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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 10754 OF 2019

Sureshkumar Pandey & Ors. ... Petitioners
Vs.
Navi Mumbai Co-Op. Bank Ltd. & Ors. ... Respondents

Mr. Bodade a/w Satish Kumbhar, for the Petitioners.
Ms. M. S. Bane, AGP for Respondent Nos. 2, 3 and 5.
Mr. Dilip Bodake, for Respondent Nos. 1 and 4.

CORAM : C. V. BHADANG, J.

DATE : FEBRUARY 26, 2020

PC :

1. The challenge in this petition is to the order dated 5th July, 2019 passed by the learned Divisional Joint Registrar in Revision Application No. 221 of 2019. By the impugned order, the learned Divisional Joint Registrar has refused to condone the delay of over three years (which according to the learned counsel for the Respondents is 5 years and 8 months) in challenging the recovery certificate, issued under S. 101 of the Maharashtra Co-operative Societies Act, 1960 (for short the "Act").

2. The record discloses that the recovery certificate was granted in favour of the Respondent No. 1 bank on 17th July, 2013. According to the Petitioners, the said order was communicated to the

Petitioner No. 1 on 14th August, 2015. The revision before the revisional authority was filed somewhere in June, 2019. The only ground on which the condonation of delay sought is that the Petitioner was engaged in various litigations with the bank pertaining to the said loan. The Petitioner has set out details of these litigations, including the one before the Debt Recovery Tribunal. It is submitted that on account of the fact that the Petitioner was engaged in various litigations, the aspect of raising a challenge to the recovery certificate was lost sight of, thereby resulting into the delay. The learned counsel for the Petitioners has strenuously urged that the Petitioner was acting on legal advice, and there is no lack of bona fides, nor the delay is intentional. It is submitted that the Petitioner was all along bona fide pursuing the legal remedies, including the one before the DRT, which has resulted into the delay. He therefore, submits that the Petitioner has made out sufficient cause for condonation of delay under S. 5 of the Limitation Act. At one stage, it was also submitted that the time spent in various litigations needs to be excluded under the provisions of the Limitation Act.

3. The learned counsel for Respondent No. 1 and 4 has pointed out that even prior to 14th August, 2015, there were several notices issued by the Special Recovery Officer to the Petitioner, and

therefore, it cannot be said that the Petitioner was unaware of the grant of the recovery certificate. It is submitted that computed from the date of the order granting recovery certificate i.e. 17th July, 2013, the delay would be about 5 years and 8 months. He submits that the recovery certificate was never challenged, and therefore, there is no question of any exclusion of time.

4. I have carefully considered the rival circumstances and the submissions made. The existence of sufficient cause is a *sine qua non* for granting an order of condonation of delay. It is now well settled that although the Court can take a liberal view in respect of delay of short duration, a stricter approach is necessary where the delay is of substantial or gross nature, as in the present case. (see decision in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors.***¹ Computed from the date of the order granting recovery certificate, the delay is of 5 years and 8 months, and even calculated from the date of alleged communication of the said order to the Petitioner i.e. 14th August, 2015, the delay is of 3 years. The mere fact that the Petitioner was engaged in other litigation with the bank, including before the DRT, in my considered view, is not a sufficient cause, for not challenging the recovery certificate within time.

1 (2013) 12 SCC 649

5. The contention based on Section 14 of the Limitation Act, 1963 on exclusion of time also cannot be accepted, inasmuch as it is not even the case made out that the impugned recovery certificate was challenged before a wrong authority or forum. It is a matter of record that recovery certificate was not challenged before any authority.

6. The learned counsel for the Petitioner points out that in fact the details of various cases which were filed by the Petitioner were submitted before the lower authority, and the lower authority has wrongly observed that no such details were furnished. However, I find that even assuming that the Petitioner was engaged in various litigation, it is not enough to make out a sufficient cause. In that view of the matter, the petition is dismissed, with no order as to costs.

Vinayak
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Halemath

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C. V. BHADANG, J.