rrpillai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4452 OF 2023

Zulekha Masud Patel and Others … Petitioners

Vs.

Divisional Joint Registrar … Respondents
Co-operative Societies and Others

Mr. Hrishikesh Sopan Shinde for Petitioner.
Mr. Anand Shrikant Kulkarni for Respondent Nos. 4 an 5.
Ms. M. P. Thakur, AGP for the State.

CORAM : GAURI GODSE, J.

DATE : 21st FEBRUARY 2024

P.C.

1. Heard. This petition takes an exception to the order passed by the revisional authority dismissing the application for condonation of delay in filing revision application for challenging the recovery certificate, issued under Section 101 of the Maharashtra Co-operative Societies Act, 1960 ("MCS Act").

2. The revision application was filed by the heirs and legal representatives of the original borrower with an application for

condonation of delay of six years in filing the revision application. The revisional authority has dismissed the application for condonation of delay by recording reasons that though the petitioners were aware about the recovery certificate and the demand notice issued pursuant to the issuance of recovery certificate, steps were not taken to file revision application in a reasonable time after knowledge of the recovery certificate.

3. Learned counsel for the petitioners submitted that husband of petitioner no. 1 and father of petitioner nos. 2 to 6, who was the original borrower expired due to covid infection, on 2nd December 2020. He submitted that the original borrower had availed of a loan facility of Rs. 15,00,000/- from respondent no. 4 – bank, however, the borrower had deposited substantial amount for repayment of the loan. He submitted that various objections were raised on behalf of the petitioners for challenging the recovery certificate which was issued without taking into consideration the amounts that were already paid by the original borrower for challenging the impugned order.

4. Learned counsel relied upon the averments in the application for condonation of delay. He submitted that the reasons for seeking

condonation of delay were explained in the application, however, the same are not been taken into consideration by the revisional authority.

5. In addition to the submissions made based on the application for condonation of delay, the learned counsel for the petitioners relied upon the government notification dated 11th November 2022 and submitted that though the petitioners had filed application pursuant to the said notification, the bank did not take any steps to forward the proposal of the petitioners to the State Government pursuant to the said notification.

6. Learned counsel has placed on record copy of the said notification dated 11th November 2022. Perusal of the notification indicates that the same is issued by the Co-operative Commissioner and Registrar, Co-operative Societies intimating the Divisional Joint Registrar and the District Deputy Registrar, Co-operative Societies seeking information in the prescribed format regarding the outstanding dues of borrowers who have expired due to covid infection. Learned counsel submitted that pursuant to the said notification petitioners had filed an application with the bank, however the bank did not process the application. He relied upon copy of the application which is

annexed to the petition.

7. Perusal of the application indicates that the same was filed on 10th August 2022. Thus, it appears that there is no application filed seeking any benefit under the notification dated 11th November 2022. However, learned counsel appearing for the bank submitted that the petitioners had issued a notice to the bank through their Advocate intimating the bank that they had got the calculations approved through the Government approved tax consultant and the total outstanding amount of Rs.24,56,019/- was intimated to the bank, as the total outstanding amount as per the calculation made by the petitioners and approved by the Government approved tax consultant. He submits that, by the said notice the petitioners called upon the bank to accept the amount as per the said calculations and issue a no dues certificate.

8. Learned counsel appearing for the bank submitted that though the said notice was issued to the bank, no steps have been taken by the petitioners for complying with the said notice dated 24th January 2022. In view of the said notice issued by the petitioners, learned counsel for the bank on instructions submitted that the bank is ready to

accept the offer given by the petitioners under the said notice dated 24th January 2022 subject to the further calculation of interest from the date of the said notice till date of payment.

9. Learned counsel for the petitioners on instructions of petitioner no. 4 who is present in court submits that the petitioners are not in a position to make payment of the said amount. However, the petitioners are ready and willing to pay only an amount of Rs.17,50,000/-. In addition to the aforesaid, learned counsel for the petitioners pointed out the copy of the roznama before the revisional authority and submitted that though hearing of the application was fixed on 25th January 2023, the revisional authority rejected the application for condonation of delay by passing an order on 24th January 2023. He further submitted that thus, the revisional authority without taking into consideration the reasons pleaded by the petitioners for condonation of delay has rejected the application a day prior to the date fixed for hearing of the application.

10. Learned counsel thus submitted that only due to the death of the original borrower during the covid time, the petitioners were unable to file revision application within time. Hence, it is submitted that the

petitioners ought to have been granted an opportunity of hearing the revision application on merits.

11. Learned counsel appearing for the bank in response to the aforesaid submissions pointed out the entry made in the roznama of 11th January 2023. He submitted that the argument of the Advocate for the petitioners was heard on 11th January 2023 and the application for condonation of delay was closed for passing orders. He further pointed out that the entry in the roznama, further indicates that the date mentioned in the roznama was the next date assigned as 25th January 2023.

12. I have considered the aforesaid submissions. Perused the record. Learned counsel for the bank is right in submitting that the entries in the roznama shows that petitioners' Advocate was heard on the application for condonation of delay, on 11th January 2023. Even otherwise, nothing turned on the aforesaid dates, as it is not the grievance of the petitioners in the petition, that they were not heard for deciding the application for condonation of delay. Hence, I do not see any reason to examine the said ground any further.

13. Perusal of the application for condonation of delay is bereft of any explanation as to why the revision application was not filed within time after the date of knowledge of the recovery certificate and the execution of the recovery certificate. The recovery certificate is dated 6th October 2016. The original borrower expired on 2nd December 2020. The petitioners filed application for condonation of delay on 12th October 2022 i.e. after almost six years. Perusal of the application for condonation of delay indicates that the petitioners were aware about the loan and the outstanding amount and issuance of the recovery certificate.

14. Perusal of the impugned order indicates that the revisional authority has taken into consideration all the grounds raised on behalf of the petitioners and by a well reasoned order rejected the application for condonation of delay. In view of the aforesaid facts and circumstances and the conduct of the petitioners of refusing to make payment inspite of issuing notice through their Advocate accepting liability and an offer to pay an amount of Rs.24,56,019/- on 24th January 2022, I do not see any reason to invoke powers under Article 227 of the Constitution of India and interfere in the impugned order.

15. Perusal of the Advocate's notice dated 24th January 2022 clearly shows that the petitioners had offered to make a payment of Rs. 24,56,019/- on 24th January 2022. The issuance of the said notice and the contents of the same are not disputed by the petitioners. Hence, I do not see any substance in the arguments made on behalf of the petitioners.

16. The petition is devoid of merits. For the reasons recorded above, petition is dismissed. Ad-interim relief granted in the petition stands vacated.

17. At this stage, learned counsel for the petitioners requests to extend the ad-interim relief granted by this court for a period of four weeks from today.

18. Learned counsel for the bank submits that only due to the pendency of this petition, the bank was unable to proceed with the execution of the recovery proceedings, since there was already an ad-interim relief granted by this court. Hence, no coercive action to be taken against the petitioners for a period of four weeks from today.

19. The bank is at liberty to proceed for execution of the recovery certificate by taking appropriate steps for attachment and sale of the property. However, even if the auction sale proceedings are conducted before the period of four weeks from today, the possession of the petitioners shall not to be disturbed for a period of four weeks from today.

[GAURI GODSE, J.]