

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

WRIT PETITION NO.2772 OF 2021

Shaikh Irfan Isakoddin,
Age : 37 years,
Occupation : Business,
R/o Khadkeshwar,
Tq. & Dist.Aurangabad.

...PETITIONER

-VERSUS-

1. Tasneem Kausar Shaikh Hamad,
Age : Major, Occupation : Household,
R/o House No.3/2/17, Barudgarnala,
Opp.l Talat High School, City Chowk,
Aurangabad.
2. Adarsh Mahila Nagari Sahakari Bank Ltd.,
Opposite JNEC College, N-6, Cidco,
Aurangabad.
Through it's Branch Manager.
3. Sayyad Shouket Sayyad Subedar,
Age : Major, Occu : Business,
R/o Khodegaon,
Tq. & Dist. Aurangabad.
4. Special Recovery Officer,
Adarsha Mahila Nagari Sahakari Bank Ltd.,
Opposite JNEC College, N-6, CIDCO,
Aurangabad.
5. Divisional Joint Registrar,
Cooperative Societies,
Aurangabad,
Tq. & Dist.Aurangabad.

...RESPONDENTS

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Advocate for the Petitioner : Salunke V.d.
Advocate for Respondents 1 and 3 : Shri B.N. Patil h/f Shri R.N. Kolekar
AGP for Respondents 2, 4 and 5 : Shri Kiran B. Jadhavar

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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 05th January, 2022

ORAL JUDGMENT :

1. Heard the learned counsel for the petitioner and the respondents.
2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
3. The petitioner is aggrieved by the order passed by the Divisional Joint Registrar, Cooperative Societies, Aurangabad on 27.11.2020 in Miscellaneous Application No.57/2019 filed by respondent No.1, seeking the relief of condoning the delay in filing the revision application under Section 154 of the Maharashtra Cooperative Societies Act, 1960. The delay of approximately six years has been condoned with the only reason being cited that it is not intentional.
4. Before I advert to the merits of the impugned order, the narration of brief facts in the background is necessary.

Respondent No.1 is the original borrower, who obtained the loan of Rs.5 lacs from respondent No.2 (Adarsha Mahila Nagari Cooperative Bank Limited). On default being committed, respondent

No.2/Bank initiated the proceedings under Section 101 of the Maharashtra Cooperative Societies Act for the recovery of the loan amount and the recovery certificate was issued against respondent No.1 on 23.11.2009. On 11.01.2010, the District Deputy Registrar, Cooperative Societies, Aurangabad, issued the offset price of the property owned by the guarantor since no property of the borrower was available. Price was fixed at Rs.1,57,680/-. The property of the guarantor was put to auction and the District Deputy Registrar also issued the sale confirmation certificate on the auction being conducted, under which, the property was purchased by the present petitioner.

5. The claim of the petitioner is that respondent No.1 never bothered to repay the loan amount and did not take any steps when the auction was conducted and the sale certificate was granted in favour of the petitioner. For the first time in the year 2014, respondent No.1 approached the High Court by filing Writ Petition No.9713/2013, which was dismissed by this Court on 27.01.2014 by recording that the property of the guarantor is auctioned and the guarantor or his legal representative did not come forward to challenge the said sale and therefore, respondent No.1 was lacking the locus to challenge the action of auctioning the property of the guarantor.

6. This order being passed in the year 2014, respondent No.1 filed the revision petition under Section 154 of the Maharashtra

Cooperative Societies Act, 1960 in the month of April, 2014, seeking the relief of setting aside the recovery certificate dated 23.11.2009 and for remanding the matter back to the District Deputy Registrar for its decision afresh.

Since there was delay in filing the revision, a separate application for condonation of delay of 04 years and 30 days was filed. The concerned authority i.e. the Divisional Joint Registrar, Cooperative Societies, by a detailed order dated 04.11.2016, rejected the application for condonation of delay. Perusal of the said order would reveal that the authority has attributed the knowledge to the revision applicant in the month of June, 2010 and refused to accept the contention that the revision applicant is illiterate and had no knowledge of law. Recording that the ignorance of law cannot be pleaded as an excuse and since the knowledge is attributed to the revision applicant in June, 2010, who in fact, had knocked the doors of the High Court, cannot be benefited for ignorance of law, the application came to be rejected.

7. Surprisingly, respondent No.1 filed another revision application, this time after delay of more than six years, to be precise on 19.04.2019, once again seeking similar relief of setting aside the recovery certificate. This revision application was accompanied by the application for condonation of delay, where the delay of more than six years was sought to be condoned. The petitioner, who is the bonafide purchaser of

the auctioned property, strongly opposed the said application and invited attention of the authority to the earlier order passed when the delay of 04 years and 30 days was refused to be condoned in filing the revision, invoking Section 154 of the Maharashtra Cooperative Societies Act and therefore, it was pleaded that another application that too after the delay of six years is liable to be rejected.

8. In utter ignorance of the objection raised by the petitioner, the Divisional Joint Registrar, Cooperative Societies, Aurangabad has condoned the delay under the impugned order. Perusal of the impugned order would reveal that while condoning the delay, the only reason that has been put forth is, it is in the interest of justice, the delay is condoned. The delay being not intentional and since there is power to condone the delay, the application is granted and the revision application is directed to be posted for hearing.

9. On perusal of the impugned order, it can only be observed that the learned Authority, exercising quasi judicial power, is bound to exercise discretion vested in him on the settled norms. In an earlier round, delay of 04 years and 30 days was found inordinate and not bonafide and therefore, the revision application was refused to be entertained in the absence of delay being condoned. The learned Authority has failed to advert himself to the earlier order and based on the solitary reason that the delay is not intentional, has condoned the delay of six years. It is trite

position of law that the authority vested with discretion like the present one, is expected to advert to the proposition of law and particularly when the very same authority, in the earlier round, has refused to condone the delay. The delay cannot be condoned in mechanical and perfunctory manner, particularly when it is enormous, though reasonable delay can be condoned exercising the discretionary power, provided it is explained and it is bonafide. The Authority has condoned the delay merely by observing that the delay is not intentional, though the petitioner specifically invited attention of the authority to the malafides in filing the revision application once again, though the same was rejected in the earlier round, the authority has not at all considered the said contention of the petitioner. Discretion in the Authority since not exercised bonafide, the impugned order, calls for interference of this Court in exercise of it's writ jurisdiction.

10. For the reasons recorded above, the impugned order, which is unreasoned one, cannot be sustained and is liable to be quashed and set aside. Necessarily, the Writ Petition is allowed by quashing and setting aside the impugned order.

11. Rule is made absolute in terms of prayer clause B.