2024:BHC-AUG:12531

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

WRIT PETITION NO. 10602 OF 2019

DR. BABASAHEB AMHEDKAR NAGARI SAHAKARI BANK LTD. AURANGABAD THROUGH ITS MANAGER
VERSUS
THE DIVISIONAL JOINT REGISTRAR COOPERATIVE SOCIETIES AURANGABAD DIVISION AURANGABAD AND OTHERS.

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Mr. K.J. Suryawanshi, Advocate for the petitioner
Mr. A.N. Nagarkar, Advocate for respondent Nos. 2 to 4.

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 27th JUNE, 2024.
PRONOUNCED ON : 1st JULY, 2024.

ORDER :-

1. The petitioner impugns the order dated 8.4.2019 passed by the Divisional Joint Registrar (Co-operative Societies) Aurangabad – Respondent No.1, in Misc. Application No. 20 of 2018 by which, the application for condonation of delay preferred by respondent Nos. 2 to 4 in filing revision under Section 154 of the Maharashtra Cooperative Societies Act, 1960 has been allowed.

2. Mr. K.J. Suryawanshi, learned advocate for the petitioner submits that the husband of respondent No.2 and father of respondent Nos. 3 and 4 – Mr. Natha Annasaheb Dudhwade had obtained loan of Rs.

25 Lakhs from petitioner bank in the year 2011. On his failure to repay the loan, the Recovery Certificate under Section 101 of the Maharashtra Cooperative Societies Act, 1960 has been issued by the Deputy Registrar Cooperative Societies in favour of the petitioner bank showing recoverable amount of Rs. 27,16,144/- alongwith interest @ 14% p.a. w.e.f. 1.1.2012. Since the borrower failed to deposit loan amount as per the recovery certificate, his property was attached and put to auction sale. But, no offer was received. The auction sale notice dated 22.2.2013 was challenged by the borrower in Revision Application No. 16 of 2013 before the Divisional Joint Registrar. The said revision application came to be dismissed on 22.10.2013. Finally, the bank initiated proceeding under Section 100 r/w. Rule 85 of the Maharashtra Cooperative Societies Rules for transfer of the property in the name of bank. The District Deputy Registrar, Aurangabad allowed the application of the bank vide order dated 29.6.2015. The respondent Nos. 2 to 4/legal representatives of borrower filed Revision Application challenging the order dated 29.6.2015 alongwith application seeking condonation of delay of 2 years and 7 months before the Divisional Joint Registrar which has been allowed without justifiable reasons.

3. Mr. Suryawanshi would criticize observations in the impugned order which states that respondent Nos. 2 to 4 were not aware about the impugned order, or delay cannot be attributed as intentional. He would submit that already, house property is possessed by the bank which is only asset to recover huge dues outstanding in loan account of late borrower – Natha.

4. Per contra, Mr. A.M. Nagarkar, learned advocate for

respondent Nos. 2 to 4 would submit that the borrower – Natha Dudhawade expired on 27.10.2017. The respondent Nos. 2 to 4 were unaware about the proceeding initiated by the bank. However, when the possession of the property is taken, immediately steps are taken to file revision application against the order dated 29.6.2015. As such, the delay caused in filing the revision application was duly explained and rightly condoned by the Divisional Joint Registrar.

5. Having considered the submissions advanced, it is apparent that the order dated 29.6.2015 passed by the District Deputy Registrar, Aurangabad, permitting transfer of the house property in favour of the bank has been challenged by respondent Nos. 1 to 4 in Revision filed under section 154 of the Cooperative Societies Act. The original borrower – Natha Dudhawade, died on 27.10.2017. It is true that he could not challenge the order dated 29.6.2015 during his lifetime. However, there is no reason to disbelieve the contentions of respondent Nos. 2 to 4 that they were not noticed about any proceeding initiated by the bank and delay occasioned is unintentional. The Divisional Joint Registrar accepted the aforesaid explanation and passed order condoning the delay. Considering the reasoning adopted by the respondent No.1 in the impugned order, no fault can be found in the ultimate conclusion.

6. At this stage, Mr. K.J. Suryawanshi, appearing for the petitioner submits that the Revision Application filed by the respondent Nos. 2 to 4 cannot be entertained in absence of deposit of 50% of recoverable dues, which is a condition precedent where there is a challenge to the recovery certificate. The application of such condition

has to be made even to any further proceeding to enforce the recovery certificate. In support of his contentions, he relies upon the judgment of this Court in the case of ***Barindra Overseas Private Limited and another vs. Shilpa Shares and Securities and others reported in 2019(3) Mh.L.J. 651.***

On a specific query by this Court as regards deposit of amount Mr. A.M. Nagarkar, learned advocate for respondent Nos. 2 to 4 confirms that no such deposit is made. However, he submits that house property is already taken in possession by the bank and the respondent Nos. 2 to 4 are without shelter.

7. It cannot be disputed that the condition stipulated in sub-section 2A of Section 154 is introduced so as to ensure speedy recovery of the dues specified under Section 101 of the Act. Even such mandate ensures to curtail long drawn litigation.

8. Perusal of record shows that objection regarding non compliance of the condition of pre-deposit was never raised before the respondent No.1. Although there is substance in the contention of Mr. Suryawanshi that even application for delay condonation caused in filing the Revision Application under Section 154 could not have been entertained without compliance of pre-condition of deposit, on prima facie consideration of the nature of litigation, it can be observed that revision application filed by respondent Nos. 2 to 4 takes exception to the order passed under Section 100(2) of the Act read with Rule 85 of the Maharashtra Cooperative Societies Rules, 1961. There is no challenge to the recovery certificate or challenge to the auction process. Prima facie, it would be debatable as to apply pre-deposit condition in such a case,

particularly when the property is already in possessed by bank. However, this issue can be kept open to be raised before the respondent No.1, who shall take further decision in this regard after hearing all concerned.

9. In that view of the matter, there is no substance in the writ petition. Writ petition stands dismissed. However, respondent No.1 shall expeditiously decide the revision application filed by respondent Nos. 2 to 4, within a period of four months from the date of this order.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-