

21 December 2023.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6240 OF 2022**

Shree Warana Sahakari Bank Ltd.

Thr. Authorised Chief Officer

...Petitioner

V/s.

Tejas Industries Ltd. Thr. Proprietor

Sachin Shankarrao Yevtekar and Ors.

...Respondents

Mr. Umesh Mankapure a/w. Ms. Bhavika Shinde, for the Petitioner.
Mr. Dhairyasheel V. Sutar a/w. Ms. Jain Darshana Lalit Kumar for
the Respondents.

CORAM : SANDEEP V. MARNE, J.

DATED : 21 DECEMBER 2023.

P.C. :

1. The Petitioner-Bank has challenged the Order dated 1 November 2021 passed by the Divisional Joint Registrar, Co-operative Societies, Kolhapur allowing the application for condonation of delay filed by Respondent No.2.

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2. Petitioner-Bank had disbursed credit facilities to M/s. Tejas Industries, a proprietary concern of Mr. Sachin Shankarrao Yevtekar, to which Respondent No.2 is one of the guarantors. On account of failure to repay the loan, the Bank initiated recovery proceedings under the provisions of Section 101 of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**). The Recovery Certificate dated 5 September 2002 was issued against the Borrower and the Guarantors for recovery of sum of Rs. 5,76,030/- alongwith future interest and costs. A Dispute was filed bearing S.C.C. No. 236 of 2004 before the Co-operative Court, Kolhapur under Section 91 of the MCS Act challenging the Recovery Certificate which came to be dismissed for default by Order dated 13 July 2005. Respondent No.2 filed Dispute bearing No. 259 of 2010 before the Co-operative Court, Kolhapur, in which preliminary objection raised by the Petitioner-Bank about maintainability was rejected by the Co-operative Court by Order dated 25 January 2017. However, in Revision, the Order of the Co-operative Court was set aside by the Co-operative Appellate Court and the Dispute was held to be not maintainable.

3. When Petitioner-Bank attempted to seek possession of the assets of Respondent No.2 under Section 156 of the M.C.S. Act read with Rule 107(11)(d-1) of the Maharashtra Cooperative Societies Rules 1961, the same was challenged by Respondent No.2

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by filing Writ Petition No. 8316 of 2017, which came to be rejected by this Court by Order dated 24 July 2017.

4. Respondent No.2 made one mere attempt by filing Revision Application No. 249 of 2017 before the Divisional Joint Registrar challenging the Recovery Certificate dated 5 September 2002. The Divisional Joint Registrar has proceeded to condone the delay of over 14 years by Order dated 1 November 2021 which is the subject matter of challenge in the present petition.

5. I have heard Mr. Mankapure, the learned counsel appearing for the Petitioner and Mr. Sutar, the learned counsel appearing for Respondent No.2.

6. After having considered the submissions canvassed by the learned counsel appearing for the parties, the short issue that arises for consideration is whether the Divisional Joint Registrar was justified in condoning the delay of over 14 years in filing the Revision Application by Respondent No.2.

7. During the course of hearing of the petition on 1 November 2023, a twist was added by Mr. Sutar when he made a statement that the Respondent No.2 and Petitioner-Bank have filed a compromise pursis dated 18 August 2018 before the Co-operative Court agreeing to withdraw all the proceedings against each other.

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The hearing of the petition was therefore deferred in order to enable Mr. Mankapure to take instructions with regard to the filing of such pursis. Accordingly, an Affidavit dated 12 April 2018 is filed by Respondent No.2 placing on record copy of Dispute No.106 of 2018 and compromise purshis filed therein on 18 August 2018. However, it appears that though pursis has been filed, Dispute No. 106 of 2018 has not been closed and the Rojnama shows that evidence in the same is being recorded. Mr. Mankapure would submit that no compromise has taken place between the parties and the amount of loan has not been repaid by Respondent No.2 in any manner. Since the dispute between the parties is not resolved, the correctness of the impugned Order dated 1 November 2021 will have to be determined.

8. The Recovery Certificate challenged in the Revision Application No. 249 of 2017 is issued on 5 September 2002. The Revision Application filed in the year 2017 is after the delay of 15 long years. Perusal of the application for condonation of delay would indicate that filing of various proceedings before the Co-operative Court is cited as the main reason for seeking condonation of delay. The Co-operative Appellate Court has also held that the proceedings in the form of Disputes No. 236 of 2004 and 259 of 2010 remained pending before the Co-operative Court on account of which the Revision Application could not be filed.

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9. In my view, the Divisional Joint Registrar has missed the point that the Dispute No. 236 of 2004 was dismissed for default on 13 July 2005. There is nothing on record to indicate as to whether the said Dispute was restored or not. The next Dispute was filed Respondent No.2 directly in the year 2010. Thus, there is a long gap of five years in filing of the two Disputes. It is difficult to believe that repeated filing of Dispute under Section 91 of the MCS Act despite availability of remedy of filing Revision under Section 154 was a bonafide mistake. Even, if Respondent No.2 was to be granted the benefit of bonafide prosecution before the wrong forum, admittedly he was not prosecuting anything during the years 2005 to 2010. There is no explanation for this long delay. Therefore, the finding of the Divisional Joint Registrar that delay is caused due to pendency of proceedings before wrong forum is perverse. Respondent No. 2 is grossly abusing the process of law by engaging the Bank in litigation. In such circumstances, the Divisional Joint Registrar could not have condoned the long delay of 15 years in a routine manner. The order of the Divisional Joint Registrar suffers from serious non-application of mind and is unsustainable.

10. The Writ Petition thus succeeds. The Order dated 1 November 2021 passed by the Divisional Joint Registrar allowing application for condonation of delay is set aside. Consequently,

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Revision Application No. 249 of 2017 is dismissed. Writ Petition is **allowed**. There shall be no order as to costs.

SANDEEP V. MARNE, J.