

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

WRIT PETITION NO. 6342 OF 2023

Sampada Nagari Sahakari Patsanstha Ltd.,
Through its Liquidator

.. Petitioner

Versus

1. The Divisional Joint Registrar,
Co-operative Societies, Nashik Division,
Nashik.
2. Sau. Sunita Satish Pathare
3. Sarjerao Gopal Jadhav
4. Rejendra Maruti Chaudhari
5. The Asst. Registrar, Co-operative Societies
(Perseva) Ahmednagar, Dist. Ahmednagar .. Respondents

Mr. Vitthal H. Dighe, Advocate for the Petitioner.

Mr. K. B. Jadhavar, AGP for Respondent Nos. 1 & 5.

Mr. Ketan D. Pote & Mr. Arvind G. Ambetkar, Advocates for Respondent
No. 2.

**WITH
CIVIL APPLICATION NO. 9704 OF 2023
IN
WRIT PETITION NO. 6342 OF 2023**

Smt. Sunita Satish Pathare

.. Applicant

Versus

1. The Divisional Joint Registrar,
Co-operative Societies, Nashik Division,
Nashik.
2. Sarjerao Gopal Jadhav

3. Rejendra Maruti Chaudhari
4. The Asst. Registrar, Co-operative Society,
Parner, Dist. Ahmednagar
5. Sampada Nagari Sahakari Patsanstha Ltd.,
Through its Liquidator .. Respondents

Mr. Ketan D. Pote & Mr. Arvind G. Ambetkar, Advocates for the Applicant.

Mr. K. B. Jadhavar, AGP for Respondent Nos. 1 & 4.

Mr. Vitthal H. Dighe, Advocate for Respondent No. 5.

CORAM : KISHORE C. SANT, J.

DATED : 07th AUGUST, 2023.

P C. :-

. Heard the parties.

2. A prayer in this petition by the Co-operative Society is that the respondent No. 2 – borrower had availed a loan from the society. She committed default in payment of the loan amount. The society was therefore required to approach the Assistant Registrar, Co-operative Societies for recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act (for short “MCS Act”). The Assistant Registrar, Co-operative Societies, Ahmednagar was pleased to issue recovery certificate for an amount of Rs. 3,76,560/- on 18.03.2010. Even thereafter there was no recovery. The respondent No. 2 did not challenge the certificate. The petitioner thereafter started recovery proceedings pursuant to issuance of certificate. The respondent No. 2

for the first time challenged the recovery certificate by filing revision before Divisional Joint Registrar, Nashik though styled as appeal, the same was in fact revision. Since there was delay in filing the revision the respondent No. 2 was required to file an application for condonation of delay. The Divisional Joint Registrar, however, condoned the delay without insisting on deposit of 50% of the amount as required under Section 154 (2) (A) of the MCS Act by his order dated 07.06.2023. The petitioner has thus approached this Court.

3. It is specific ground in the petition that, to condone the delay without insisting for deposit of 50% of the amount of the total recovery dues is against Section 154 (2) (A) of the MCS Act. Learned advocate for the petitioner relies upon the judgment in the case of **Barindra Overseas Pvt. Ltd. and another Vs. Shilpa Shares and Securities and others** reported in **2019 (3) Mh.L.J. 651**. He thus submits that, this order impugned is totally without jurisdiction. The Divisional Joint Registrar has no authority even to condone the delay unless the amount is deposited.

4. Learned advocate for respondent No. 2 vehemently opposes the petition. It is the case of respondent No. 2 that, in the year 2009 itself the amount of loan was paid. There is also a certificate of no dues issued by the authorized signatory of the petitioner. He submits that,

the Divisional Joint Registrar by considering this aspect has condoned the delay and no fault can be found with the order.

5. Considering the submissions, this Court finds that, Section 154 (2) (A) mandates deposit of 50% of the amount of recovery dues. The same decision is clarified in the judgment of **Barindra Overseas Pvt. Ltd. and another** (supra). This Court finds that, it was necessary for respondent No. 2 to deposit 50% amount of the recovery dues even after entertaining the application for condonation of delay. Delay is about 13 days.

6. This Court finds that, the petition deserves to be allowed. At this stage, since the society is proceeding with the recovery proceedings pursuant to recovery certificate, learned advocate for respondent No. 2 submits that, society be directed not to take coercive steps. The respondent No. 2 is ready to give an undertaking that she would deposit 50% of the amount within a period of two (02) months from today specifying therein that, if, she fails to deposit the amount, she would not claim further extension or any equity.

7. Amount to be deposited as per law.

8. Today, the respondent No. 2 has filed an undertaking. The said undertaking is taken on record. However, learned advocate Mr. Dighe

for the petitioner submits that, since the amount is directed to be deposited as per Section 154 (2) (A) of the MCS Act with the society and this Court has only said that amount to be deposited as per law along with the revision, the wording of the undertaking underlined shall be deleted. The undertaking to read as under :

“1) I say and submit that, as per the order dated 07.08.2023 passed by the Hon’ble High Court, I undertake that, I will deposit 50% amount as per under section 154 (2) (a) of Maharashtra Co-operative Societies Act, within two months. If I failed to deposit the said amount within two months then society can take steps as per accordance with law.”

9. Considering the above, subject to conditions as stated above, the petition stands allowed in terms of prayer clause (B).

10. It is made clear that, the petitioner shall not take any coercive action against respondent No. 2 for a period of three (03) months if, she deposits an amount within two (02) months as stated.

11. Needless to say that, the Civil Application No. 9704/2023 stands disposed off.

(KISHORE C. SANT, J.)

PS.B.