

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**APPELLATE SIDE CIVIL JURISDICTION****WRIT PETITION NO. 4516 OF 2014**

Atul Dnyaneshwar Kharade

....Petitioner.

Vs.

Adarsh Nagari Sahakari Patsanstha Ltd. & Ors.

....Respondents.

Mr. Vivek V. Salunke for the Petitioner.

Mr. S.A. Ghaisas i/by Mr. A.M. Joshi for Respondent No.1.

Mr. S.D. Rayrikar, AGP for Respondent No.4.

CORAM:- ANOOP V. MOHTA, J.

DATE :- 17 FEBRUARY 2015.

P.C:-

Rule, made returnable forthwith.

Heard finally by consent of the parties.

2 The Petitioner-borrower and guarantors in the proceedings initiated under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short, the MCS Act) by Respondent No.1 Society, filed an Application for the inspection and production of documents on 24 February 2014, prior to filing of the Written Statement. Respondent No.4-Assistant Registrar, on the same date directed the Society to supply documents and the matter was adjourned to 10 March 2014. However, on 10 March 2014, though there is no power, the earlier

order passed by the Authority was revoked indirectly and rejected the Petitioner's Application stating it to be not relevant for filing Written Statement.

3 The learned counsel appearing for the Petitioner makes statement that the Written Statement is filed thereafter. However, in view of above observations, and the rejection of Application so referred above, the case of Petitioner for inspection/production of documents, though referred in the Application and/or material placed on record in support of the same, now would not be inspected/produced though the Application was granted initially by order dated 10 March 2014, as it is rejected again.

4 Rule 86-D, production and inspection of the documents deals with the situation like this, which is reproduced as under:-

“86-D. Production and inspection of documents.-

(1) The parties shall file the documents referred to in the pleadings at the time of filing application and statement of defence, as the case may be. If either party satisfies the Registrar that any document is relevant and the same is in the custody of the opposite party, the Registrar may, by an order in writing, direct such party to produce such document on the next day of hearing. However, no such application shall be entertained from the opponent

before filing his written statement in defence.

(2) If the party so ordered, fails to produce such documents on the next date of hearing, the Registrar may draw adverse inference against such party and hearing of the original application shall not be postponed till filing of documents or for the reasons of such non-compliance of the order.

(3) If the Registrar is satisfied that the documents required to be produced, cannot be brought before the Registrar for sufficient reasons like its volume or otherwise, the Registrar may allow the opposite party to take inspection of the documents within seven days from the date of order of such inspection.

(4) If the Registrar is satisfied that the opponent had no access to the documents earlier and the filing of additional statement is necessary he may allow the filing of such additional statement. In no other case, such additional statement shall be allowed to be filed.”

5 The production and inspection of the documents at the instance of Opponent, after filing of Written Statement in defence, is an important facet to give equal opportunity to all the parties. If Application is filed and those documents are necessary for the adjudication for the issue so raised, there is no reason that such opportunity should not be granted to the Opponent and/or by one who asked for inspection of the documents. This intent is very clear

from clause (2) itself that, if the party so ordered to produce and/or permit to inspect the documents, failed to do so, the Registrar may take adverse inference against such party. This is not the case where any sufficient and/or special reasons made out by the opposite party to not to give inspection and/or produce the documents. The statement is made by the learned counsel appearing for the Petitioner that those documents are read and referred in the Application so filed by the Society and therefore, it is necessary for appropriate defence and even for proper adjudication for the issue, so raised. Therefore, taking overall view of the matter, I am inclined to dispose of the present Writ Petition by permitting the Petitioner to file fresh Application for inspection and production of documents, within two weeks from today. Respondent No.4 to consider the same in accordance with law, as early as possible, preferably within four weeks thereafter.

6 Resultantly, the following order:-

ORDER

- a) Order dated 10 March 2014 is quashed and set aside.

- b) The Petitioner to file a fresh Application for inspection and the production of the documents within two weeks.
- c) Respondent No.4-Assistant Registrar, to consider the said Application, in accordance with law, by giving equal opportunity to both the parties and dispose of as early as possibly, preferably within 4 weeks thereafter.
- d) By keeping all points open, Writ Petition is allowed.
- e) Rule made absolute, accordingly.
- f) There shall be no order as to costs.

(ANOOP V. MOHTA, J.)