



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.
WRIT PETITION NO. 498/2024

1. Pravin S/o Laxmanrao Chakole, Aged about 52 years, Occ. Business.
2. Dipali W/o Pravin Chakole, Aged about 47 years, Occ. Housewife.

Both R/o Plot No.49, Deonagar, Behind Orange City Hospital, Khamla Road, Nagpur.

PETITIONERS

.....VERSUS.....

1. State of Maharashtra, Through Ministry of Co-op. Societies, Mantralaya, Mumbai.
2. Divisional Joint Registrar, Co-op Societies, Nagpur.
3. New Subhedar Nagri Sahakari Pat Sanstha Ltd.,
A registered Society under Maharashtra Co-op. Societies Act, Through its Recovery Officer, Off. At Plot no.750, New Subhedar Layout, Nagpur – 440 024.

RESPONDENTS

Shri S.M. Pande, counsel for the petitioners.
Miss D.V. Sapkal, Assistant Government Pleader for the respondents.

CORAM : **NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.**

DATE : **JANUARY 22, 2024**

ORAL JUDGMENT (PER : NITIN W. SAMBRE, J.)

RULE. Rule made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. The petitioners are the borrowers and accordingly the members of the respondent no.3-New Subhedar Nagari Sahakari Pat Sanstha Ltd. (for short, ‘the respondent no.3-Society’), which is a Credit Cooperative Society.

3. The petitioners suffered a recovery certificate under Section 101 of the Maharashtra Cooperative Societies Act, 1960 (for short, ‘the

Act of 1960') for an amount of Rs.1,02,19,685/-. The principal amount which was obtained by the petitioners was Rs.80,00,000/- as on August 16, 2018 which they have failed to repay. After issuance of the aforesaid recovery certificate, the petitioners assured the respondent no.3-Society that they shall be making good the payment within a period of one month as reflected in the communication dated June 28, 2022. According to the petitioners, in view of the policy of the State Government for acceptance of One Time Settlement, the petitioners were willing to deposit the amount.

4. Since the petitioners have neither deposited the outstanding amount nor honoured the dictum under the recovery certificate issued under Section 101 of the Act of 1960, the property of the petitioners, a house, was sought to be auctioned vide advertisement dated December 23, 2023. The petitioners thereafter submitted a proposal for One Time Settlement dated January 12, 2024, however it appears that the petitioners have failed to demonstrate *bona fides* by depositing the amount. The petitioners thereafter taken out proceedings under Section 154 of the Act of 1960 by invoking revisional jurisdiction. However, it is stated that the respondent-Authorities have refused to register the said proceedings. That being so, the learned counsel for the petitioners has prayed for acceptance of the memo of revision presented by the petitioners and to stay the further proceedings.

5. The aforesaid prayer is objected by the learned Assistant Government Pleader on the ground that for enjoying the interim relief against the recovery sought from the petitioners, they must show their *bona fides* by depositing 50% of the total outstanding amount.

6. We have appreciated the aforesaid submissions.

7. Section 154 of the Act of 1960 which confers the revisional jurisdiction on the Registrar, in the present case the Divisional Joint Registrar, Co-operative Societies, reads as under :-

“154. Revisionary powers of State Government and Registrar

(1) *The State Government or the Registrar, suo motu or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub-section (9) of section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings. If in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.*

(2) *Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer.*

(2A) *No application for revision shall be entertained against the recovery certificate issued by the Registrar under section 101 [or section 154B-29] unless the applicant deposits with the concerned society, fifty per cent amount of the total [amount of recoverable dues. If the revision application is allowed, the Revisional Authority may pass an order directing the society to refund the amount so deposited to the applicant].*

[Provided that, in case of such revision where revisional authority has granted a stay to the recovery of dues, the authority shall as far as may be practicable, dispose of such revision application as expeditiously as possible but not later than six months from the date of the first order.]

(3) *No application for revision shall be entertained, if made after two months of the date of communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies it that he had sufficient cause for not making the application within such period.*

(3A) *The revisional authority, in order to prevent the ends of justice being defeated, may pass such interim orders including order of stay against the impugned order, pending the decision and final hearing of the Revision Application:*

Provided that, if any interim order has been passed by the revisional authority without hearing the other side, the revisional authority shall decide such application within a period of three months and pass the necessary orders on merits after giving an opportunity of being heard and for the reasons to be recorded in writing.

(4) *The State Government may, by order, direct that the powers conferred on it by this section shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised also by an officer of the rank of Secretary to Government'*

8. The Revisional Authority is vested with the power to entertain a revision *suo motu* or on an application being made to it so as to satisfy itself as to the legality or propriety of a decision or order including that of regularity of proceedings, if any, and is vested with the power to modify, annul or reverse the decision. Before exercising the powers, it is mandated under sub-Section (1) of Section 154 of the Act of 1960 that there has to be an opportunity of hearing.

Sub-Section (2A) of Section 154 of the Act of 1960 provides that an application for revision shall not be entertained against the recovery certificate issued by the Registrar under Section 101 of the Act of 1960 unless the applicant deposits with the concerned Society 50% of the total recoverable dues. Sub-Section (3) of Section 154 of the Act of 1960 also casts an embargo on the right of the Revisional Authority to entertain a revision if same is preferred after two months of the date of communication of the decision or order. However, the Revisional Authority can entertain such application beyond limitation if the applicant satisfies that he had a sufficient cause for not making the application within such period.

9. If the grievance of the petitioners is considered, their case is, even if the revision was preferred at a belated stage, the Revisional Authority is vested with the power to entertain such revision provided

they satisfy the Revisional Authority about existence of sufficient cause for not making the application within such period. For deciding such application or even for delayed lodging the revision application, in our opinion, it cannot be held that the condition of deposit as provided under sub-Section (2A) of Section 154 of the Act of 1960 has to be complied with.

10. On a plain reading of sub-Section (2A) of Section 154 of the Act of 1960, it is aptly clear that there is embargo for a revision being 'entertained' by the Registrar if the applicant has not deposited 50% of the total recoverable dues. The said Section does not disallow or make the Revisional Authority incompetent in considering the application for condonation of delay or for that purpose registration of the revision application. What is prohibited under the aforesaid provision is to entertain the revision as could be inferred from the language employed under sub-Section (2A) of Section 154 of the Act of 1960.

The Registrar under sub-Section (3) of Section 154 of the Act of 1960 is permitted to entertain a revision even after lapse of limitation if sufficient cause is shown for not making such application within the stipulated period.

11. As such, an application for condonation of delay can be decided based on sufficient cause being shown, however entertainment of such application does not mean that the revision is to be entertained on merit without compliance of the condition of pre-deposit of 50% of the total recoverable dues as has been mandatorily provided under sub-Section (2A) of Section 154 of the Act of 1960. If we consider the language of sub-Section (2A) of Section 154 of the Act of 1960, it expressly bars the entertainment of a revision in case the mandate under sub-Section (2A) of Section 154 of the Act of 1960 is not complied with. The word 'entertain' denotes 'to deal with' or 'to consider on merit' and cannot be said to include receiving or filing of the proceedings. The aforesaid issue is squarely covered by the judgment of this Court in the matter of *Dilawar Hakim Shah Versus Special Recovery Officer, Chiplun Urban Cooperative Bank Ltd. & Others* [2006(3) Mh.L.J. 256]. The observations in paragraphs 5, 6 and 7 thereof read thus :-

“5. We are concerned here with sub-sections (2A) and (3). On a plain reading of sub-section (2A), it is clear that it bars an application for revision from being 'entertained' by the Registrar unless the applicant deposits 50% amount of the total amount of recoverable dues. The section does not bar the Registrar from considering the application for condonation of delay which precedes the entertainment of a revision unless the applicant deposits with the concerned society, 50% amount of the total amount of recoverable dues. In fact, as is clear from sub-section (3), the Legislature has prohibited the Registrar from entertaining a revision if it is made after two months

from the date of communication of the decision or order. That sub-section also empowers the Registrar to 'entertain' any such revision application made after the period if the applicant satisfies the Registrar that he had sufficient cause for not making the application within such period. Sub-section (3), therefore, clearly contemplates that the Registrar can entertain a 'revision application' after the period of limitation, only if he is satisfied that the applicant had sufficient cause for not making the application within such period.

6. What falls for consideration in an application for condonation of delay is whether the applicant had sufficient cause for not making the 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 prescribed period and the entertainment of the revision itself.

7. The word 'entertain' has been interpreted by the Supreme Court in *Lakshmiratan Engineering Works Ltd. vs. Asstt. Commissioner (Judicial) 1, Sales Tax, Kanpur Range*, AIR 1968 SC 488 in the context of an appeal wherein Their Lordships held that the word 'entertain' means 'to deal with or admit to consideration' and not receiving or filing of the appeal. This decision has been subsequently followed by Their Lordships in *Hindustan Commercial Bank Ltd. vs. Punnu Sahu*, AIR 1970 SC 1384. Undoubtedly, therefore, because the application for condonation of delay is filed along with the appeal, it cannot be said that bar of sub-section (2A) applies even for considering the application for condonation of delay. The statutory scheme of section 154 is clear. It firstly requires a party to show sufficient cause for preferring the revision beyond the prescribed period and empowers the Registrar to entertain the revision only after sufficient cause is shown. The revision can be said to have been received along with the application for condonation of delay, but is not entertained until the delay is condoned as required by

sub-section (3) itself. The bar of sub-section (2A) applied to the entertainment of a revision unless the applicant deposits 50% of the total amount of recoverable dues. It is clear that it cannot be said that the revision is entertained unless the delay in filing it is condoned and by making out sufficient cause.”

12. Based on the aforesaid view expressed in the matter of *Dilawar Hakim Shah* (supra), the learned Single Judge at the Aurangabad Bench in *Shrideep Associates Versus The State of Maharashtra & Others* [2022(3) All M R 46] has reiterated that the mandate under sub-section (2A) of Section 154 of the Act of 1960 is mandatory in nature. It has been observed in paragraphs 7, 8, 9 and 10 as under :-

“7. The dispute between the parties is whether the refusal to entertain the revision applications is on account of non compliance of the statutory requirements under section 154 (2-A) of the MCS Act.

8. It is necessary to mention that the revision applications are accompanied with the application of condonation of delay. The authority in the impugned order is making reference to both the applications, since it can be seen that the objections have been notified and about the application for condonation of delay also, since it is not found to be adequately stamped. The learned counsel for the petitioners has placed reliance upon the decision of the learned Single Judge of this Court in the case of *Dilawar Hakim Shah Vs. Special Recovery Officer & others* reported in 2006 (1) Bom.C.R. 141, where the issue that arise for consideration while entertaining the application for condonation of delay whether the bar created under section 154 (2-A) shall come into force.

The facts of the case reveal that on grant of recovery certificate, revision application was filed along with

application of condonation of delay before the Divisional Joint Registrar and without considering the said application, seeking condonation of delay, the revision came to be dismissed on account of non deposit of 50% amount. In this backdrop, it was held that when the application for condonation of delay is filed along with the revision, the bar of section 154 (2-A), do not apply even for considering the said application.

Reliance was placed upon two decisions of the Apex Court in arriving at the aforesaid conclusions and the observations made by the learned Judge require reproduction :-

“6. What falls for consideration in an application for condonation of delay is whether the applicant had sufficient cause for not making the 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 prescribed period and the entertainment of the revision itself.

7.

8. In the result, the impugned order is hereby set aside and the respondent-Divisional Joint Registrar is directed to consider the application for condonation of delay on its merits and proceed in accordance with law.”

9. The learned counsel for the petitioners is justified in relying upon the said authority, but it can be noted that this is not the ground on which the applications filed by the petitioners are dismissed, but it's registration is refused on account of non removal of the office objections, as notified. Therefore, it is premature to say that the stage has arrived to apply the aforesaid judgment. The petitioners ought to have cured the deficiencies which are pointed out by the Divisional Joint Registrar and only upon removal of the deficiencies, the applications for condonation of delay which should necessarily precede the

revision applications being heard on merits. Further recording that there is lethargy on the part of the petitioners, to cure lacuna, impugned orders came to be passed.

The learned counsel for respondent Bank has relied upon two decisions of this Court, first being in the case of Birindra Overseas Private Ltd. Vs. Shilpa Shares and Securities, Andheri East, Mumbai reported as (2019) 3 Mh.L.J. 651 and on careful reading of the facts involved are distinct and the ratio of the judgment will have therefore to read in the context of the facts involved. The learned Single Judge, considering the purpose of section 154(2-A) of the MCS Act has held that the purpose of the provision would be frustrated if a person against whom recovery certificate has been issued is permitted to file revision without making the mandatory deposit on plea that he is not challenging the recovery certificate. In the backdrop of the peculiar facts, the decision rendered is contained in para 79 and 80 which reads thus :-

“79. In my view, the learned Divisional Joint Registrar at the first instance could not have entertained even the application for condonation of delay before the respondent nos. 1 to 3 depositing 50% of the recoverable dues. The respondent nos. 1 to 3 were liable to deposit 50% of the recoverable dues even while seeking relief of quashing and setting aside the auction of the property in question which was filed for enforcement of the recovery certificate issued by the District Deputy Registrar. The provisions of section 154 (2A) of the MCS Act were attracted to the said revision application inter alia praying for quashing and setting aside the auction proceedings.

80. In my view, the learned Divisional Joint Registrar could not have entertained the revision application filed by the respondent nos. 1 to 3 on merits and could not have set aside the auction sale without respondent nos.1 to 3 first depositing 50% of the recoverable dues in compliance of section 154(2A) of the MCS Act. The impugned order thus deserves to

be set aside on that ground alone. In view of this court proposing to set aside the impugned orders passed by the learned Divisional Joint Registrar on 20th May, 2013 and 17th January, 2012 on the ground of those revision applications not being maintainable, this court does not propose to go into the other issues raised by both the parties for consideration of this court and the same are kept open.”

However in the aforesaid law report the respondents without depositing 50% amount of recoverable dues were seeking relief of quashing and setting aside the recovery certificate and this was held to be not permissible by the learned Single Judge. Another decision in the case of Arun B. Khanjire Vs. Ichalkaranji Urban Co-op. Bank Ltd. and Ors. Reported in AIR 2008 SC (Supp) 935 on which the learned counsel placed reliance is also not of any support to him, since the judgment delivered in the backdrop of the facts that the proceedings were taken up suo moto by the Divisional Joint Registrar and question of consideration is that statutory mandate of recovery can be avoided if the proceedings were taken up suo moto.

10. *In the wake of aforesaid, in my considered opinion, the applications for condonation of delay before entertaining the revision applications under section 154 of the MCS Act is not barred in absence of the statutory deposit as contemplated under sub-section (2-A). I say so in the wake of legislature framing sub-section (2-A) of section 154, which reads thus :-*

“(2A) No application for revision shall be entertained against the recovery certificate issued by the Registrar under section 101 or section 154B-29 or certificate issued by the Liquidator under section 105 unless the applicant deposits with the concerned society, fifty percent, amount of the total amount of recoverable dues.”

13. Apart from above, the Division Bench of this Court in the matter of *Kausalya Sampat Versus Vasant Sahakari Bank Ltd. &*

Others [2004(4) Mh.L.J. 795] had an occasion to consider the constitutional validity of sub-section (2A) of Section 154 of the Act of 1960 and also the effect of non-compliance of the mandate under the aforesaid provision.

14. As such, we are of the view that the application for condonation of delay ought to have been considered along with the prayer of the petitioners for acceptance of the memo of revision. In such situation, it is to be held that for deciding the application for condonation of delay, it is not necessary to comply with the mandate of sub-Section (2A) of Section 154 of the Act of 1960. As far as the Prayer Clause in relation to grant of stay to the communication dated January 10, 2024 is concerned, in response to the Court's query, it is informed that the petitioners are not in a position to deposit 50% of the total recoverable amount due as provided under sub-Section (2A) of Section 154 of the Act of 1960. Therefore, the said prayer is liable to be rejected.

15. That being so, we pass the following order :-

- I. The writ petition is partly allowed in terms of Prayer Clause (i).
- II. It is held that for deciding the application for condonation of delay, it is not necessary to comply with the mandate of sub-Section (2A) of Section 154 of the Act of 1960.

- III. The prayer for grant of stay is rejected.
- IV. Needless to clarify that it shall be open for Revisional Authority not to entertain the revision on merit in case the petitioners fail to comply with the provision laid down in sub-Section (2A) of Section 154 of the Act of 1960.
16. Rule is made absolute in aforesaid terms. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

APTE