

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 12094 OF 2017

Mr. Rajesh M. Shekatkar	..	Petitioner.
v/s.		
Dombivali Nagari Sahakari Bank Ltd.,		
& Others	..	Respondents.

Mr. Shivaji Masal, for the Petitioner.
Mr. Aushtosh Gole, for Respondent Nos. 1 & 2.
Mr. S. D.Rayrikar, AGP for Respondent Nos.3 & 4.

CORAM: M.S.SANKLECHA, J.
DATE : 7th NOVEMBER, 2017.

P.C:-

This Petition under Article 227 of the Constitution of India, challenges an order dated 20th July, 2017 passed by the Deputy Registrar Co-operative Societies (Respondent No.3), issuing a recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (the Act).

2 The grievance of the Petitioner is that the impugned order dated 20th July, 2017 has been passed without hearing the Petitioner. It is contended that the Petitioner was unwell with cardiac problems and, therefore, unable to attend the hearing which resulted in passing of the impugned order. Moreover, the impugned order dated 20th July, 2017 is an order without reasons and falls foul of Rule 86 (f) of the Co-operative Societies Rules, 1961 (the Rules).

3 At the very outset, Mr. Gole, learned Counsel appearing for Respondent Nos. 1 and 2 contends that this Petition should not be entertained as there is an alternative remedy of Revision is available to the Petitioner under Section 154 of the Act.

4 The Courts as a self imposed restriction, do not entertain Petitions, seeking to exercise its extra ordinary jurisdiction where an equally efficacious alternative remedy, is available. However, there is no bar in Court's entertaining a Petition in an appropriate case. In fact, the Supreme Court has held in ***Whirlpool Company v/s. Registrar of Trademarks 1998(8) SCC 1*** that the availability of an alternative remedy is not to operate as bar in the Court, exercising its writ jurisdiction in any of the following cases:-

- (a) Enforcement of fundamental rights;
- (b) Violative of Principles of natural justice; or
- (c) Proceedings without jurisdiction.

In the above view, the Petitioner's contention of breach of natural justice i.e. no personal hearing and non-speaking order has to be examined. The Petition cannot be thrown out on the ground of alternative remedy, if *prima facie*, there is substance in the challenge on the ground of beach of principles of natural justice.

5 It is the case of the Petitioner that Shri Sathe represented the Petitioner on 7th July, 2017, at the hearing before the Deputy Registrar of Co-operative Societies- (Respondent No.3). However, at that stage, Mr. Masal, states that Mr. Sathe only sought time as the Petitioner had undergone angiography on 23rd June, 2017 and had been recommended to undergo an angioplasty. Thus, the Petitioner was unable to attend the

hearing. However, the Roznama maintained by Respondent No.3 annexed to the Petition, shows that the entry made therein on 7th July, 2017, reads as under: -

*“On behalf of the applicant Bank Shri Cholke is present and advocate of the Bank Shri Pathare is present.
On behalf of the respondent Shri Sathe is present. The file is being closed for order.”*

The above entry has also been signed by Mr. Sathe. The Roznama does not indicate any such submission was made on behalf of the Petitioner. If the same had, in fact, been made, then the Petitioner's representative would have objected to the same or signed it after his submission was recorded. In any case, even thereafter, the Petitioner or his representative would have addressed a letter to Respondent No.3, pointing out the facts which took place during the course of hearing on 7th July, 2017 i.e. seeking of an adjournment. However, no such communication is found on record. The very fact that the representative signed the Roznama without have recorded the submission now being made, it is unlikely that any such submission was made during the hearing. In any case, it would require an investigation into facts, which is best done by Authorities under the Act.

6 It was also contended on behalf of the Petitioner that the impugned order is un-sustainable because it is a non-speaking order and violative of Rule 86 (f) of Rules. This for the reason that the impugned order did not consider the objections of the Petitioner. The impugned order has in fact, considered the statement/ submission made at the earlier hearing on behalf of the Petitioner. The impugned order can only address the submissions/ objections raised by the party. It is not open to

the adjudicating authority to imagine the objections of the part of the Petitioner and thereafter deal with it.

7 In the above view, no interference in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India, is warranted. However, it is clarified that in case, the Petition does file a Revision Application along with an application for condonation of delay, the Revisional Authority would proceed to consider the condonation of delay after excluding the time spent in prosecuting this Petition i.e. from 11th September, 2017 to 7th November, 2017.

8 Accordingly, **Writ Petition dismissed.**

(M.S.SANKLECHA,J.)