

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3098 OF 2023

Bhikaji Mahadeo Chichkar & anr.

...Petitioners

: Versus :

Divisional Joint Registrar, Co-operative
Societies, Konkan Division, Navi
Mumbai & Ors.

...Respondents

Mr. Abhay Khandeparkar, Senior Advocate a/w. *Mr. Farhan Shaikh and
Mr. Rakesh Pathak i/by. Khandeparkar & Associates, for the Petitioners.*

Mr. Bapusaheb B. Dahiphale, AGP for Respondent Nos.1, 2 and 4-State.

CORAM : SANDEEP V. MARNE, J.

Date : 2 January 2025.

P.C. :

1) The petition challenges the order dated 26 November 2021 passed by the Divisional Joint Registrar, Co-operative Societies, Konkan Division, Navi Mumbai refusing to condone the delay of 5 years 94 days in challenging the Recovery Certificate dated 5 October 2015 issued by the Assistant Registrar, Kudal under the provisions of Section 101 of the Maharashtra Co-operative Societies Act, 1960 (**Act of 1960**). It is Petitioner's case that they were absolutely unaware about filing of proceedings under Section 101 of the Act of 1960 or about the Recovery Certificate dated 5 October 2015. However, the Divisional Joint Registrar in his order dated 26 November 2021 has referred to notice dated 13 December 2016 issued by the Recovery Officer in which a

reference was made to the Recovery Certificate dated 5 October 2015. Though, initially Petitioners did not make an averment in the petition about non-receipt of notice dated 13 December 2016, it appears that the petition has been amended and ground clauses (e-1) to (e-4) are incorporated in the petition for raising additional pleadings that the Petitioners did not receive the said notice dated 13 December 2016.

2) However, perusal of the reply dated 11 January 2021 filed by the Petitioners to the proposal filed by the Respondent-Bank for fixing of upset price for sale of mortgage property, Petitioners specifically referred to notice received by them on 15 December 2016 in para-10 of the said reply. Thus, while opposing proposal for fixing of upset price, Petitioners specifically admitted that notice before attachment was received by them on 15 December 2016. Petitioners have thus made false averments in amended paras-(e-1) to (e-4) of the petition about non-receipt of notice before attachment. Petitioners were thus fully aware about issuance of Recovery Certificate dated 5 October 2015 at least on 15 December 2016 when they admittedly received notice before attachment. In that view of the matter, no serious error can be traced in the view taken by the Divisional Joint Registrar about failure to disclose justifiable cause by the Petitioners for condonation of inordinate delay of 5 years and 94 days. Petitioners' case that they acquired knowledge about issuance of Recovery Certificate dated 5 October 2015 for the first time on 8 January 2021 appears to be clearly fallacious. The order passed by the Divisional Joint Registrar is unexceptionable. In that view of the matter, there is no warrant for entertaining the present petition. The Writ Petition is accordingly **rejected.**

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[SANDEEP V. MARNE, J.]