

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2016 OF 2018

Shri Naresh s/o Vishnuji Talmale,
Aged 51 years, Occupation – Private,
R/o Belghata, Tahsil – Paoni,
District – Bhandara.

.... **PETITIONER**

VERSUS

- 1) Divisional Joint Registrar,
Co-operative Society, Nagpur.
- 2) Assistant Registrar,
Co-operative Society, Paoni,
Tahsil – Paoni, District – Bhandara.
- 3) Akrushak Nagari Sahakari Pat
Sanstha Ltd., Asagaon (Charas),
through its President, Main Office
Asegaon, Tahsil – Paoni, District -
Bhandara.
- 4) Shri Vishnuji Somaji Talmale,
Aged 65 years, Occupation – Retired,
R/o Belghata, Tahsil – Paoni,
District – Bhandara.
- 5) Talathi, Village Dhamni/Borgaon,
Tahsil – Paoni, District – Bhandara.
- 6) Bhandara Zillah Gramin Bigar Sheti
and Nagari Sahakari Pat Sanstha
Sangh Karyala, C/o Sunil Ghagare
Miskin Tank, Near Prohibition &
Excise Office, Bhandara, through
Special Auction Sale Officer.

.... **RESPONDENTS**

Mr. S.K. Thengri, Counsel for the petitioner,
Mr. S.M. Ukey, Addl. G.P for respondents 1 and 2,
Ms. S.V. Jaiswal, Counsel for respondent 3,
Mr. M.V. Samarth, Senior Counsel assisted by Mr. S.K. Tambde, Counsel
for respondent 4.

CORAM : ROHIT B. DEO, J.
DATED : 16th MARCH, 2022

ORAL JUDGMENT :

The petitioner is challenging the order dated 01-11-2017 rendered by the Divisional Joint Registrar, Co-operative Societies, Nagpur allowing an application preferred by respondent 4 seeking condonation of delay in preferring revision under Section 154 of the Maharashtra Co-operative Societies Act, 1960 (Act).

2. I have heard Mr. S.K. Thengri, learned Counsel for the petitioner, Mr. S.M. Ukey, learned Additional Government Pleader for respondents 1 and 2, Ms. S.V. Jaiswal, learned Counsel for respondent 3 and Mr. M.V. Samarth, learned Senior Counsel assisted by Mr. S.K. Tambde, Counsel for respondent 4.

3. The order which respondent 4 intends to assail in revision and qua which the delay is condoned, is an order directing the attachment of the rice mill which admittedly was owned by late Mrs. Manda, who

was the wife of respondent 4. The borrower of the loan, the default in the repayment of which culminated in the proceedings under Section 101 of the Act, is the petitioner herein who is the brother-in-law of late Mrs. Manda and the brother of respondent 4. It is common ground that the loan was in the name of petitioner Naresh. What is disputed is whether late Mrs. Manda mortgaged her property to secure the payment of loan. While the learned Counsel appearing for the stakeholders have addressed the Court on the issue, I would refrain from making a positive observation lest there is any prejudice caused.

4. I note that the only ground on which the rice mill which was owned by late Mrs. Manda and it is now owned by her legal heirs is attached, is the premise that late Mrs. Manda offered the said property as security. The material is blurred. It would be appropriate if this factual aspect is left to the fact finding authority.

5. The petitioner is vehemently opposing the condonation of delay. I have perused the order impugned and while the delay of 8 years 7 months appears to be excessive at first blush, I am satisfied that there is sufficient cause shown for condonation, particularly since important property rights are involved and the contention of the legal heirs of late Mrs. Manda that she did not, at any point in time, offer her property as

security muchless by creating a mortgage, is a formidable submission which will have to be addressed.

6. I have noted with some concern the conduct of the petitioner. If at all some person is aggrieved by the condonation, it is the society which has taken a reasonably objective and dispassionate stand. The society has not challenged the order impugned. The order impugned is challenged by the borrower and for reasons not far to seek. In all fairness, in response to a Court query, the learned Counsel for the petitioner has candidly admitted that the order of condonation of delay is challenged since if the property belonging to late Mrs. Manda is not attached and sold, it would be the petitioner who would have to satisfy the liability. The petitioner is the borrower and the primary responsibility is indeed his.

7. The learned Counsel for the petitioner has invited my attention to certain decisions. Reference is made to certain observations of the Hon'ble Apex Court in *Lanka Venkateshwarlu (Dead) by Lrs. v. State of Andhra Pradesh and others, (2011) 4 SCC 363*. While there cannot be any quarrel with the proposition articulated by the Hon'ble Apex Court, there cannot be a straitjacket formula to decide whether there is sufficient cause to condone delay. In the glaring facts, I am more than

satisfied that the delay is rightly condoned. Indeed it would be in the interest of all the stakeholders including the petitioner if the rival contentions are addressed and decided on merits. It may further be noted that the revisional authority has accepted the submission of respondent 4 that there was no way he could have known about the intended action and that it was only after the auction notice was published on 19-6-2009 that respondent 4 sensed something fishy. It is true, as argued by the learned Counsel for the petitioner, that the application seeking condonation of delay is not happily worded. However, even if it is assumed that the learned Authority committed some error in condoning the delay, I am not inclined to exercise writ jurisdiction. A Constitutional Court may refuse to exercise writ jurisdiction for sound reasons and an error within jurisdiction does not necessarily call for interference. I am satisfied that considering the property rights involved and the overall circumstances, the issue needs to be addressed and decided on merits.

8. The petition is dismissed.

JUDGE

adgokar

Digitally signed by PRAFULLA
MANOHARRAO ADGOKAR
Signing Date: 19.03.2022 12:24