



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5803/2022

PETITIONER : Ambada Seva Sahakari Sanstha,
Ambada, Tahasil, Morshi, District : Amravati
Registered No.345 through its President
Shri Vishwasrao S/o Raghunathrao Khodaskar.

...VERSUS...

RESPONDENTS : 1. Special Recovery Officer & Sales Officer (CB)
The Amravati District Central Co-operative
Bank Ltd. Camp Road, Irwin Chowk,
Amravati – 444603.

2. The Amravati District Central Co-operative
Bank Ltd. Branch Ambada, Tahasil : Morshi
District Amravati through its Branch Manager.

3. Assistant Registrar, Deshmukh Building,
Near Government Hospital, Morshi,
Tah. Morshi, District – Amravati, Cooperative
Society, Morshi, Late Bhausahab.

WITH

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Mr. Yash Maheshwari, Advocate with Mr. Shraddhanand Bhutada, Advocate for petitioner
Mr. J.B. Kasat, Advocate for respondent Nos.1 and 2

CORAM : SACHIN S. DESHMUKH, J.
DATE : 09/07/2025

ORAL JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith. By consent of the parties, the petition is heard finally at the stage of admission.
2. The petitions raise an exception to the order dated 19/03/2021 rendered by the Cooperative Appellate Court, by which civil application seeking condonation of delay of six years has been rejected. Since identical issue is involved in both the petitions, as such are heard together.
3. The petitioner borrowed the loan from the respondent in the year 1998. Eventually he committed default in the year 2008. In the wake of the said default, the proceedings were presented by the respondent No.1 bearing Dispute Nos.78/2010 and 79/2010 for recovery of loan amount.

4. The disputes were filed for recovery of an amount of Rs.3,82,403/- and Rs.5,97,895/- respectively along with interest. Although notice was served upon the petitioner herein by the Cooperative Court, the petitioner – Society chose not to appear in the said proceedings resultantly no written statement was filed. Eventually, the dispute came to be allowed by the order dated 17/02/2015.

5. On the strength of the order in dispute, the execution proceedings were presented. In the execution proceedings, there were several requests made on behalf of the petitioner – Society in response to loan demand notice under Rule 107 (3) Maharashtra Co-operative Societies Rules, 1961 (for short hereinafter “MCS Rules, 1961”) and Section 103 (11) and 98 of the Maharashtra Co-operative Societies Act, 1960 (for short hereinafter “MCS Act, 1960”), those were served upon the petitioner on 10/06/2016. Similarly, seizure and custody of the property was also undertaken by the authority on 29/06/2016. Coupled with these events, the custodial receipt of attached property was executed by and on behalf of the petitioner on 29/06/2016 under Rule 107 (5) (b) of the Rules, 1961. A notice of attachment of property was also issued by taking recourse to Rule 107 (5) of the MCS Rules, 1961 on 29/06/2016. Apart from the aforesaid aspect a letter was presented on behalf of the petitioner on 30/10/2017 admitting unpaid amount and arrears towards the loan along with interest pursuant to the

judgment and award rendered by the Cooperative Court. The said request was on the strength of the resolution passed by the petitioner – Society vide Resolution dated 24/10/2017. Equally, a communication dated 08/07/2019 on behalf of the petitioner – Society was made thereby admitting the unpaid arrears of loan and interest.

6. Thereafter, the petitioner herein has decided to raise challenge to the order rendered by the Cooperative Court on 17/02/2015. Since there was delay in presenting the appeal before the Cooperative Appellate Court, an application for condonation of delay was presented accompanied with an appeal. Surprisingly in the application seeking condonation of delay, the aforesaid events are consciously withheld and sweeping plea is put forth in paragraph Nos.3 and 4 of the application, which is reproduced as under :-

“3. That recently on 18.02.2021, the respondent no.1 issued written notice for auction of the movable and immovable properties of the appellant society. The notice is also published in daily Deshnotti on 18.02.2021, by the respondent no.1 for the alleged auction. It is submitted that the appellant society making continuous efforts to get the accounts statement of loan from respondents, but the same is not supplied till date.

4. The Judgment, order and Award is passed on 17.02.2015 and the limitation for filing the appeal is expired on 60 days thereafter. The auction notice is published in news paper on 18.02.2021 and after coming to the knowledge of present managing committee the appellant immediately applied for necessary documents and certified copy of impugned judgment and those are received on 05.03.2021. Therefore the delay of 5 years, months and days caused in filing the present appeal is not intentional on the part of appellant and hence same needs to be condoned, in the

interest of justice. If the delay is not condoned great prejudice will be caused to the appellant society. No loss or prejudice is caused to the respondents if the delay is condoned and matter may be heard on merits.”

7. Taking into account the conduct of the petitioner herein of withholding the events, the Cooperative Appellate Court has not considered the reasons stated to be sufficient to condone the delay and eventually dismissed the Misc. Civil Application No.5/2021 by its order dated 19/03/2021. The said order is subject matter of present petition.

8. Mr. Maheshwari, learned Counsel for the petitioner in order to justify the delay restated the grounds put forth in the application presented before Cooperative Appellate Court and also attempted to rely upon the communication dated 17/04/2021 which is coming from the private auditor with an assertion that the recovery is in excess to which the respondent – Bank is otherwise not entitled.

9. Per contra, Mr. Kasat, learned Counsel for the respondent Nos.1 and 2 has supported the order rendered by the Cooperative Appellate Court by submitting that the petitioner herein has not approached this Court with clean hands since the vital events which are recorded by the Cooperative Appellate Court are not disclosed so as to justify the condonation of delay, and also submitted that even accounts are also settled pursuant to the judgment and award by the Cooperative

Court. As such, it is submitted that the issue has practically attained finality, therefore, same may not be reopened as prayed by the petitioner, more so, when petitioner has withheld material facts from this Court. Further it is submitted that, correspondence reproduced herein above has been properly appreciated and accepted by the Cooperative Appellate Court in its order. Thus, he has ultimately prayed for dismissal of the petitions.

10. Even while presenting these petitions before this Court the petitioner herein has chosen not to disclose the sequence of events those have taken place after the award by the Cooperative Court and what is reiterated is the contention as has been put forth before the Cooperative Appellate Court in paragraph Nos.3 and 4 of the application. Further sweeping plea is made that after the elections of general body were conducted, the petitioner herein (newly elected office bearer) has taken over the rein and as such decided to present these petitions.

11. Having considered the rival contentions put forth by the litigating sides, and upon perusing the order rendered by the Cooperative Court it appears that although the petitioner was served with a notice of proceedings before the Cooperative Court in Dispute No.79/2010, however, the petitioner herein has chosen not to participate in the said proceedings. Having suffered the judgment and award dated 17/02/2015, the petitioner was before the respondent

No.1- Bank which is evident from the list of events, those are stated herein below.

Barring the contentions in paragraph Nos.3 and 4 of the application, the petitioner herein has chosen not to disclose the sequence of events those have occurred after the judgment and award was rendered by the Cooperative Court. The sequence of events are reproduced as under :-

“ (b) (i) Loan Demand Notice by Respondent No.1 to the applicant u/r 107 (3); 103 (11) and 98 of the Maharashtra Co-operative Societies Act, 1960; (M.C.S. Act) dated 10.06.2016.

(ii) Seizure – Distress of Properties attached by Respondent No.1 u/r 107 (5) of the M.C.S. Act dated 29.06.2016.

(iii) Custody Receipt of the Attached Properties u/r 107 (5) (b) of the M.C.S. Act; dated 29/06/2016;

(iv) Order for Proposed Auction Sale of Attached Properties; by Respondent No.1 u/r 107 (10) of the M.C.S. Act dated 29.06.2016;

(v) Proposed Sale Notice of Attached Properties by Respondent No.1 u/r 107 (11) (d) of the M.C.S. Act, dated 29.06.2016 ;(from document No.1 to 14).

(vi) Letter by the applicant dated 30.10.2017; to the Respondent No.1 admitting the unpaid arrears of loan – interest and passing of the Impugned Judgment & Award and undertaking to pay Rs.10,000,00/- Lakh (Rs.Ten lakhs only) along with its Resolution No.03 dated 20.10.2017; for sale of Attached Properties and applying the proceeds thereof for repayment of the loan dues.

(vii) Letter by the applicant dated 08.07.2019; to the Respondent No.1 admitting the unpaid arrears of loan – interest and passing of the Impugned Judgment & Award and undertaking to pay the dues their under and request for sale of Attached Properties and applying the proceed thereof for repayment of the loan dues.

(viii) Demand Notice by the Respondent No.1 dated 30.04.2016.

(ix) Order of the Divisional Joint Registrar, Cooperative Societies, Amravati dated 09.07.2020; u/s 156 (1) r/w r 107; authorizing the Officers therein to be the Special Recovery and Sales Officer for the period 01.04.2020 to 31.03.2021 including Respondent No.1; B.S. Khande, Spl. Recovery Officer.

(x) Letter dated 17.02.2021; by the Amravati District Central Co-operative Bank, Amravati; to Respondent No.1 B.S. Khande, Spl. Recovery Officer.

(xi) Notice dated 18.02.2021; u/s 156(1) r/w r 107; for auction of Attached Properties on 20.03.2021; along with terms and conditions of auction;

(xii) Public Notice dated 18.02.2021; u/s 156 (1) r/w r 107; in “Deshonnati” for auction of Attached Properties; on 20.03.2021.”

12. Thus, the aforesaid vital events which unequivocally indicate and establish that the petitioner was aware of the order rendered by the Cooperative Court, still no explanation whatsoever is offered rather a plea is put forth before the Cooperative Appellate Court vis-a-vis before this Court that it is only after the elections in the year 2021 the petitioner herein has decided to raise challenge to the order rendered by the Cooperative Court. Even the petitions are totally silent

and no reference is consciously made to disclose any event recorded herein above.

13. At this juncture, it would be appropriate to note that the party who prefers not to disclose the complete facts, those may be in favour or against such litigant would be disentitled to claim any relief much less an equitable relief. A support can be drawn from the observations made by the Hon'ble Apex Court in ***K.D. Sharma Vs. Steel Authority of India Limited and others (2008) 12 SCC 481***, more particularly paragraph Nos.36, 38 and 39, which are reproduced as under :-

"36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating 'We will not listen to your application because of what you have done'. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play 'hide and seek' or to 'pick and choose' the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The

very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the court knows law but not facts".

39. If the primary object as highlighted in Kensington Income Tax Commissioners is kept in mind, an applicant who does not come with candid facts and 'clean breast' cannot hold a writ of the court with 'soiled hands'. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

It becomes obligatory for this Court while exercising supervisory jurisdiction, not to overlook the conduct of party preferring not to disclose the entire sequence of events. Further observation is made that if party chooses not to disclose the entire facts withholding vital facts, leads to suppression and eventual fraud. Therefore, "we will not listen to your application because of what you have done". Admittedly, the petitioner herein has chosen not to disclose the events

which are significant and sufficiently satisfy the fact that the petitioner herein was fully aware that award is rendered by the Cooperative Court on 17/02/2015 and thereafter continuously requesting the respondent Nos.1 and 2 in relations to the award rendered by the Cooperative Court.

14. As such, having chosen not to disclose the events indicates that the petitioner was having knowledge of the award rendered by the Cooperative Court, still ignorance is claimed, while presenting application vis-a-vis present petitions with a plea of sweeping statements, seeking condonation of delay, which is rather inordinate and unexplained. This deserves no consideration on the solitary ground of suppression of material facts. Equally attempt to place reliance on the communication from private auditor also does not support the case for the reason of lack of authenticity and particularly of the year 2021. Resultantly, no error could be noted in order under challenge.

15. In light of the peculiar facts and circumstances mentioned herein above, the writ petitions are dismissed. Rule stands discharged. No order as to costs.

(SACHIN S. DESHMUKH, J.)