

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9506 OF 2018

Pundalik s/o Natthu Choudhari,
Age : 66 years, Occu. Farmer,
R/o Udali Khurd, Tq. Raver,
District Jalgaon

PETITIONER

VERSUS

1. Mr. Vasudeo S. Patil,
Special Recovery & Sales Officer,
Tapi Urban Co-operative Credit Society
Limited, Savada, Taluka Raver,
District Jalgaon
2. Chief Administrator,
Tapi Urban Co-operative Credit Society
Limited, Savada, Taluka Raver,
District Jalgaon
3. Mr. Subhash Eknath Sarode,
Age : Major, Occu. Business & Agriculture,
R/o Savada, Taluka Raver,
District Jalgaon
4. The Collector,
Jalgaon

RESPONDENTS

Mr. Chetan T. Jadhav, Advocate for the petitioner
Mr. V.B. Patil, Advocate for respondent Nos.1 to 3
Mr. S.N. Kendre, A.G.P. for respondent No.4

CORAM : MANGESH S. PATIL, J.

DATE : 26.10.2020

ORAL JUDGMENT :

Heard.

2. Rule. The Rule is made returnable forthwith and with the consent of the learned Advocates for the parties, the matter is heard finally at the stage of admission.

3. The petitioner, who is a debtor of respondent No.2 – Credit Cooperative Society, has filed this petition being aggrieved and dissatisfied by the judgment and order passed by the learned Divisional Joint Registrar, Cooperative Societies, Nashik Division, Nashik, dated 25.01.2018, whereby a Revision preferred by him under Section 154 of the Maharashtra Cooperative Societies Act, 1960 (“the Act”, for short) has been dismissed by refusing to condone the delay, which, according to the petitioner, was of two years and six months.

4. By such Revision, the petitioner was seeking to challenge sale of his property over which there was a charge of respondent No.2 Society by respondent No.1 – Recovery Officer pursuant to a certificate issued under Section 101 of the Act and the process undertaken in terms of Rule 107 of the Rules framed under the Act.

5. It is necessary to note here that in fact the petitioner is intending to challenge the auction process undertaken by respondent No.1 on merits. However, since the Revision preferred by him has been dismissed only on the ground of limitation, the parties were put to notice that this Court would consider the point of limitation and examine the impugned order only to that

extent. With the consent of both the sides, therefore, I have heard the parties only to the extent of the dispute regarding condonation of delay. Needless to state that if it is found that the delay was properly explained by the petitioner and could have been condoned, obviously, the matter will have to be remanded for decision of the Revision on merits.

6. Mr. C.T. Jadhav, learned Advocate for the petitioner vehemently submits that the petitioner is an agriculturist, who, by now, is a senior citizen. Though he had obtained a land from respondent No.2 Society, at no point of time, he was properly explained about the entries in the account. Interest was charged exorbitantly, his land to the extent of 95 Ares from Gut No.16 of village Lumkheda, Taluka Raver District Jalgaon was offered as a security and a charge was created thereon. Without keeping him informed, a proceeding was taken out and a certificate under Section 101 of the Act was obtained. Again, even the further process leading upto the auction undertaken by respondent No.1 was held behind his back. It is only in September, 2015, he could collect the documents and realizing the misdeeds, could file the Revision.

7. The learned Advocate would further point out that an objection was raised by the Auditor of respondent No.2 Society questioning the manner in which the auction had undertaken. After getting the knowledge of the sale, he tried to collect the documents. He was not having copy of the sale certificate. He collected all these documents in September 2015 and filed the

Revision under Section 154 of the Act with some delay. All these facts and circumstances ought to have been considered by the learned Divisional Joint Registrar. Instead of taking a pragmatic view of the matter and ignoring the nature of dispute, he refused to condone the delay. The order is clearly perverse and arbitrary and may be quashed and set aside and the Revision may be remanded for decision afresh, on merits.

8. Mr. V.B. Patil, learned Advocate for respondent Nos.1 to 3 vehemently submits that the petitioner is alive all the while to the every step that was taken leading to the sale of the property in auction. He would submit that the petitioner is feigning ignorance. Even attempt was made to stall the process by making his family members to institute a suit for general partition and even an order of temporary injunction, restraining him from disposing of the properties was obtained. The learned Advocate would then point out that even in the petition, the petitioner has not been consistent. He is coming with contradictory versions as to the date when he got the knowledge about the auction process. The learned Advocate would submit that the very conduct of the petitioner in not coming with a sincere disclosure as to the date on which he got the knowledge itself disentitles him of the discretionary relief. Lastly, he would submit that the process of auction has reached an irreversible stage and cannot be interfered with now after lapse of so many years. He would point out that even according to the averments in the petition, atleast the petitioner was aware about the auction

process having undertaken in the year 2013 and the delay was quite more than 813 days sought to be condoned before the Divisional Joint Registrar.

9. Indeed, the law of limitation gives a discretionary power to the Courts to condone the delays. However, simultaneously it also needs to be borne in mind that the law of limitation is harsh and shuts the doors of justice to the erring parties. Needless to state, the meritorious claims, howsoever strong they may be, could be defeated if the delays are not properly explained. Therefore, the paramount consideration for any Court faced with a request for condoning the delay is to delve into the material to ascertain if the delay is properly explained and constitutes sufficient cause.

10. As a corollary to the above principle, it is expected that the person praying for condonation of delay must come with a truthful disclosure and the request should appear to be sincere one. The principles, which need to be borne in mind for condoning the delays, have been laid down by the Supreme Court repeatedly in number of cases like *Ramlal, Motilal and Chhotalal Vs. Rewa Coalfields Ltd.; AIR 1962 SC 361, Collector, Land Acquisition, Anantnag & Anr. Vs. MST. Katiji & Ors.; AIR 1987 SC 1353*, etc. Instead of reproducing the principles, in my considered view, it would be appropriate to bear in mind these principles and approach the matter in hand.

11. Going by the pleadings in the petition, attempt has been made

by the petitioner to show that he could collect the documents which were needed for preferring the Revision under Section 154 of the Act only in September 2015 and therefore, this was prime reason which resulted in the delay. Apparently, this is the only ground put forth before the Divisional Joint Registrar in his application for condonation of delay of 813 days in preferring the Revision. The rest of the averments therein touch to the merits, to point out as to how the process of auction undertaken by respondent No.1 was either faulty or illegal. One cannot comprehend as to how and why a person like the petitioner could not have preferred the Revision in time only because he was not having the documents. Conspicuously, he does not deny specifically about having knowledge that the process of auction was undertaken. What he is attempting to demonstrate is that though he could be attributed with knowledge of the auction process since inception, he could collect the documents relevant for challenging the process only in September 2015.

12. A careful perusal of the petition itself would clearly demonstrate that the petitioner has been aware about initiation of the process for recovery of the loan which was started way back in the year 2009 and could reach finality in the year 2013. In paragraph 12 of the petition, he specifically admits about having received a caveat notice dated 07.06.2013 (Exh-L) from respondent No.1. A bare look at this notice shows that it is dated 04.06.2013. The petitioner and his family members were shown to be the

persons against whom the caveat was moved. In paragraph No.1 of the notice, it has been specifically mentioned that 95 Ares portion from the land Gut No.16 was under an encumbrance with the Society. It was specifically mentioned that on 03.06.2013, the property under charge was sold by a public auction having received offer of more than the offset price. If such is the state-of-affairs, one can easily attribute the knowledge to the petitioner about his land having been not only put to auction but even the auction having been completed in the year 2013. Once it is concluded that in this manner the petitioner was aware about his property having been put to auction and sold way back in the year 2013, his attempt to demonstrate that he got the papers in the month of September 2015 as a ground to explain the delay is clearly a lame attempt.

13. Pertinently, taking a stand that there was no delay at all, the petitioner had filed the Revision under Section 154 of the Act on 26.10.2015. It is only after respondent No.3 herein, who is the auction purchaser, raised objection that the petitioner seems to have filed application for condonation of delay on 09.05.2017. This clearly demonstrates that there was no sufficient and cogent reason for the Divisional Joint Registrar to invoke the discretionary power to condone the delay.

14. True it is that the petitioner would not apparently stand to gain by allowing his Revision to be time-barred, which is one of the principles to be borne in mind. But then the things do not seem to be as plain as they are

made to appear by the petitioner. Admittedly, in all probability, sensing that his land would be put to sale for recovery of the dues of respondent No.2 Society, attempt was made to sabotage the process by making his family members to go for a suit in the year 2012 for partition against him and obtaining a temporary injunction restraining him from selling the property.

15. I, therefore, find no hesitation in concluding that the conduct of the petitioner is not bona fide. There was no sufficient ground. He was not ready to accept that there was delay. When it was demonstrated that there was delay, under compulsion, he filed the application for condonation of delay. The delay was not properly explained, rather he was not ready to admit the entire delay. All these circumstances cumulatively justify the impugned order refusing to condone the delay. I do not find any perversity or arbitrariness in the impugned order passed by the Divisional Joint Registrar and the Writ Petition is liable to be dismissed on this count alone.

16. The Writ Petition is dismissed. The money deposited by the petitioner in this Court to show bona fides be refunded to him. The Rule is discharged. All pending Civil Applications are disposed of.

[MANGESH S. PATIL]
JUDGE

