

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.614 OF 2021**

Dr. Babasaheb Ambedkar Nagari
Sahakari Bank Ltd., Aurangabad,
Through its Manager
Balu Chandrakant Mirge,
Age: 33 years, Occ. Service,
R/o. Aurangabad,
Tq. and Dist. Aurangabad. ..Petitioner

Versus

1. The Divisional Joint Registrar,
Co-operative Societies, Aurangabad
Division, Aurangabad.
2. Deputy Registrar,
Co-operative Societies,
Taluka Aurangabad.
3. Sow. Kamal Arun Zare,
Age 60 years, Occu. Household,
R/o Pahadsingpura, Caves Road
Aurangabad Tq. and Dist. Aurangabad
..Respondents

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Mr. K. J. Suryawanshi, Advocate for the Petitioner.
Mr. A. S. Shinde, AGP for Respondents-State.
Mr. S. V. Kulkarni, Advocate for Respondent No.3.

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**CORAM : SANDEEP V. MARNE, J.
DATED : 05th SEPTEMBER, 2022.**

JUDGMENT (Per: Sandeep V. Marne, J.):—

1. Rule. Rule is made returnable forthwith.
With the consent of both the sides, the matter is
heard finally at the stage of admission.

2. By way of the present petition, the
petitioner challenges the order dated 14.10.2020
passed by the Divisional Joint Registrar, Co-
operative Societies, Aurangabad in Miscellaneous

Application No.7/2020. By the impugned order, delay of 11 years in filing the Revision Petition has been condoned by the Divisional Joint Registrar.

3. Mr. Suryawanshi, learned counsel appearing for the petitioner submits that the recovery certificate was issued by the Deputy Registrar on 31.12.2009 and the same was served upon respondent no.3 on 12.01.2010. He submits that, the approval for offset price for sale of the property was issued on 28.12.2013 and auction notice was published on 25.07.2013. He further submits that sale of the property was effected by way of sale certificate dated 27.05.2014. It is further submitted that on account of pendency of Regular Civil Suit No.144/2014 filed by respondent no.3 before the Civil Judge Senior Division, Aurangabad for restraining the petitioner Bank from selling the suit property, the sale transaction could not be registered. Subsequently, the Suit was dismissed and the sale deed was registered on 20.02.2019.

4. Mr. Suryawanshi, invites my attention to paragraph no.3 of the Miscellaneous Application filed by respondent no.3 seeking condonation of delay, in which respondent no.3 has admitted that she had obtained copy of the recovery certificate from the Bank in the month of February, 2009. He submits that there was no sufficient cause for condonation of inordinate delay of 11 long years in

filing Revision before the Joint Registrar, that too after the entire sale process is completed. He, therefore, prays for setting aside the impugned order dated 14.10.2020.

5. Per contra, Mr. Kulkarni, learned counsel appearing for respondent no.3 supports the impugned order. He submits that the petitioner is a lady who was continuously undergoing cardiac issues since the year 2008 onwards and was accordingly prevented from challenging the recovery certificate within the prescribed time limit. He further submits that the sale deed in respect of the property was registered on 20.02.2019 and that therefore respondent no.3 was justified in filing the Revision Petition in the year 2020. He further submits that, respondent no.3 had also approached this Court by filing Writ Petition No.7295/2019 in which liberty was granted to respondent no.3 by order dated 18.06.2019 to take steps as permissible under law. Mr. Kulkarni, submits that after passing of the said order on 18.06.2019, respondent no.3 took necessary steps by filing the Revision Petition before the Joint Registrar of Co-operative Societies. He submits that considering the circumstances of the case, the Divisional Joint Registrar is justified in condoning the delay. He prays for dismissal of the writ petition.

6. Mr. Shinde, learned A.G.P. appearing for the State Government supports the order passed by the Divisional Joint Registrar.

7. Rival contentions of the parties fall for my consideration.

8. The recovery certificate was issued against respondent no.3 on 31.12.2009. The same was served upon her on 12.01.2010. It is not the case of respondent no.3 that she was unaware of issuance of the recovery certificate. In fact, she admits the knowledge of issuance of recovery certificate. In paragraph no.3 of her application, she has pleaded as under:

"3. The petitioner states that, the bank has filed proceeding u/s 101 of MCS Act before the Taluka Deputy Registrar Cooperative Society Aurangabad, the respondent no.1 has passed final order on 31.12.2009 but however they have not received the certified copy of the impugned order and therefore the petitioner does not the date of judgment. However the petitioner has obtained the copy of from the bank in the month of February, 2009 and thereafter she has tried to contact the advocate but the petitioner has sustained heart problems and therefore she is taking continuous medical treatment"

9. Even though there appears to be incongruity in the statement made by respondent no.3 about the date of obtaining copy of recovery certificate from the Bank in February, 2009 (recovery certificate was issued on 31.12.2009), the same would not benefit respondent no.3 in any manner. Firstly, the factum of acquisition of knowledge of issuance of recovery certificate is admitted by respondent no.3. From the approximate date of receipt of copy of the recovery certificate

of 'February, 2009' stated by her, the only conclusion that can be drawn is that she was extremely casual in making a statement in her application. Be that as it may. Since the acquisition of knowledge of issuance of recovery certificate on in the year 2009 is not disputed, it became incumbent upon her to explain the delay from the date of acquisition of such knowledge.

10. Now I proceed to deal with various pretexts raised by respondent no.3 for not filing Revision Petition in time. In paragraph no.3 (repeated) of her application she has made the following averments:

"3. The petitioner is the lady and she was admitted in the hospital on various times, since July, 2008 onwards continue time to time therefore she could not run the business, and there is no any other members in her family, therefore she could not approach before the Hon'ble Court for getting justice. The entire medical papers are also enclosed herewith time to time. Moreover she has also taken the treatment onwards continue therefore the petitioner could not get the justice. Her husband is also not in good health condition. Therefore the delay is not intention one but it is accidental one same is liable to be quashed in the interest of justice."

11. From the averments in paragraph no.3 (repeated) the only conclusion that can be raised is that the said averments are made in a casual manner without any supporting material. It is difficult to accept that respondent no.3 was continuously sick for 11 long years. This pretext

cited by the petitioner is therefor required to be rejected.

12. Now, I come to the next ground raised by Mr. Kulkarni, that the sale deed of the property was registered on 20.02.2019. Firstly, this reason was not cited in the application filed by respondent no.3 for seeking condonation of delay and therefore, it would not be appropriate for me to consider the said ground. However even if the said ground was to be pleaded, the same would not benefit her as she has admitted acquisition of knowledge of issuance of recovery certificate in the year 2009. There was no reason for her to wait till execution of sale deed for challenging the recovery certificate. The next ground for delay is filing of Writ Petition No.7295/2019. However, even if this ground is taken into consideration, perusal of order dated 18.06.2019 passed in Writ Petition No.7295/2019 would indicate that the cause of action involved in that petition was altogether different i.e. mutation entry in pursuance of mortgage deed dated 26.02.2008. Therefore, filing or disposal of Writ Petition No.7295/2019 had no possible connection to the subject matter involved in the recovery certificate.

13. Perusal of the impugned order passed by the Divisional Joint Registrar shows that the application has been allowed in most casual manner. The pleadings made in the application seeking condonation of delay or the material produced in

support thereof have not been considered by the Divisional Joint Registrar. Inordinate delay of 11 long years is condoned on the basis of a casual finding that the delay is not intentional. In my opinion, the Joint Registrar ought to have examined each and every reason cited by respondent no.3 for seeking condonation of delay and ought to have recorded its findings in respect of such reasons. The same is, however, not done.

14. Even though condonation of delay is a discretionary power vested in Courts/Tribunals/Quasi Judicial Authorities, it is equally well settled that the discretion in condoning the delay has to be exercised judiciously based on facts and circumstances of each case. The object for fixing time limit for litigation is based on public policy of fixing a lifespan for legal remedy. Limitation is prescribed to ensure that parties do not resort to dilatory tactics. In a case like present one, where respondent no.3 waited silently even after her property was sold in auction in 2014, condonation of 11 long years in challenging the recovery certificate would only result in prolonging the litigation which has long since attained quietus. The Apex Court, in its recent decision in **Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi and Ors.** 2021 SCC Online SC 1260 has summarized the principles on condonation of delay in paragraph nos.16 to 21 of judgment as under:

"16. At this stage, a few decisions of this Court on delay in filing the appeal are referred to and considered as under:-

17. In the case of Ramlal, Motilal and Chhotelal (supra), it is observed and held as under:-

In construing s. 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chattappan, (1890) J.L.R. 13 Mad. 269, "s. 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."

18. In the case of P.K. Ramachandran (supra), while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay,

the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.

19. In the case of Pundlik Jalam Patil (supra), it is observed as under:—

“The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as “statutes of peace”. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim “interest reipublicae ut sit finis litium”, that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.”

20. In the case of Basawaraj (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression “sufficient cause” cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of

a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.

21. In the case of Pundlik Jalam Patil (supra), it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and "do not slumber over their rights."

15. Consequently the order passed by the Divisional Joint Registrar, Co-operative Societies, Aurangabad on 14.10.2020 is liable to be set aside.

16. The petition is accordingly allowed. The order dated 14.10.2020 passed by the Divisional Joint Registrar, Co-operative Societies, Aurangabad is quashed and set aside. No orders as to cost.

17. Rule is made absolute in above terms.

(SANDEEP V. MARNE)
JUDGE