

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**WRIT PETITION NO. 9446 OF 2018
WITH
CIVIL APPLICATION NO. 997 OF 2022 IN WP/9446/2018**

Kausabai W/o Eknath Hajare (Died)
Through Legal Representative
Vijay S/o Eknath Hajare
Age : 62 years, Occu :- Retired,
R/o : Kedgaondevi, Near Branch Office of Mahapalika,
Kedgaon, Ahmednagar,
Tq.and Dist. Ahmednagar

.. Petitioner

Versus

- 1] The Deputy Registrar,
Co-operative Societies,
Mahatma Fule Chouk, Market Yard,
Ahmednagar
- 2] The District Deputy Registrar,
Co-operative Societies,
Market Yard, Station Road,
Ahmednagar
- 3] The Divisional Joint Registrar,
Co-operative Societies,
Nashik Division, Nashik
- 4] Sahyadri Nagari Gramin Bigar Sheti
Sahakari Pat Sanstha Ltd., Kedgaon,
Ahmednagar,
Through its Administrator
Shri. Kiran Kashinath Avhad,
Head Clerk, Office of the Assistant Registrar,
Co-operative Societies, Parneer,
Tq. Parneer, Dist. Ahmednagar
- 5] Shriram S/o Eknath Hajare
Age :- 57 years, Occu :- Service,
R/o. Shikshak Colony, Munjoba Chouk,
Nepti Road, Kedgaon, Ahmednagar
- 6] Sunil S/o Eknath Hajare
Age :- 55 years, Occu:- Service,
R/o. As above,

- 7] Vishnu S/o Eknath Hajare,
Age :- 48 years, Occu :- Nil,
R/o Kedgaondevi, Near Branch Office
of Mahapalica, Kedgaon, Ahmednagar
Tq. and Dist. Ahmednagar
- 8] Sahyadri Nagari Gramin Bigar Sheti
Sahakari Pat Sanstha Ltd., Kedgaon,
Ahmednagar
Through it's Special Recovery Officer,
R/o. Kedgaon Devi, Nagar Pune Road,
Ahmednagar, Tq. & Dist. Ahmednagar
- 9] Sahyadri Nagari Gramin Bigar Sheti
Sahakari Pat Sanstha Ltd., Kedgaon,
Ahmednagar,
Through it's Manager,
R/o. Kedgaon Devi, Nagar Pune Road,
Ahmednagar, Tq. & Dist. Ahmednagar .. Respondents

...
Advocate for Petitioner : Mr. Ashok Tapse h/f. Mr. Suryawanshi D.N.
AGP for the respondent – State : Mr. S.B. Pulkundwar
Advocate for the respondents no. 8 and 9 : Mr. A.C. Darandale
Respondents no. 4 to 7 served - absent
...

CORAM : MANGESH S. PATIL, J.

DATE : 11 JULY 2022

ORAL ORDER :

Heard. Rule. Rule made returnable forthwith. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner happens to be one of the four sons of one Kausabai. She was the borrower of respondent no. 4 - society and to which her two sons, respondents no. 5 and 6 were the guarantors. He is aggrieved by the order passed in revision preferred by him under section 154 of the Maharashtra Co-operative Societies Act, 1960 ("the

Act"), thereby refusing to condone the delay of more than 10 years in putting up the challenge to the recovery certificate.

3. I have heard learned advocate of both the sides.

4. The learned advocate for the petitioner would submit that the petitioner was not a party to the dispute. The procedure contemplated in law was not followed. After issuing recovery certificate under section 101 of the Act, no immediate steps were taken by the respondent no. 4 - society for recovering the dues. After her demise he was served with a notice. The house property which was mortgaged to secure the loan was attached. It was put to auction. In spite of his strenuous efforts, he was not provided with the documents and all these factors had cumulatively resulted in causing the delay. The revisional authority ought to have considered all these aspects and should have allowed the petitioner to prefer the revision and the decision could have been taken on its own merits.

5. Learned advocate for the respondent - society supports the order.

6. It is a matter of record that the certificate under section 101 of the Act was issued way back in the year 2006. The petitioner's mother - Kausabai and his two brothers respondents no. 5 and 6 were apparently parties to that proceeding. As can be seen from the *roznama* of that proceeding it purports to be under the signatures of the

respondents no. 5 and 6. It appears that even by submitting their reply of the even date, all the three, namely, Kausabai and respondents no. 5 and 6 had admitted the liability and had assured to repay it in installments. Consequently, there cannot be any dispute as regards the procedure that was adopted while issuing recovery certificate which was *ex facie* issued pursuant to the stand taken by the borrower and the guarantors admitting the claim.

7. Admittedly, the petitioner was not a party to that transaction. It is, therefore, a serious issue as to if he could have preferred a revision under section 154 of the Act questioning the legality of the recovery certificate that too after a lapse of more than 10 years.

8. Pertinently, admittedly, Kausabai died in the year 2013. Meaning thereby that during her lifetime, since after issuance of recovery certificate, for about 6 - 7 years she had not put up any challenge to the legality of the recovery certificate nor has it been done by the respondents no. 5 and 6.

9. In spite of such state-of-affairs, the petitioner has come forward to prefer the revision belatedly.

10. Even going by the stand being taken by the petitioner all throughout, at least since the year 2014, he was aware about the recovery certificate. Still, it took him another 2-1/2 to 3 years to put up

the revision with the application for condonation of delay when the period of limitation prescribed is 60 days under sub-section (3) of section 154 of the Act.

11. It is also pertinent to note that, the petitioner seems to be residing in the same house property which is sought to be auctioned. Pursuant to the recovery certificate, the house property was subsequently attached and now even it has been sold. There was paper publication declaring the attachment way back in 2009 and it is, therefore, highly unbelievable that the petitioner could get the knowledge about recovery certificate only in the year 2013 and not prior thereto.

12. Considering all the afore-mentioned facts and circumstances, I find no error or illegality in the order under challenge refusing to condone the delay for the peculiar facts and circumstances of the case.

13. Writ petition is dismissed.

14. Rule stands discharged.

15. Pending civil application is disposed of.

[MANGESH S. PATIL]
JUDGE

arp/