

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**APPELLATE SIDE CIVIL JURISDICTION****WRIT PETITION NO. 2183 OF 2014**

Balasaheb Dhondiram Nikam,
Age 69, Occupation- Pensioner,
R/A D-22, Pratik Duplex, Gendamal,
Shahupuri, Satara Dist. Satara

....Petitioner.

Vs.

- 1 The Joint Registrar,
Co-operative Societies,
Kolhapur
- 2 The Asst. Registrar,
Co-operative Societies, Satara,
Ajinkya Colony Satara.
- 3 Maratha Co-operative Society
Ltd., Satara, Branch Satara 506,
Sadar Bazaar Satara,
Dist. Satara.
- 4 Jagannath Dnyanu Pawar,
Age Adult, Occu- Business,
R/A Dhawadashi, Tal. Satara,
Dist. Satara.
- 5 Ashok Bapurao Kale,
Age Adult, Occu. Business,
R/A 34B, Shiva Nagar,
More Colony, Venkatpura,
Satara.

....Respondents.

Mr. Ajit J. Kenjale a/w Mr. Rajesh Dharap for the Petitioner.
Mr. S.D. Rayrikar, AGP for Respondent Nos. 1 and 2.

CORAM:- ANOOP V. MOHTA, J.
DATE :- 13 FEBRUARY 2015.

ORAL JUDGMENT:-

Rule, rule made returnable forthwith.

2 Heard the learned counsel appearing for the Petitioner, as well as, the learned AGP for Respondent Nos. 1 and 2. Though served, none appeared for Respondent Nos. 3 to 5.

3 The learned counsel appearing for the Petitioner has pointed out the provisions specifically Rule 86-F (Chapter VIII-A) of the Maharashtra Co-operative Societies Rules, 1961 (for short, the MCS Rules), which is reproduced as under:-

***“86-F. Judgments, Order and Certificate:-** After hearing the arguments of the parties, the Registrar shall issue a reasoned judgment and pass an order for the grant of the rejection of the application. The Registrar, thereafter, shall issue a Certificate in Form “V”. The judgment and the certificate shall bear his seal, signature and date.”*

and further submission is placed, by referring to the basic notice issued under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short, the MCS Act”) for recovery of the amount due

dated 25 July 2011, in which there are no reasons whatsoever mentioned which is required in view of the Rules so referred. I am inclined to accept the submission, as in pursuance to the Rules, it is necessary for the Assistant Registrar and/or other Officers to give reasons, after giving opportunity to the borrowers and/or guarantors, before passing such order of recovery, as done in the present case. All these basic elements are missing in the basic notice. The Revisional Authority therefore, ought to have considered the submissions so made, but without assigning any reasons and by overlooking the written arguments filed by the Petitioner in Revision Application under Section 154 of the MCS Act, dismissed/rejected the same, solely on the ground that *“The applicant has admitted the loan”* and further that technical grounds were raised. I am inclined to observe that the authorities concerned, are under obligation to deal and decide the issues by reasoned order, that is the requirement of law, in view of clear provisions, so recorded before issuing any recovery certificate.

4 In the present facts and circumstances, the reasoned order is missing and there is a breach of principle of natural justice at the time of issuing of certificate under Section 101 of the MCS Act. The

Authority cannot substitute and/or add the reasons in Appeal and/or Revision. In the present case, even those reasons are missing and therefore, the case is made out to interfere with the order, as well as, the recovery certificate so issued.

5 The learned counsel appearing for the Petitioner strongly relied upon the Judgment of the Division Bench of this Court Sundeep Polymers Pvt. Ltd. & Ors. Vs. State of Maharashtra & Ors.¹, whereby this Court, as the recovery certificate was issued without following due procedure and as the principles of natural justice were violated, interfered with the recovery certificate and directed the concerned officer to reconsider the same and to conduct de-novo inquiry as per the Rules.

6 In the result, the following order.

ORDER

- a) Impugned order dated 26 December 2013 is quashed and set aside. The recovery certificate dated 25 July 2011, is also quashed and set aside.

1 2010(6) All MR 550

- b) However, Respondent No.2 is at liberty to issue show cause notice and by giving all opportunity in accordance with law, pass fresh order.
- c) By keeping all points open, the Writ Petition is allowed.
- d) Rule made absolute, accordingly.
- e) There shall be no order as to costs.

(ANOOP V. MOHTA, J.)