

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

WRIT PETITION NO. 5245 OF 2009

Narayan Dhondiba Bhondve .. Petitioner

Versus

Dnyanoba S/o Laxman Dinkar
and others .. Respondents

Shri P. S. Dighe, Advocate h/f Shri R. L. Kute, Advocate for the
Petitioner.

Shri S. V. Tungar, Advocate for the Respondent No. 1.

Shri N. P. Bangar, Advocate for the Respondent No. 2.

Shri R. P. Adgaonkar, Advocate for Respondent Nos. 3 to 5.

Shri P. N. Mule, A.G.P. for the Respondent No. 6.

**CORAM : S. V. GANGAPURWALA AND
A. I. S. CHEEMA, JJ.**

DATE : 28TH APRIL, 2015.

PER COURT :-

. Mr. Dighe, the learned counsel for the petitioner submits that, the Deputy Registrar Co-operative Societies did not follow the procedure laid down under Rule 86 of the Maharashtra Co-operative Societies Rules (for short "M.C.S. Rules"). Thereby whole proceedings are vitiated. The learned counsel submits that, the petitioner at no material point of time was served with the notice of U/Sec. 101 of the M. C. S. Act. The learned counsel further submits that, as the procedure has not been followed, the

recovery certificate issued cannot be sustained. The provisions of Rules 86 of the M. C. S. Rules are mandatory in nature. The learned counsel relies on the judgment of the Division Bench of this Court in a case of **Sundeep Polymers Pvt. Ltd. and others Vs. State of Maharashtra and others** reported in **2010 (7) Mh.L.J. 538**.

2. Mr. Adgaonkar, the learned counsel for the respondent Nos. 3 to 5, the learned A. G. P. for the respondent No. 6 submit that, the petitioner was issued with the notice of proceedings U/Sec. 101 of the M. C. S. Act. The petitioner was also served with the notice. The petitioner choose to remain absent. The petitioner cannot take benefit of his own wrong.

3. Mr. Tungar, the learned counsel for the respondent No. 1 submits that, the bank has already sold the house property of the petitioner for Rs. 2,50,000/-. So also a plot of the petitioner for Rs. 2,30,000/- and the bus for which the loan was taken is also sold by the bank. As such, total amount Rs. 5,80,000/- is recovered by the bank from the respondent No. 1. The respondent No. 1 is now getting paltry pension amount.

4. Mr. Dighe, the learned counsel for the petitioner submits that, the petitioner is surviving on the pension amount. The learned counsel further submits that, the petitioner has even

retired from service.

5. We have considered the submissions canvassed by the learned counsel for respective parties. In normal course, we would not have entertained the writ petition, on the contrary would have relegated the petitioner U/Sec. 154 of the M. C. S. Act for filing the revision.

6. It appears that, notice was issued to the petitioner, however, there is no proof of the same having been served. We are not entering into the disputed questions of fact in the present petition considering the fact that the petitioner could not appear in the matter and could not put forth his defence, we are exercising our jurisdiction. However, the petitioner is claiming that the guarantee agreement which has been signed by the petitioner is for some other loan which was never sanctioned. The said disputed question would be required to be gone into by the Deputy Registrar. The petitioner is required to deposit the amount with the bank to show his bonafides.

7. In the light of the above, we pass following order.

8. The recovery certificate issued as against the petitioner to the extent of petitioner is quashed and set aside on condition that the petitioner deposits an amount of Rs. 1,50,000/- with the

respondent bank on or before 08.06.2015. The petitioner shall appear before the respondent No. 1 on 08.06.2015. In view of the fact that, the date is given by this Court, it would not be necessary to issue fresh notice to the petitioner. In case the amount is deposited as directed above, the petitioner shall be given an opportunity of hearing and to put forth his case. The respondent No. 1 shall decide the issue in accordance with law as mandated under Rule 86 of the M. C. S. Rules. The said proceedings be decided expeditiously and preferably within a period of six (6) months from the date of appearance of the petitioner. The deposit of amount by 08.06.2015 is condition precedent.

9. In case the amount is deposited by 08.06.2015, the same would be subject to the out come of the decision in the proceedings U/Sec. 101 of the M. C. S. Act. The writ petition is disposed of. No costs.

[A. I. S. CHEEMA, J.]

[S. V. GANGAPURWALA, J.]

bsb/April 15