

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.4645/2012

- 1) Dr.Vaishali Pandharinath Nerkar,
Age: 36 years, Occ:Medical
Practitioner, Proprietress of M/s
Krishna Hospital,R/o: Arya Niwas,
Opposite SBI Colony,Behind Bus Stand,
Amalner, District Jalgaon.
- 2) Mrs.Pushpa Pandharinath Wani,
Age: 67 years, Occ: Housewife,
R/o Arya Niwas, Opposite SBI Colony,
Behind Bus Stand, Amalner,
District Jalgaon.

...Petitioners..

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Co-operation Department,
Mantralaya, Mumbai 400 032.
- 2) The Deputy Registrar,
Co-operative Societies (Parseva),
Jalgaon Zilla Urban Co-operative Banks
Association, Jalgaon.
- 3) Dombivali Nagari Sahakari Bank Ltd.
(Schedule Bank),147/148, Shri
Laxminarayan Plaza, Ground Floor, Navi
Peth, (Opp: Joshi Sports)
Jalgaon, through its Branch Manager.
- 4) Special Recovery & Store Officer,
C/o Dombivali Nagari Sahakari Bank Ltd.
Guruprasad, 1st floor, Behind
Chhatrapati Shivaji Maharaj Statue,
Manpada road, Dombivali (East)-421201.

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- 5) Shri.Arvind Murlidhar Pate,
Age: Major, Occ.Business,R/o 2683/2684,
Bajar Peth,Amalner, District Jalgaon.
- 6) Mrs.Vimal Madhav Wani, Age: Major,
Occ: Household,R/o Dwarka Niwas, Behind
G.S.High School, Amalner,
District Jalgaon.
- 7) Pandharinath Krushna Wani,
Age: Major, Occ: Business,
R/o: Arya Niwas, Opposite SBI Colony,
Behind Bus Stand, Amalner,
District Jalgaon.
- 8) Santosh Gurunath Kulkarni,
Age: Major, Occ.:Business,
R/o: Arya Niwas, Opposite SBI Colony,
Behind Bus Stand, Amalner,
District Jalgaon.

...Respondents...

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Shri S.R. Deshpande, Advocate for petitioners.

Shri S.K. Tambe, AGP for respondent no.1.

Shri S.A. Pradhan, Advocate for respondent nos.3 & 4.

Respondent nos.2,5,6 and 7 served.

Respondent no.8 is served through publication.

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CORAM: T.V. NALAWADE, J.

DATE: 14.09.2016

ORAL JUDGMENT :

1] The petition is filed to challenge the order made by the Deputy Registrar of Cooperative Societies, Jalgaon, in Application No.536/2011-12, which was filed

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by respondent – cooperative society. The certificate is issued u/s 101 of the Maharashtra Cooperative Societies Act by the authority. This order is directly challenged by filing present writ petition.

2] Both the sides are heard.

3] The copy of application, which was given before the Deputy Registrar, Cooperative Societies, that on three occasions, loan was disbursed in favour of present petitioners, who are doctors, for purchasing the machinery and appliances for their hospitals. As the amount was disbursed and sanctioned on different occasions, interest rate was different on these occasions. As default was committed in making the repayment of the loan and installments were not paid, a resolution was made by the Director Board of the society and on that basis, proceeding was started before the Deputy Registrar. The total amount of Rs.84,20,478=50 was shown as due from the present petitioners.

4] The application was filed before the Deputy Registrar on 5.1.2012 and notice was issued immediately, which was made returnable on 19.1.2012. Notices were served on the present petitioners, but they did not

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appear before the Deputy Registrar. The matter was adjourned to 27.1.2012 and the Deputy Registrar had given direction to issue one more notice. Such notices were issued, but on adjourned date i.e. 27.1.2012 also, nobody turned up for the petitioners and so on that date, *ex-parte* order was made and the matter was decided. Subsequently, the certificate u/s 101 of the Maharashtra Cooperative Societies Act was issued.

5] Under the aforesaid Act, there is provision to challenge such order by filing revision u/s 154 of the Act before the appellate authority. Instead of taking such a step, present proceedings came to be filed in the year 2012. It appears that this Court granted stay subject to deposit of amount of Rs.5,00,000/- by the petitioners and the matter remained pending till this date.

6] Learned counsel for the petitioners submitted that there is jurisdiction to this Court as proper procedure was not followed by the Deputy Registrar. He took this Court through the provision of Rule 86(c) and submitted that after passing of the *ex-parte* order, it was necessary for the cooperative society to prove the

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claim and the matter could not have been decided on the same date. He submitted that as such procedure was not followed, this Court can invoke writ jurisdiction. In support of this contention, he placed reliance on the observations made in [1] *Sundeeep Polymers Pvt.Ltd. & others v. State of Maharashtra & others* reported at **2010(6) ALL MR 550**; [2] *Pradeep Sambhojirao Aherrao v. Deputy Registrar, Cooperative Societies, Jalgaon & others* reported at **2013 (6) LJSOFT 101** and [3] *Central Bank of India v. Ravindra & others* reported at **AIR 2001 Supreme Court 3095**. The first two cases are on the possibility of entertaining writ petition when the procedure laid down by the Maharashtra Cooperative Societies Act and the Rules framed thereunder is not followed. Facts and circumstances of each and every case are always different. When there is a provision that revision needs to be filed and in the revision, every kind of grievance can be addressed, it is always desirable to see that such recourse is taken by the person feeling aggrieved by the order of the authority. For coming to this Court and for invoking writ jurisdiction when the proper course is not followed, exceptional case needs to be made out. The

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contentions made in the petition and the record show that the petitioners are not disputing that the first notice issued by the Deputy Registrar was received by the petitioners. It is only their contention that alongwith the notice, copy of application filed for issuing certificate u/s 101 of the aforesaid Act was not supplied. This cannot be a ground for contending that there was no proper opportunity given to the petitioners to defend the matter. After filing appearance, the petitioners could have requested the authority to see that copy of application was supplied. However, copy of notice is on record and it shows that alongwith the notice, copy of application filed u/s 101 of the Act was also supplied. The other circumstance, which is appearing on record, shows that in the month of March, the order of attachment was made for recovery of the aforesaid amount and there was knowledge to the petitioners of this order also, but they preferred to wait till May, 2012 and then they filed the writ petition. These circumstances are sufficient to infer that they wanted to protract the things. The record of the present matter shows that they were trying to see

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that they get benefit of some scheme like one time settlement. It can be said that only to pressurize the society and to get some benefit and avoid making of the payment of the amount due, such tactics are played by the petitioners. The extraordinary jurisdiction cannot be exercised in favour of such persons.

7] The relevant facts are quoted and they show that on 19.1.2012 itself, *ex-parte* order could have been made and it can be presumed that the matter was to proceed *ex-parte* on 19.1.2012 itself. By way of precaution, one more notice was issued, but that does not take away the circumstance that on 19.1.2012, the petitioners did not appear before the authority and so on that date, the matter was to proceed *ex-parte*. There is no force in the other contention that the Deputy Registrar ought to have asked the society to prove the claim. It is upto the Deputy Registrar to consider as to what record is necessary and sufficient for making the order. The order made by the Deputy Registrar is reasoned order and it shows that entire record in respect of the transactions mentioned in the application was made available to him. In view of these circumstances, this Court holds that on

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merits also, there is no case in favour of the petitioners.

8] In the result, the writ petition stands dismissed. There shall be no order as to costs. In view of dismissal of writ petition itself, Civil Application No.127/2013 does not survive and disposed of as such.

(T.V. NALWADE, J.)