IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7826 OF 2017

Moscow Bearing Centre
through its proprietor and anr. ..Petitioners
Vs.
The Greater Bombay Co-op.
Bank Ltd. and Ors. ..Respondents

.....

Mr. Sandeep Sharma, Advocate for Petitioners.
Mr. Harish R. Pawar, Advocate for Respondent No.1.
Mr. Y. D. Patil, AGP for Respondent Nos.2 and 3 / State.

CORAM : C.V. BHADANG, J.
DATE : 10th FEBRUARY, 2020

P.C.

. The challenge in this petition is to the order dated 20/3/2017 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai thereby refusing to condone the delay of over 1300 days in filing the revision application challenging the grant of recovery certificate.

2. The record discloses that the recovery certificate was granted against the petitioners in favour of the respondent No.1 on 8/5/2012. Admittedly, the petitioner had appeared before the Deputy Registrar in the proceedings under section 101 of the said Act. According to the petitioner, the copy of the final order granting recovery certificate was never served on the petitioners. The contention is that the first respondent collected the copy of the recovery certificate “on behalf of the petitioners.”

3. Be that as it may, the petitioner came to know about the passing of the impugned order by the Deputy Registrar, on his own saying on 13/5/2013. However, the order granting the recovery certificate was sought to be challenged for the first time on 27/2/2017. The only ground made out in the application for condonation of delay is that there were settlement talks going on between the parties. Today, during the course of argument, there is one more ground made out which is based on the health condition of the petitioner who is stated to have undergone an open heart surgery. A perusal of the record shows that this was not the ground made out for the condonation of delay.

4. I have heard learned counsel for the parties. Perused record.

5. It cannot be accepted that the petitioner has made out 'sufficient cause', for condonation of delay of over 1300 days in filing the revision application. In the first place, such a gross delay cannot be explained on the ground that there were settlement talks going on, even assuming that there were such talks which were going on between the parties. Quite to the contrary, the record discloses that the first proposal was made by the petitioner on 5/12/2013. However, there is nothing on record to show that the Bank had given it in writing that any such proposal was under active consideration of the Bank. The record indicates to the contrary that the respondent No.1 was consistently insisting for execution of the recovery certificate.

6. Learned counsel for the petitioner also pointed out to the panchanama dated 25/6/2016 which by no stretch of imagination

shows that Bank was favourably considering the settlement proposal. All that the panchanama records is that the petitioner had made request to the recovery officer to keep the proceedings of attachment, in abeyance as the petitioner was willing to attend the Bank and to discuss about some proposal for settlement with the senior officers.

7. Learned counsel for the petitioner also raised certain contentions that the proceedings under section 101 of the Act were not maintainable and the first respondent was infact required to approach the Debt Recovery Tribunal. It is also contended that the Bank was incorporated in the year 1955 i.e. prior to coming into force of the Co-operative Societies Act and therefore the provisions of the said Act are not applicable. In this regard, learned counsel for the petitioners has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Greater Bombay Co-Operative Bank Ltd vs United Yarn Tex. Pvt. Ltd. & Ors. 2007 (6) SCC 236.** The contention is that the petitioner i.e. first respondent is not registered under the Co-operative Societies Act.

8. The contention in my considered view cannot be accepted. It appears that the petitioner had approached this Court on the Original Side in Writ Petition Lodging No.1259/2017 raising several such contentions which have been noted by this Court in para 8 of the order dated 5/5/2017. This includes the contention on behalf of the petitioner that the recovery proceedings ought to have been filed before the Debt Recovery Tribunal and the Deputy Registrar had no authority to issue the recovery certificate. The said contention is already been considered and negatived by this Court. That apart,

this Court has also noted that there was suppression on behalf of the petitioner as the filing of the present petition was not disclosed in Writ Petition (Lodging) No.1259/2017. Looked from any angle, no case for interference is made out. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.