



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

**WRIT PETITION NO.5144 OF 2023
WITH
CIVIL APPLICATION NO. 13988 OF 2023
IN WP NO.5144 OF 2023**

**Ms Hotel Rucha And Lodging Through Its Prop Vasant
Madhukar Ghodke And Others**

VERSUS

**The State Of Maharashtra Through Its Secretary And
Others**

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Advocate for Applicant : Mr. C.V. Thombre

AGP for Respondents 1,2 : Mr. N D Rajee

Respondent Nos.3 and 4 – Served.

**Advocate for Respondent no.5 : Mr. R.N.Dhorde Senior
Counsel i/b Mr. V. R. Dhorde**

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : 02nd August, 2024

PER COURT :-

1. The petitioners impugn the order dated 25.2.2022 passed by the Divisional Joint Registrar Co-operative Societies, Nasik-Respondent no.2, thereby dismissing the revision filed under section 154 of the Maharashtra Co-operative Societies Act against the recovery certificate dated 22.1.2019 issued by respondent no.3-Assistant Registrar Co-operative Societies.

2. Mr. Thombre, learned advocate appearing for petitioners submits that, petitioners assailed the recovery certificate issued under section 101 of the Maharashtra Co-operative Societies Act by filing the revision application under section 154 before the Respondent No.2 Divisional Joint Registrar, Nashik. Revision Application was not registered owing to certain office objections. Petitioners were given communication dated 17.11.2021 recording such office objections. Although, other office objections were minor, one of the objection states that petitioners have not deposited 50% of the recoverable amount in terms of the recovery certificate, which is subject matter of the challenge. Mr. Thombre, would submit that, in fact, revision application was filed with application for delay condonation. Such application was yet to be decided and it is settled law that consideration of application for delay condonation cannot be refused for non-fulfillment of precondition of 50% deposit.

3. To buttress his submissions, he relies upon the observations of this Court in writ petition no.5128 of 2021 between *M/s. Shrideep Associates through Proprietor Sau. Deepali Shripad Thombre Vs. State of Maharashtra and others* alongwith companion matters and also observations in case of *Dilawar Hakim Shah Vs. Special Recovery Officer and others reported in 2006 (1) Bom.C.R. 141*.

4. Per contra, Mr. Dhorde, learned senior counsel i/b Mr. V.R. Dhorde, appearing for respondent no.5 submits that present writ petition has become infructuous. After filing of the revision application, petitioners have consented for sale of the property in pursuance of the recovery certificate, consequently, a sale-deed dated 14.11.2022 has been executed, to which the petitioner is also consenting party. As such, no purpose would be served by entertaining prayers in the writ petition.

5. Having considered submissions advanced, apparently, petitioners had assailed the very certificate issued under section 101 of the Maharashtra Co-operative Societies Act by filing revision application before the respondent no.2 under section 154 of the Maharashtra Co-operative Societies Act. Said revision application was accompanied with an application for condonation of delay. However, on the basis of certain defects/short falls in the revision application, it came to be dismissed. Perusal of list of defects as discernible from the communication dated 17.11.2021 and 10.12.2021, it appears that one of the defect shown is non-deposit of 50% of the recoverable amount alongwith the revision application. It is not disputed before this Court that revision application was filed alongwith the application seeking condonation of delay and delay application was yet pending when the revision application is dismissed referring to the defects in

the impugned order. Pertinently, this Court in case of *Dilawar Hakim Shaha* (supra) came across the similar situation and deliberated in issue as to whether for entertaining the application for condonation of delay, bar created under section 154 (2-A) would operate. This Court, after considering scheme of the Act and relevant decision of the Supreme Court observed thus :-

“What falls for consideration in an application for condonation of delay is whether the applicant had sufficient cause for not making application within the prescribed period. The entertainment of the revision is another matter, the occasion for which arises if and after delay is condoned. There is thus a clear demarcation between the proceedings taken for establishing that there was sufficient cause for not approaching the Registrar within the period and entertainment of revision application itself.”

6. Applying aforesaid observations to the facts of the case, it can be observed that the revision application filed by the petitioners was pending consideration alongwith the application for condonation of delay. No decision was arrived on the prayer for condonation of delay. Therefore, the stage as regards to compliance of section 154 (2-A) was yet to be reached. Office of respondent no.2 could not have raised objection at the stage of delay condonation and could not have thrown the matter for non-compliance of pre-deposit condition at that stage.

7. In that view of the matter, following order is passed.

ORDER

- i. Writ Petition is partly allowed.
- ii. The impugned order dated 25.2.2022 passed by respondent no.2, thereby dismissing the revision application on the ground of non-deposit of 50% amount in terms of section 154 (2-A) is hereby quashed and set aside.
- iii. The respondent no.2 shall restore the application for condonation of delay and proceed to decide in accordance with law without insisting for deposit of 50% of the recoverable amount within the period of (03) three months from the date of this order.
- iv. Writ Petition stands disposed off. No costs.
- v. Pending civil application also stands disposed off.

(S. G. CHAPALGAONKAR)
Judge

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