

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9109 OF 2015

Mr. Sherkha Rahimkhan Pathan,
Age : 48 years, Occu. Business,
R/o. Plot Nos.2,3,4 in Land Gut No.2,
at Brijwadi/Naregaon, Aurangabad.

... **Petitioner**

Versus

1. The State of Maharashtra,
Through its Principal Secretary
Co-operative Department,
Maharashtra State Mantralaya,
Mumbai.
2. Commissioner for Co-operation
Department and Registrar
Co-operative Societies,
Maharashtra State Pune.
3. Divisional Joint Registrar,
Co-operative Societies, Aurangabad,
District Aurangabad.
4. The District Registrar,
Co-operative Society,
Aurangabad.
5. Special Recovery Officer,
Devgiri Nagari Sahakari Bank Limited
Branch Kranti Chowk, Aurangabad.
6. Devgiri Nagari Sahakari Bank Limited
Branch Kesarsinghpura, Aurangabad,
Through its Branch Manager.
7. Harischandra S/o Kashinath Tiwari,
Through G.P.A. Sanju D/o Harischandra Tiwari,
Age : 33 years, Occu. Service,

R/o. Plot No.2/A Rajendra Nagar,
Naregaon, Aurangabad.

... **Respondents**

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Mr. A. N. Sabnis, Advocate for Petitioner.

Mr. S. P. Deshmukh, AGP for Respondent/s-State.

Mr. N. K. Tungar, Advocate for Respondent No.5 and 6.

Mr. A. S. Kulkarni, Advocates for Respondent No.7.

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CORAM : V. K. JADHAV, J.

DATE : 15.03.2021.

JUDGMENT :-

1. Heard finally at admission stage by consent of the parties. Rule. Rule made returnable forthwith.

2. By way of this present Writ Petition, the petitioner / auction purchaser is challenging the order dated 29.05.2015 passed by respondent No.3 in Misc. Application No.43 of 2014 filed by respondent No.7 herein, thereby condoning the delay of 376 days caused in filing the revision petition.

3. Respondent No.7 is the owner of the property in dispute. Respondent No.7 had mortgaged the disputed property for availing the loan on 28.08.1997 with respondent No.6 / Devgiri Nagari Sahakari Bank Limited (herein after referred to as 'Bank'). It appears that respondent No.7 had availed the

loan of Rs.15,00,000/- (Rupees Fifteen Lacs only) and mortgaged the disputed property with the bank by executing all the necessary legal documents. Respondent No.7 has thereafter committed default in the repayment and despite the final notice served on him, failed to repay the borrowed amount, respondent No.6-bank has obtained the recovery certificate as provided under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (herein after referred to as 'the Act'). Thereafter, the valuation of the property was carried out by the Government Valuer and on 20.12.2013 the public auction notice was issued in the daily newspaper 'Sakal'. The auction was scheduled and held on 20.01.2014 and the present petitioner had submitted the highest bid. At that time, no one has raised the objection and as such auction sale has become final. The said auction was confirmed by passing resolution in the meeting of the Directors of the respondent-bank on 05.03.2014. Thereafter, sale deed was executed in the name of the petitioner in the office of the Sub Registrar, Aurangabad on 20.03.2014. The respondent-bank has given letter to the Tahsildar on 19.04.2014 for recording the name of the petitioner in respect of the suit property in the revenue

records. Thus, the name of the petitioner stands mutated in 7/12 extract of the suit land. Respondent No.7 has thereafter approached respondent No.3 by filing the revision under Section 154 of the Act along with the separate application seeking condonation of delay. The said application is registered as Misc. Application No.43 of 2014 and by impugned order dated 29.05.2015 respondent No.3 has allowed the said application. Hence, this writ petition.

4. The learned counsel for the petitioner submits that respondent No.7 has failed to show the sufficient cause for condonation of an inordinate delay caused in filing the revision. The learned counsel submits that even respondent No.3 in the impugned order has also accepted that the respondent-bank has published the public auction notice of the suit property in a daily newspaper 'Sakal', which is widely circulated in the region. Even respondent No.3 has also observed that the notice dated 08.07.2014 issued to respondent No.7 in the said proceedings returned unserved and therefore the paper publication was made about public auction in the daily newspaper 'Sakal'. The learned counsel for the petitioner submits that respondent No.3 has observed that

the matter needs to be decided on merits and in view of the same, the delay required to be condoned. The learned counsel submits that respondent No.3 has not observed that respondent No.7 has shown the sufficient cause for condonation of delay. On the other hand, respondent No.3 has made the observations in the impugned order, which indicates that respondent No.7 has failed to show the sufficient reasons for condonation of said inordinate delay.

5. The learned counsel for the petitioner in order to substantiate his submissions placed his reliance in a case ***Basawaraj and another Vs. Special Land Acquisition Officer*** reported in ***(2013) 14 Supreme Court Cases 81***.

6. The learned counsel for respondent No.7 submits that the properties put to the auction by the Recovery Officer of the Bank are admittedly the agricultural lands with dwelling house of respondent No.7. In terms of Rule 107 of the Maharashtra Co-operative Societies Rules, 1961, the agricultural lands and dwelling house cannot be attached in the execution of the recovery certificate issued under Section 101 of the Act. The learned counsel submits that the disputed properties i.e. plot

Nos.2, 3 and 4 were actually the agricultural lands and over the said plots, dwelling house is constructed. The learned counsel submits that the said properties were never mortgaged or offered as collateral security in favour of respondent-Bank by the father of respondent No.7. (The affidavit-in-reply filed by respondent No.7 who is the daughter). The learned counsel submits that in view of this illegality, the entire process right from the stage of auction till the transfer of the properties in favour of the petitioner stands vitiated. The petitioner has not acquired any legal right in respect of the said properties as per law.

7. The learned counsel submits that respondent No.3 after considering the nature of dispute and patent illegalities committed by the authorities of the bank in the peculiar facts and circumstances, condoned the delay caused in filing the revision petition. The learned counsel submits that respondent-bank has initiated the recovery proceeding under Section 101 of the Act on the basis of the loan application No.508 dated 04.08.1997 and as per the entry taken on the said application, the loan was already cleared. Further there are overwritings in respect of the dates. In view of the same, respondent No.7

should get one opportunity to pursue his revision. The learned counsel submits that the property under auction is worth of crore rupees and the petitioner has grabbed the said properties for a meager amount. The learned counsel submits that entire proceedings was ex-parte and in view of the same, respondent No.3 was justified in condoning the delay caused in filing the revision. The learned counsel submits that the expression "sufficient cause" within the meaning of Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. The learned counsel submits the delay if any is not malafide, intentional and respondent No.7 has not adopted the dilatory tactics.

8. The learned counsel for respondent No.7 has placed his reliance on the following cases :

- (i) Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others reported in AIR 1987 Supreme Court 1353.
- (ii) Ram Nath Sao @ Ram Nath Sahu and others Vs. Gobardhan Sao and others reported in AIR 2002 Supreme Court 1201.
- (iii) M/s Puran Automobiles, Shahgunj, Aurangabad Vs. The State of Maharashtra and others in Writ Petition

No.1405 of 2011, this Court (Coram : B. P. Dharmadhikari, J.) order dated 25.02.2011.

9. I have heard the learned AGP for respondent No.3-State.

10. The learned counsel Mr. N. K. Tungar for respondent Nos.5 and 6 submits that respondent No.7 is the owner and possessor of the suit properties bearing plot Nos.2, 3 and 4 situated at Brijwadi, Aurangabad admeasuring 418.20 Sq.Mtrs. The learned counsel submits that on 19.12.2013 the public auction notice was published in a daily newspaper 'Sakal' and the sale notice was also displayed on the board of the respondent-bank. The learned counsel submits that the Government approved valuer has given report of the properties and as per the said report, real market value of the property is determined as Rs.35,12,500/-. The respondent-Special Recovery and Sales Officer has passed the order on 20.01.2014 and fixed the upset price of the property. The learned counsel submits that on the date of auction, three persons participated in the auction proceedings and respondent No.7 was deliberately remained absent. The petitioner put the highest bid and therefore the auction was confirmed on his name.

Even on 20.03.2014 by way of registered sale deed, the ownership and possession was transferred to respondent No.4 (in revision) / petitioner herein. The learned counsel submits that by Registered Post, the notice has been sent on 08.07.2014 and also by way of paper publication in the daily newspaper 'Sakal', respondent No.7-revisional petitioner was intimated by the District Deputy Registrar about the auction sale. The physical possession of the property was also handed over to the petitioner.

11. I have carefully considered the submissions advanced by the learned counsel for the respective parties. With their able assistance, I have perused the pleadings, the grounds taken in the petition, annexures thereto and the reply filed by the respondent.

12. I have carefully gone through the contents of Misc. Application No.43 of 2014 filed by respondent No.7 seeking condonation of delay. According to respondent No.7, respondent No.2 has issued sale notice dated 20.12.2013 and the property bearing plot Nos.2, 3 and 4 situated at Brijwadi with building constructed thereon was put for sale on

20.01.2014. According to respondent No.7, the sale notice was not served upon him and it was also not published in the daily newspaper 'Sakal'. According to him, respondents on 23.12.2014 without any intimation broken the lock of his house and removed household articles including the utensils, readymade garments, T.V. set, fridge and certain ornaments etc. Thus, the respondent No.7 immediately on 24.12.2014 made an inquiry in the office of concerned authority. Respondent No.7 has knowledge about the said proceedings and accordingly filed the revision along with application for condonation of delay.

13. I have carefully gone through the impugned order. Respondent No.3 has observed in the impugned order that the submissions made on behalf of respondent No.7 are not acceptable. Respondent No.3 has observed in the impugned order that though the notice was issued on 08.07.2014 to respondent No.7, however, it was returned unserved and therefore the paper publication about the auction sale was published in daily newspaper 'Sakal'. Respondent No.3 has further observed that in the backdrop of this publication in the daily newspaper 'Sakal' it cannot be said that respondent No.7

had no knowledge about the said auction proceedings. Respondent No.3 has further observed that if the delay is not condoned, respondent No.7 would face the irreparable loss and in view of the same, the delay is required to be condoned. Respondent No.3 has further observed that the revision is required to be decided on merits and as such the delay needs to be condoned.

14. In a case ***Ram Nath Sao @ Ram Nath Sahu and others Vs. Gobardhan Sao and others*** reported in ***AIR 2002 Supreme Court 1201*** relied upon by the learned counsel for respondent No.7, in paragraph Nos.9 and 10 the Supreme Court has made the following observations :

"9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a

different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause."

The Supreme Court has observed that the length of delay is no matter, acceptability of the explanation is the only criterion. The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. In paragraph No.11, the Supreme Court has explained the expression "sufficient cause" and made the following observations :

"11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period

for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

15. In a case ***Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others*** reported in ***AIR 1987 Supreme Court 1353***, relied upon by the learned counsel for respondent No.7, in paragraph No.3, the Supreme Court has made the following observations :

"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice--that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that :-

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908. may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

"2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the in-herited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

16. In a case *M/s Puran Automobiles, Shahgunj, Aurangabad Vs. The State of Maharashtra and others, in Writ Petition No.1405 of 2011*, relied upon by the learned counsel for respondent No.7, this Court (Coram : B. P. Dharmadhikari, J.) by order dated 25.02.2011 in the facts of the said case observed that the petitioner ought to have been given an opportunity of hearing before deciding the upset price.

17. In a case *Basawaraj and another Vs. Special Land Acquisition Officer* reported in *(2013) 14 Supreme Court Cases 81* relied upon by the learned counsel for the petitioner, in paragraph No.15, the Supreme Court has made the following observations :

" 15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to

prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

In view of the ratio laid down by the Supreme court, the petitioner has to explain the Court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case, a party found to be negligent or for want of bonafide on his part in the facts and circumstances of the case or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay.

18. In the instant case, respondent No.7-borrower has not contested the 101 proceedings for issuance of the recovery certificate nor challenge the said recovery certificate. It further appears that even respondent No.7 has avoided the service of the notice issued by the respondents-authorities in the proceedings for the proposed auction sale. Consequently, the notice was published in the wide circulated daily newspaper 'Sakal'. Respondent No.7 has raised a specific plea about want of knowledge by contending that the notice was not published

in the widely circulated newspaper. However, respondent No.3 has not accepted the said submissions. Undisputedly, the daily newspaper 'Sakal' is widely published newspaper in the region. Respondent No.7 has failed to give "sufficient cause" which prevented him to approach the authority within limitation. Respondent No.7 is the defaulter and considering the entire history of the proceedings right from the issuance of the recovery certificate under Section 101 of the Act, I do not think that respondent No.7 has approached to the authority bonafidely. The application seeking condonation of delay is required to be decided within the parameters laid down by the Supreme Court with regard to condonation of delay. However, respondent No.3-authority has taken the liberal view without any justifiable grounds. Respondent No.3-authority has observed that if the delay is not condoned, respondent No.7 would face the irreparable loss and in view of the same, the delay needs to be condoned. Respondent No.3 has also observed in the earlier part of the impugned order that respondent No.7 has failed to show sufficient cause for condonation of delay.

19. In view of the same, the order impugned needs to be quashed and set aside. Hence, I proceed to pass the following order :

ORDER

- (i) The Writ Petition is allowed in terms of prayer clause 'B'.
- (ii) Rule made absolute in the above terms.
- (iii) Writ Petition is accordingly disposed off.

(V. K. JADHAV, J.)

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