

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

WRIT PETITION NO. 5128 OF 2021

M/s. Shrideep Associates through,
Proprietor Sau. Deepali Shripad Thombre,
Age : 37, Occu. Builder,
R/o : Shraddha Kutir, Indira Nagar,
Near Parth society, Nashik,
Tq. Dist. Nashik.

...Petitioner.

Versus

1. The State of Maharashtra, through
Secretary, Co-operative and Textile Department,
Mantralaya, Mumbai-32.
2. Divisional Joint Registrar,
Co-operative Society, Nashik, Division Nashik.
3. Assistant Registrar (On Deputation), Sah. Sanstha,
Tq. Ahmednagar, Dist. Ahmednagar.
4. Samta Nagri Sah. Patsanstha, ltd. Kopergaon,
Through its Authorized Officer,
Address : Samta Marg, Main Road Kopergaon,
Tq. Kopergaon, Dist. Ahmednagar.
5. Special Recovery & Sale Officer,
Samta Nagri Sah. Patsanstha, ltd. Kopergaon,
Address : Samta Marg, Main Road Kopergaon,
Tq. Kopergaon, Dist. Ahmednagar.
6. Prashant Manikchand Dakale,
Age : 40, Occu: Business,
R/o. Plot No. F-404, Rohan Garima Co-operative Society,
Shivaji Nagar, Pune.
7. Manoj Baburao Nilak,
R/o: S.N 103-A, 10+11, Plot No. F-404,
behind of Rohan Garima Co-operative Society,
Bhamburda, Shivajinagar, Pune.

8. Sanjay Kamat Singh
R/o : Near Mauli Lawns, Shop No. 2,
Kamtewade Shivar, Nashik,
Tq. Dist. Nashik.

....Respondents.

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Mr. C.V. Thombre, Advocate for petitioner.
Mr. K.B. Jadhavar, AGP for respondent Nos. 1 to 3.
Mr. R.L. Kute, Advocate for respondent Nos. 4 & 5.

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AND

WRIT PETITION NO. 5129 OF 2021

Shri. M/s S.V. Thombre & Associates,
through proprietor, Shripad Vinayak Thombre,
Age : 45, Occu. Builder,
R/o : Shraddha Kutir, Indira Nagar,
Near Parth society, Nashik,
Tq. Dist. Nashik.

...Petitioner.

Versus

1. The State of Maharashtra, through
Secretary, Co-operative and Textile Department,
Mantralaya, Mumbai-32.
2. Divisional Joint Registrar,
Co-operative Society, Nashik, Division Nashik.
3. Assistant Registrar (On Deputation), Sah. Sanstha,
Tq. Ahmednagar, Dist. Ahmednagar.
4. Samta Nagri Sah. Patsanstha, Ltd. Kopergaon,
Through its Authorized Officer,
Address : Samta Marg, Main Road Kopergaon,
Tq. Kopergaon, Dist. Ahmednagar.
5. Special Recovery & Sale Officer,
Samta Nagri Sah. Patsanstha, Ltd. Kopergaon,
Address : Samta Marg, Main Road Kopergaon,
Tq. Kopergaon, Dist. Ahmednagar.

6. Prashant Manikchand Dakale,
Age : 40, Occu: Business,
R/o. Plot No. F-404, Rohan Garima Co-operative Society,
Shivaji Nagar, Pune.
7. Pramod Jalindar Ranmale,
R/o : Trimurti Chowk, Uttam Nagar, Cidco, Nashik,
Tq. Dist. Nashik.
8. Sanjay Kamat Singh
R/o : Near Mauli Lawns, Shop No. 2,
Kamteiwade Shivar, Nashik,
Tq. Dist. Nashik.

....Respondents.

...

Mr. C.V. Thombre, Advocate for petitioner.

Mr. K.B. Jadhavar, AGP for respondent Nos. 1 to 3.

Mr. R.L. Kute, Advocate for respondent Nos. 4 & 5.

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AND

WRIT PETITION NO. 5153 OF 2021

Shripad Vinayak Thombre,
Age : 45, Occu. Builder,
R/o : Shraddha Kutir, Indira Nagar,
Near Parth society, Nashik,
Tq. Dist. Nashik.

...Petitioner.

Versus

1. The State of Maharashtra, through
Secretary, Co-operative and Textile Department,
Mantralaya, Mumbai-32.
2. Divisional Joint Registrar,
Co-operative Society, Nashik, Division Nashik.
3. Assistant Registrar (On Deputation), Sah. Sanstha,
Tq. Ahmednagar, Dist. Ahmednagar.
4. Samta Nagri Sah. Patsanstha, ltd. Kopargaon,

Through its Authorized Officer,
Address : Samta Marg, Main Road Kopergaon,
Tq. Kopergaon, Dist. Ahmednagar.

5. Special Recovery & Sale Officer,
Samta Nagri Sah. Patsanstha, Ltd. Kopergaon,
Address : Samta Marg, Main Road Kopergaon,
Tq. Kopergaon, Dist. Ahmednagar.
6. Prashant Manikchand Dakale,
Age : 40, Occu: Business,
R/o. Plot No. F-404, Rohan Garima Co-operative Society,
Shivaji Nagar, Pune.
7. Pramod Jalindar Ranmale,
R/o : Trimurti Chowk, Uttam Nagar, Cidco, Nashik,
Tq. Dist. Nashik.
8. Sanjay Kamat Singh
R/o : Near Mauli Lawns, Shop No. 2,
Kamtewade Shivar, Nashik,
Tq. Dist. Nashik.

....Respondents.

...

Mr. C.V. Thombre, Advocate for petitioner.

Mr. K.B. Jadhavar, AGP for respondent Nos. 1 to 3.

Mr. R.L. Kute, Advocate for respondent Nos. 4 & 5.

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CORAM : SMT. BHARATI H. DANGRE, J.

DATED : 09/02/2022

ORAL JUDGMENT :

1. The three writ petitions revolve around a similar challenge and hence, they were heard together and disposed of by this common order.

2. The petitioners are the borrowers, who had obtained loan

from respondent No. 4 - Samta Nagari Sahakari Patsanstha Ltd. Kopergaon on mortgaging property. Unable to repay the loan the Patsanstha preferred an application under section 101 of Maharashtra Co-operative Societies Act, 1961 ('MCS Act' for short) for recovery of the amount before the Assistant Registrar, Ahmednagar. Certificate came to be issued against the respective the petitioners and guarantors on distinct dates and being aggrieved by the same, the distinct revision applications came to be filed before the Divisional Joint Registrar Nashik. The orders passed on these revisions are assailed in the present writ petitions.

3. When the impugned orders passed by the Divisional Joint Registrar are carefully read, it conclusively record that since there was a failure on the part of revision petitioners to comply with the objections notified by the Divisional Registrar within a period stipulated, a conclusion is derived to the effect that they are not interested in prosecuting the applications and therefore, the respective applications came to be filed.

4. The learned Assistant Government Pleader vehemently argued that this did not result in termination of the proceedings, but the proceedings are merely filed. But when asked about what are the consequences of filing of the applications, he is unable to take his

arguments further to show that on compliance being done the application can again be revived.

5. The record and proceedings would reveal that the revision applications preferred by the petitioners by invoking section 154 (2-A) of MCS Act and along with the revision applications, there are separate applications filed, seeking condonation of delay of 122 days .

On the revision applications being preferred to the Divisional Joint Registrar, the petitioners were notified about the objections and directions were issued to comply the said objections before registering the revision applications. Along with the affidavit filed by respondent No. 2 the objections which were notified and brought to the notice of the petitioners are annexed at Exh. R-1. The notified objections reads as under :-

- (i) No compliance of Rule 106 of MCS Act.
- (ii) Synopsis not annexed.
- (iii) Present application is not attested.
- (iv) Proper stamp fee is not affixed to the application.
- (v) For the purpose of issuing notice envelop affixed with proper postage is not supplied.
- (vi) The documents which are mentioned in the application are not enlisted with their true copies.

(vii) The application for condonation of delay is not affixed with proper Court fee stamp.

(viii) There is no compliance of provision of section 154(2-A) of MCS Act which contemplate depositing 50% of recoverable dues amount.

(ix) The impugned order has not been annexed.

6. The petitioners were notified of aforesaid objections to be removed, before registration of Revisions, and on failure to do so, the applications filed shall be closed/filed. The petitioners were reminded of the objections and about its removal within the period stipulated, by two distinct letters issued by the Divisional Joint Registrar, Co-operative Societies dated 17.8.2020 and 17.11.2020. These letters are also placed on record.

The petitioners however chose to ignore and no steps were taken for removing the office objections. The nature of office objections pointed out by the Divisional Joint Registrar constrained the authority to file the proceedings by recording that the revision petitioners are not interested in prosecuting the applications and the applications tendered by them came to be filed. This is what the impugned order dated 9.2.2021 narrates.

7. The dispute between the parties is whether the refusal to

entertain the revision applications is on account of non compliance of the statutory requirements under section 154 (2-A) of the MCS Act.

8. It is necessary to mention that the revision applications are accompanied with the application of condonation of delay. The authority in the impugned order is making reference to both the applications, since it can be seen that the objections have been notified and about the application for condonation of delay also, since it is not found to be adequately stamped. The learned counsel for the petitioners has placed reliance upon the decision of the learned Single Judge of this Court in the case of **Dilawar Hakim Shah Vs. Special Recovery Officer & others reported in 2006 (1) Bom.C.R. 141**, where the issue that arise for consideration while entertaining the application for condonation of delay whether the bar created under section 154 (2-A) shall come into force.

The facts of the case reveal that on grant of recovery certificate, revision application was filed along with application of condonation of delay before the Divisional Joint Registrar and without considering the said application, seeking condonation of delay, the revision came to be dismissed on account of non deposit of 50% amount. In this backdrop, it was held that when the application for condonation of delay is filed along with the revision, the bar of section

154 (2-A), do not apply even for considering the said application.

Reliance was placed upon two decisions of the Apex Court in arriving at the aforesaid conclusions and the observations made by the learned Judge require reproduction :-

“6. What falls for consideration in an application for condonation of delay is whether the applicant had sufficient cause for not making the application within the prescribed period. The entertainment of the revision is another matter, the occasion for which arises if and after delay is condoned. There is thus a clear demarcation between the proceedings taken for establishing that there was sufficient cause for not approaching the Registrar within the prescribed period and the entertainment of the revision itself.

7.

8. In the result, the impugned order is hereby set aside and the respondent-Divisional Joint Registrar is directed to consider the application for condonation of delay on its merits and proceed in accordance with law.”

9. The learned counsel for the petitioners is justified in relying upon the said authority, but it can be noted that this is not the ground on which the applications filed by the petitioners are dismissed, but it's registration is refused on account of non removal of

the office objections, as notified. Therefore, it is premature to say that the stage has arrived to apply the aforesaid judgment. The petitioners ought to have cured the deficiencies which are pointed out by the Divisional Joint Registrar and only upon removal of the deficiencies, the applications for condonation of delay which should necessarily precede the revision applications being heard on merits. Further recording that there is lethargy on the part of the petitioners, to cure lacuna, impugned orders came to be passed.

The learned counsel for respondent Bank has relied upon two decisions of this Court, first being in the case of **Birindra Overseas Private Ltd. Vs. Shilpa Shares and Securities, Andheri East, Mumbai reported as (2019) 3 Mh.L.J. 651** and on careful reading of the facts involved are distinct and the ratio of the judgment will have therefore to read in the context of the facts involved. The learned Single Judge, considering the purpose of section 154(2-A) of the MCS Act has held that the purpose of the provision would be frustrated if a person against whom recovery certificate has been issued is permitted to file revision without making the mandatory deposit on plea that he is not challenging the recovery certificate. In the backdrop of the peculiar facts, the decision rendered is contained in para 79 and 80 which reads thus :-

“79. In my view, the learned Divisional Joint Registrar at the first instance could not have entertained even the application for condonation of delay before the respondent nos. 1 to 3 depositing 50% of the recoverable dues. The respondent nos. 1 to 3 were liable to deposit 50% of the recoverable dues even while seeking relief of quashing and setting aside the auction of the property in question which was filed for enforcement of the recovery certificate issued by the District Deputy Registrar. The provisions of section 154 (2A) of the MCS Act were attracted to the said revision application inter alia praying for quashing and setting aside the auction proceedings.

80. In my view, the learned Divisional Joint Registrar could not have entertained the revision application filed by the respondent nos. 1 to 3 on merits and could not have set aside the auction sale without respondent nos. 1 to 3 first depositing 50% of the recoverable dues in compliance of section 154(2A) of the MCS Act. The impugned order thus deserves to be set aside on that ground alone. In view of this court proposing to set aside the impugned orders passed by the learned Divisional Joint Registrar on 20th May, 2013 and 17th January, 2012 on the ground of those revision applications not being maintainable, this court does not propose to go into the other issues raised by both the parties for consideration of this court and the same are kept open.

However in the aforesaid law report the respondents without depositing 50% amount of recoverable dues were seeking relief of quashing and setting aside the recovery certificate and this was held to be not permissible by the learned Single Judge. Another decision in the case of **Arun B. Khanjire Vs. Ichalkaranji Urban Co-op. Bank Ltd. and Ors. Reported in AIR 2008 SC (Supp) 935** on which the learned counsel placed reliance is also not of any support to him, since the judgment delivered in the backdrop of the facts that the proceedings were taken up *suo moto* by the Divisional Joint Registrar and question of consideration is that statutory mandate of recovery can be avoided if the proceedings were taken up *suo moto*.

10. In the wake of aforesaid, in my considered opinion, the applications for condonation of delay before entertaining the revision applications under section 154 of the MCS Act is not barred in absence of the statutory deposit as contemplated under sub-section (2-A). I say so in the wake of legislature framing sub-section (2-A) of section 154, which reads thus :-

“(2A) No application for revision shall be entertained against the recovery certificate issued by the Registrar under section 101 or section 154B-29 or certificate issued by the Liquidator under section 105 unless the applicant deposits with the concerned society, fifty

percent, amount of the total amount of recoverable dues.”

11. The provision thus contemplate that no application for revision shall be entertained against the recovery certificate. This do not surely contemplate an application for condonation of delay, but in any case the purpose of the petitioners will be served merely by the application for condonation of delay being entertained and as and when they seek entertainment of their revision applications against the certificate issued under section 101 the imperative mandate of section (2A) shall come into force which would preclude the concerned authority from entertaining the Revision application against the recovery certificate, in absence of the statutory deposit contemplated under section (2A).

Apart from this, it is also imperative for the petitioner to remove the office objections in absence of which their applications have been refused to be registered and have been filed.

The argument of the learned counsel for petitioner that their applications for condonation of delay have been refused only on the ground of non deposit of 50% of the amount out of the total amount as recovery dues do not appear to be correct reading of the impugned order. The impugned order categorically set out the lacuna/

objections which were notified and the petitioners were directed to remove the same and on failure to do so the proceedings have been filed. However, the learned AGP has invited my attention to the affidavit filed by the respondent No. 2 where he has made following statements :-

“2. I say that, petitioner has suppressed material facts and hence its petition is liable to be dismissed for want of bonafides and for following reasons

a) Provision of sec 154(2A) of MCS Act 1960 is under :-

“No application for revision shall be entertained against recovery certificate issued by Registrar under sec 101 or section 154B-29 or certificate issued by Liquidator under section 105 unless the applicant deposits with the concerned society fifty percent amount of total amount of recoverable dues”

Hence unless 50% amount is deposited before Joint Registrar no application for revision with delay application challenging recovery certificate could said to have been filed legally and respondent no 2 has no jurisdiction to entertain it.”

12. The aforesaid statement in the Affidavit lead to the conclusion that the respondent No. 2 is harping under impression that

before deciding the application for condonation of delay, the statutory deposit of 50% is imposed. The attention of the authority is drawn to the decision of the learned Single Judge in the case of **Dilawar Hakim Shah** (supra).

13. In the wake of above situation prevailing, the impugned orders which have filed the proceedings, though not exclusively on the ground of non deposit of statutory amount under section 154 (2A), deserves to be quashed and set aside.

This however shall come with a cost, since the petitioners have reflected callus approach towards the proceedings being prosecuted before the Divisional Joint Registrar, Co-operative Societies. The inconvenience on account of the lapse of time has cost great loss to the bank who has obtained the recovery certificate in the year 2020, but is unable to proceed further.

In such circumstance, the impugned orders are quashed and set aside, subject to each of the petitioner paying cost of Rs.10,000/- (Rupees ten thousand) to the bank within a period of four weeks from today. The respondent bank shall acknowledge the payment of cost and tender the receipt before the Revisional authority. The petitioners shall also take steps to remove the office objections except one, i.e. objection 8 deposit of 50% of the amount, which have

been notified within a period of two weeks from today and upon removal of the said objections. On ensuring compliance, the Divisional Joint Registrar shall grant registration of the revision application and shall proceed to hear the application for condonation of delay. It is however clarified that before proceeding further, the Divisional Joint Registrar shall ensure the statutory mandate prescribed under section 154(2-A) of MCS Act.

[SMT. BHARATI H. DANGRE, J.]

ssc/