

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10588 OF 2018

Riyaz Bashir Mulla

...Petitioner

Versus

Bashir Gulab Shaikh (Chougule) And Ors.

...Respondents

...

Mr. Nagesh Y. Chavan for Petitioner.

Mr. Manoj A. Patil, for Respondent Nos.2 & 3.

Mr. S.D. Rayrikar, AGP for Respondent Nos.4 & 5.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 25 SEPTEMBER 2023.

P. C.:

By this petition Petitioner, challenges order dated 30 October 2017 passed by the Divisional Joint Registrar, Co-operative Societies, Solapur allowing application for condonation of delay and condoning delay of 06 years and 21 days in filing Revision Application No.327 of 2016.

2. On 07 February 2018, this Court directed Petitioner to serve Respondent Nos.1 and 2 by private notice. Accordingly advocate for Respondent No.1 appeared on 03 May 2018. Respondent No.1 also filed affidavit-in-reply dated 03 May 2018. However on subsequent dates, the

advocate for Respondent No.1 has remained consistently absent. This Court therefore issued fresh notice to Respondent No.1 on 01 April 2021. The said notice has also been served on Respondent No.1 as per office report dated 08 February 2022. However despite being served twice, none has appeared for Respondent No.1 on last several dates of hearing. Accordingly this Court is left with no other alternative but to proceed further for hearing of the petition in absence of Respondent No.1.

3. Respondent No.1 was aggrieved by the auction sale conducted in respect of his land on 13 May 2010, in pursuance of which, registered sale deed dated 09 June 2010 has been executed in favour of Petitioner. After delay of 06 years and 21 days from the date of confirmation of sale, respondent No.1 filed Revision Application No.327 of 2016 directly before Divisional Joint Registrar, who has proceeded to condone the delay by passing order dated 30 October 2017. Learned counsel appearing for Petitioner has also submitted that under provisions of Sub-Rule 14 of Rule 107, the correct remedy to be exercised by Respondent No.1 was to file proceedings before the District Deputy Registrar and not directly before the Divisional Joint Registrar.

4. Perusal of affidavit-in-reply filed by Respondent No.1 would indicate that main objection of Respondent No.1 to the auction sale is failure on the part of Assistant Registrar to fix the upset price before conducting auction sale. Only on this count, auction is sought to be set aside.

5. Apart from that, perusal of order dated 30 October 2017 of Divisional Joint Registrar would indicate that no cogent reasons are recorded for condoning inordinate delay of 06 years and 21 days. The Divisional Joint Registrar ought to be mindful of the fact that condoning the delay would open up a challenge to the auction sale finalised in favour of Petitioner after inordinate delay of 06 years and 21 days. In such case, delay cannot have been condoned in a routine manner. The only reason pleaded by Respondent No.1 in application for condonation of delay is medical treatment undergone by him. However no documents were placed by Respondent No.1 before the Divisional Joint Registrar in support of his alleged medical treatment. I am therefore of the view that no case was made out by Respondent No.1 for condoning inordinate delay of 06 years and 21 days. The Divisional Joint Registrar thus erred in passing order dated 30 October 2017.

6. Under Sub-Rule 13 of Rule 107 of the Maharashtra Co-operative Societies Rules, the borrower has an option of getting auction sale set aside by payment of sum equal to 5% of purchase price and thereafter depositing entire purchase price. In the present proceedings, there is nothing to indicate that the option of getting the sale set aside under Rule 107(13) was exercised by the Respondent No.1 in any manner. The Supreme Court, in its recent judgment in **Deen Dayal Nagari Sahakari Bank & Ors., Vs. Munjaji & Ors**, (2022) 7 SCC 594 has held that every minor irregularity of procedure in conducting auction sale cannot be a ground for setting aside the sale especially when borrower

fails to avail opportunity of getting the sale set aside under Rule 107 (13). In that view of the matter, it appears that Respondent No.1 does not have any case on merits for getting sale set aside, that too after lapse of period of 06 years and 21 days.

7. Writ Petition is allowed. Order dated 30 October 2017 passed by Divisional Joint Registrar is set aside. Since the application for condonation of delay is rejected, the Revision Application No.327 of 2016 also stands rejected.

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SANDEEP V. MARNE, J.