

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 8022 OF 2018

M/s.Shree Maruti Lubricant & Anr. Petitioners

VERSUS

The District Deputy Registrar & Ors. Respondents

Mr.Kishor Patil for the Petitioners.

Mr.Shivaji Lanke, a/w. Mr.Vijaykumar B. Dighe for the Respondent no.2.

Mr.V.A.Madane, A.G.P. for the State – Respondent no. 1.

CORAM : R.D. DHANUKA, J.

DATE : 6th JUNE, 2018

P.C.

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 12th March,2018 passed by the learned District Deputy Registrar rejecting the application filed by the petitioners for recall of the *ex-parte* order dated 8th February, 2017 on the ground that he has no jurisdiction to review the order passed by him under section 101 of the Maharashtra Co-operative Societies Act, 1960.

2. Mr.Patil, learned counsel for the petitioners invited my attention to the postal acknowledgement annexed to the petition as well as the application made by the petitioners and the impugned order passed by the Deputy Registrar thereon. He also invited my attention to the

judgment of this court delivered on 10th February, 2012 in ***Writ Petition No. 10464 of 2011*** in case of ***Shri Albert Pistoba Bardaskar and Ors. Vs. Bhudargad Nagari Sahakari Pat Sanstha Maryadit and Ors.*** holding that the question as to whether the petitioners were duly served with the notice of the recovery proceedings before the Assistant Registrar or not is the question of fact which need not be and cannot be gone into a writ petition. The said issue has to be gone into by the Assistant Registrar himself if any application is made by the petitioner on the ground that he has not been served with the notice of recovery proceedings. It is held that such application would thus be not maintainable.

3. Learned counsel for the respondent no.2 submits that the petitioners were duly served with the recovery proceedings and thus the impugned order passed by the learned authority does not warrant any interference.

4. A perusal of the impugned order indicates that though the petitioners have made an averment in the application for recall of the order that the petitioners were not served with the recovery proceedings, the learned Assistant Registrar instead of going into the said issue, has rejected the application simplicitor on the ground that he has no jurisdiction to review his own order.

5. In my view, the impugned order passed by the learned Assistant Registrar is contrary to the principles of law laid down by this court in case of ***Shri Albert Pistoba Bardaskar and Ors.*** (supra).

6. I, therefore, pass the following order :-

(a) The impugned order dated 12th March,2018 passed by the respondent no.1 is quashed and set aside.

(b) Application dated 1st March,2018 filed by the petitioner for recall of the order dated 8th February,2017 is restored to file.

(c) The learned Deputy Registrar shall hear the said application and dispose of the same in accordance with law after hearing both the parties.

(d) It is made clear that this court has not expressed any views as to whether the petitioners were served with the papers and proceedings for the recovery or not and the said issue is kept open.

(e) The respondent no.2 also is at liberty to produce the relevant proof before the Deputy Registrar, Co-operative Society in support of their plea that the petitioners had been duly served with the recovery proceedings.

(f) The learned Deputy Registrar shall decide the issue as to whether the petitioners were duly

served with the recovery proceedings or not while considering the said application for recall of the said order dated 8th February, 2017 or not.

(g) Both the parties are directed to appear before the Deputy Registrar, Co-operative Society on 15th June, 2018 at 03.00 p.m.

(h) The learned Deputy Registrar shall dispose of the said application within two weeks from the date of hearing and shall communicate the order to both the parties immediately.

(i) Till the said application is decided by the Deputy Registrar and for a period of two weeks from the date of communication of the order that would be passed, the recovery certificate as well as the impugned order that would be passed by the Deputy Registrar shall not be implemented.

7. Writ petition is disposed of in the aforesaid terms. No order as to costs.

8. The parties as well as the authority to act on the authenticated copy of this order.

[R.D. DHANUKA, J.]