V. BHADANG, J.)