

Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7641 OF 2022

NALIN R CHAVAN,
Age: 48, Occupation: Business,
R/at: 7A/6, Paschimanagari, S.No 21,
Kothrud, Pune 411 052.

...PETITIONER

~ VERSUS ~

- 1. DISTRICT DEPUTY REGISTRAR,
CO-OPERATIVE SOCIETIES,
MUMBAI (1),**
Having its office at: Malhotra House,
6th Floor, Opposite GPO, Fort,
Mumbai 400 001.
- 2. DEPUTY REGISTRAR, CO-
OPERATIVE SOCIETIES
(DEPUTATION) MUMBAI,**
Having its office at: 6/603, Durga
Krupa Co-op Housing Society,
Hanuman Chowk, Navghar Road,
Mulund East, Mumbai 400 081.
- 3. NEW AJINKYATARA SAHAKARI
PATASANSTHA MARYADIT,**
Having its registered office at: Shop
No.48, Ground Floor, Building No.
CA, Kalpak Estate, Shaikh Mistri
Durga Road, Wadala Antop Hill,
Mumbai 400 037.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONER **Mr SS Panchpor, i/b Shantanu Joshi.**

FOR RESPONDENTS NO. 1 AND 2 **Mr PP Pujari, AGP.**

FOR RESPONDENT NO.3 **Mr Subhash G Bane.**

CORAM : Neela Gokhale, J.

RESERVED ON : 2nd May 2023

PRONOUNCED ON : 4th May 2023

JUDGMENT (Per Neela Gokhale, J):-

1. **Rule.** The contesting Respondent No.3 has filed Affidavit in Reply. By consent, Rule made returnable forthwith.

2. The Petitioner has assailed the judgment and order dated 21st April 2022 passed by the learned District Deputy Registrar (“**DDR**”), Co-operative Society, Mumbai (1) City in Revision Application No. 45 of 2021. By the impugned order, the District Deputy Registrar has rendered a prima facie finding that the Petitioner had taken a loan of Rs.81,23,128/- with interest at the rate of 17% per annum from the Respondent No.3 Credit Society and is in default. The finding is based on a promissory note of the said amount issued by the Petitioner as security. Holding as such, the

learned DDR has remanded the matter to the Deputy Registrar (“**DR**”) for a fresh hearing.

3. The Petitioner is a member of the Respondent No.3 Credit Co-operative Society and the Respondents No.1 and 2 are the District Deputy Registrar, Mumbai (1) and the Deputy Registrar of Co-operative Societies respectively.

4. The impugned order has been passed in an appeal filed by the Society against the order dated 27th June 2015 passed by the Learned Deputy Registrar of co operative societies. Pertinent to note is that the learned Deputy Registrar has dismissed an application made by the Society seeking a Recovery Certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (**‘the Act’**), on the ground that no documents were placed on record to establish that the advance has actually been disbursed by the Society to the Petitioner. The learned Deputy Registrar has in fact observed that the entire transaction appears to be suspicious and does not even appear in the records of the Society.

5. Both parties have filed short notes of arguments.

6. Mr Panchpor, learned Counsel holding for Mr Joshi, the Advocate on record appears for the Petitioner. He contends that the Recovery Application was rejected by the Deputy Registrar on 27th June 2015 and the Society filed Revision Application before the

learned District Deputy Registrar, Co-operative Society(2), East Sub, Mumbai. The Revision Application was filed beyond the limitation period of prescribed for filing a revision application. However, the learned DDR (2) by his order dated 4th August 2020, holding that the Application was without territorial jurisdiction returned the same to be filed before the authority of competent jurisdiction.

7. Mr Panchpor further draws to my attention the fact that the Society filed another Revision Application before the Respondent No.1 DDR (1) on 23rd December 2021, i.e., after approximately six years from the date of the rejection order. He thus submits that the Revision Application was time barred and ought not to have been entertained by the learned DDR (1). He relies upon the Scrutiny Application of the Revision proceeding maintained by the office of the learned DDR (1). The same is at Exhibit 'B' at page 93. He further points out that the said Scrutiny Application along with the roznama reveal that some condonation of delay application was made by the Society and allowed without even giving notice to the Petitioner. The learned DDR (1) seems to have endorsed a remark that:

“15/03/2022: Applicant Society’s Adv. Subhash Yadav filed V.P. Resp. Mr Nalin Chavan already filed reply and delay application. For Rejoinder matter adj. To 22/03/2022 12:30 pm. Delay condonation application

is allowed already.”

8. Mr Panchpor further submits that the signature of the learned Advocate for the Society is seen against the endorsement which indicates his presence. But neither any signature of the Petitioner nor that of his Counsel appears in the order sheet to mark their presence. There are two other signatures seen beneath the endorsement which are not discerned.

9. Mr Panchpor canvases that *firstly* the delay was condoned without hearing the Petitioner and the Petitioner was unaware of the same till such time that the Society filed its Affidavit in Reply to the present Petition. In these circumstances he was unable to separately challenge the condonation of delay in filing Revision Application by the learned DDR (1).

10. Mr Subhash Bane, learned Counsel appears for Respondent No.3 Society and Mr Pujari, learned Additional Government Pleader appears for Respondents No.1 and 2.

11. Mr Bane has made an attempt to canvass that since the roznama had already endorsed a remark that that 'delay condition application was allowed already', the Petitioner was well aware of the same. He further states that in any case delay was on account of the COVID-19 pandemic and the Apex Court had extended the limitation period for all such matters. He states that there is no

explanation from the Petitioner as to why he did not lodge any grievance or complaint against the Society since the year 2012 and further that the execution and registration of mortgage deed itself indicate that the amount of advance was disbursed to the Petitioner. Mr. Bane has bravely attempted to convince that the advance was disbursed in cash since the Petitioner was in dire need of the money to repay a previous personal loan and cash was given only with the intention to help the Petitioner. Now the Petitioner is taking advantage of his own wrong.

12. Perused the documents on record and considered the submissions canvassed by the parties.

13. Admittedly, even as on date there are no documents on record to corroborate the stand of the Society of having actually disbursed the sanctioned amount to the Petitioner. Mere execution and registration of mortgage is not sufficient to support the contention of the Society that the money was actually disbursed and received by the Petitioner. It is a matter of record that the security documents are always executed and confirmed prior to disbursement. There is no bank record showing transfer of funds to the Petitioner's account. It is the submission of the Society that the said amount has been advanced to the Petitioner in cash which is difficult to believe.

14. Another argument put forth by the Petitioner is that no

opportunity was given to him before condoning the delay in filing Revision Application. The order condoning the delay is also remiss in recording any satisfaction of the DDR (1) of the Society establishing sufficient cause for not making the application within the limitation period. The ground of extension of limitation granted by the Supreme Court in all matters due to COVID-19 was from 15th March 2020 to 28th February 2022. However, it is painfully clear that the Recovery Application was rejected in the year 2015 when COVID-19 had not even appeared on the horizon. There is no justification *firstly* to deprive the Petitioner of an opportunity to contest the delay condonation application and *secondly* to condone the delay without recording any satisfaction by the DDR (1). Most importantly, the factum of disbursement of the advance has not been proved by any cogent proof of the same.

15. In view of the above, it is clear that the Revision Application has been made much beyond the limitation period. Moreover, having unilaterally condoned the delay, the DDR (1) is not justified in simply affirming the existence of disbursement of the advance amount to the Petitioner only on the basis of some security documents, which are in any case ordinarily executed prior to actual disbursement. There is no record of the Society to indicate the actual disbursement. Hence, the finding of learned DDR (1) to the effect that the amount has been disbursed to the Petitioner is erroneous and set aside.

16. However, I am of the view that an opportunity must be given to the Society to establish actual disbursement of the advance amount, by cogent and documentary evidence in the form of bank statement, Society records and other relevant documents, if any, before the learned Deputy Registrar since ultimately the funds of the Respondent No. 3 society are public funds and belong to the members of the society. Hence, the impugned order to the extent that the matter has been remanded to the learned Deputy Registrar is sustained. The learned Deputy Registrar is directed to decide the application under Section 101 of the Act afresh and on its own merits within a period of eight weeks from today, without being influenced by the findings of the learned DDR (1) in the impugned order. All contentions are expressly kept open.

17. Rule is partially made absolute. No order as to costs.

(Neela Gokhale, J)

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