

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 5486 OF 2013****Bhima Sahakari Sakhar Karkhana Ltd.****....Petitioner.****Vs.****Shri Sudhakar Ramchandra
Paricharak & Ors.****....Respondents.**

Mr. Amit Borkar a/w Mr. H.V. Shingnapurkar for the Petitioner.
Mr. S.S. Kanetkar for Respondent No.1.
Mr. Mayuresh S. Lagu for Respondent Nos. 2 to 6.
Ms. P.S. Cardoz, AGP for Respondent No.9.

CORAM:- ANOOP V. MOHTA, J.
DATE :- 30 JANUARY 2015.

P.C:-

Heard finally by consent of the parties.

2 The Petitioner has challenged impugned order dated 29 April 2013 passed by Respondent No.9 whereby, allowing the Appeal filed by the erstwhile Managing Committee, against whom the Authorized Officer passed order under Section 88 of the Maharashtra Co-operative Societies Act-1960 (for short, “the Act”) and thereby remanded the matter back for re-consideration by setting aside the

order, on merits also.

3 The learned counsel appearing for the Petitioner has pointed out that no opportunity was given before passing the impugned order, though the reference was made that the Society failed to appear and did not represent the case. The fact that the Society needs to file Application for joining parties in the proceeding, as Respondent No.2 in the above matter, shows that initially the Society was not made party, though the basic complaint/inquiry was based upon the complaint, as well as, the material placed before the Society against the erstwhile Management Committee.

4 The Intervention Application was filed on 16 April 2013. The same was allowed. However, without communicating and/or intimating the next date of hearing, the matter was heard on 26 April 2013. The order is dated 29 April 2013. Admittedly, the Petitioner was not heard in any of the days.

5 The reasons so provided by the Respondents for setting aside the impugned order is based upon the conclusion drawn by the

Authorities and without giving the opportunity, which in given facts and circumstances, would have thrown light and would not have supported the impugned reasoned order so passed, which was based upon the material supplied by them. This aspect of not giving an opportunity to the Petitioner, in my view, is relevant factor to interfere with such order so passed.

6 The learned counsel appearing for the Respondent however, submitted that ultimately the impugned order is nothing but the remand order and therefore, no prejudice would be caused if the order retained and remanded to the first Appellate Authority. This representation, in my view, in the present facts and circumstances and for the above reasons, is unacceptable as in the given case if an opportunity was given, the Petitioner would be in a position to justify and to support the reasoned order so passed by the Appellate Authority in question.

7 The order of remand back to First Authority means re-inquiry and re-hearing and that will definitely cause further delay in the matter. Therefore, considering the scope and purpose of Section

88 of the Act and the above noted facts, I am inclined to set aside the impugned order with observation that the Appellate Revisional Authority to reconsider the case afresh after giving opportunity to all the parties, including the Petitioner, as early as possible, preferably within 12 weeks from the receipt of copy of this order. However, it is made clear that the rival contentions raised by the parties, are kept open.

8 The Writ Petition is accordingly disposed of in the above terms, with no order as to costs.

(ANOOP V. MOHTA, J.)