

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Civil Revision Application No.15/2017

Omprakash Dharmdeosingh Arya

Vs.

Municipal Shikshak Cooperative Cr.Society Ltd.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri T.G.Bansod, Advocate for applicant.

Shri A.M.Ghare, Advocate for non applicant/respondent.

CORAM : N.W.SAMBRE, J.

DATE : APRIL 03, 2017

Shri Bansod, the learned counsel for the applicant submits that pursuant to award passed under Section 98, a revision is preferred by the applicant before the State Government under Section 154 of the Maharashtra Cooperative Societies Act. According to him, the said revision is still pending and the authorities have issued a certificate against the present applicant for executing the award, pursuant to the provisions of Rule 88 and Section 98-A of the Maharashtra Cooperative Societies Act. He would then urge that the applicant was not heard before issuance of such certificate. He would then invite my attention to the provisions of Rule 83 and Section 98 of the Maharashtra Cooperative Societies Rules and the Act. In addition, he would rely upon the judgment of this Court in the matter of *Khushal s/o Narayan Mundhe Vs State of Maharashtra and others* reported in 2007(4) Mh.L.J.333.

The claim of the applicant is opposed by the learned counsel for the respondent - Municipal Shikshak Co-operative Credit Society. According to him, even if, the present applicant is ready and willing to deposit the amount as is ordered in the certificate, the Court should entertain the present applicant and examine the merits. However, the present application is moved with an intention to buy time. He would then urge that pursuant to the certificate issued under Section 98 by the Competent Authority, the execution proceedings are filed.

Considering the rival submissions, it is required to be noted that the award delivered against the present applicant for the recovery of the amount by the competent authority is further certified by the Assistant Registrar in view of power under Section 98(a) of the Maharashtra Cooperative Societies Act. While issuing such certificate, the said authority has followed the powers and procedures as contemplated. Once the said certificate is issued pursuant to the provisions of Section 98(a) of the Maharashtra Co-operative Societies Act, the same takes a shape of a decree which is executable before the competent civil Court.

In view thereof, the respondent – decree-holder has rightly initiated the execution proceedings.

The reliance placed by the learned counsel for the applicant on the judgment in the matter Khshal vs. State (supra) and to the provisions of Rule 83 of the Maharashtra Co-operative Societies Rules, is wholly misplaced as the judgment in the matter of Khushal (supra) is based upon a claim under Section 101 of the

Maharashtra Co-operative Societies Act which contemplates an opportunity to the debtor before the recovery certificate is issued. In the present case, the when the award under Section 98 was passed, the present applicant was very much put to notice.

In view thereof, in my opinion, there is no substance in the application. The impugned order cannot be termed as without jurisdiction. As such, the revision fails and it is rejected accordingly.

JUDGE

Andurkar..