

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

WRIT PETITION (ST.) NO.11830 OF 2018

Mir Mozam Ali

... Petitioner

Vs.

The State of Maharashtra and ors.

... Respondents

Mr.Ankit Lohia with Mr. Chetan R.Shah i/by Mr.Rakesh Agrawal
for the Petitioner.

Mr.S.H. Kankal, A.G.P. for the State – Respondent Nos.1 and 2.

Mr.Harshwardhan H. Gautam-Respondent No.3 present in the
court.

CORAM : R.D.DHANUKA, J.

DATE : APRIL 23, 2018.

P.C. :

1. By this Petition filed under Article 227 of the Constitution of India the Petitioner has impugned the order dated 9th April 2018, passed by the Respondent No.2. The Respondent No. 3 had made an application under Section 146 of the Maharashtra Co-operative Societies Act, 1960 for initiating action against the Petitioner and his Advocate. The Petitioner filed an application raising an issue of maintainability of the said application filed by the Respondent No.3. On the date when the matter appeared, the Petitioner had asked for time to file rejoinder to the affidavit in reply filed by the Respondent No. 3 to the application filed by the

Petitioner raising an issue of maintainability on the Application filed by the Respondent No.3. It is the case of the Petitioner that however in the roznamam the Petitioner is shown absent by the Respondent No. 2 and has closed the application filed by the Respondent No.3 under Section 146 of Maharashtra Co-operative Societies Act, 1960 without deciding the application filed by the Petitioner raising an issue of maintainability.

2. I have heard Learned counsel Mr.Ankit Lohia for the Petitioner and learned AGP Mr.S.H. Kankal for Respondent Nos.1 and 2 and Respondent No. 3 appearing in person. Learned AGP has no objection if matter is remanded back to the Respondent No.2 for hearing of the application filed by the Petitioner raising issue of maintainability of application filed by Respondent No. 3.

3. The Respondent No.3 however submits that the Petitioner has been delaying the proceedings of the Respondent No.2 on one or other ground. In my view, the Respondent No. 2 could not have closed the hearing of application made by the Respondent No. 3 under Section 146 of Maharashtra Co-operative Societies Act, 1960 without hearing the application filed by the Petitioner, thereby raising issue of maintainability of the

application filed by Respondent No.3.

4. Impugned order dated 9th April 2018, passed by the Respondent No.2 is thus set aside. The Respondent No.2 shall hear the application filed by the Petitioner raising issue of maintainability first before deciding the application filed by the Respondent No.3. The affidavit-in-rejoinder, if any, to the reply filed by Respondent No.3 in the said application shall be filed within one week from today. It is made clear that no further extension of time would be granted to the Petitioner to file rejoinder. A copy of the rejoinder shall be served upon the Respondent No. 3 simultaneously.

5. Parties are directed to appear before the Respondent No. 2 on 6th May 2018, at 3.00 p.m.. The Respondent No.2 shall dispose of the application filed by the Petitioner as well as the Respondent No. 3 within 8 weeks from the date of hearing and shall not grant any unnecessary adjournment to any of the parties. The petition is disposed of in aforesaid terms. Parties shall co-operate with each other and with the Respondent No. 2 in disposing of the application within time prescribed.

6. Parties to act on the authenticated copy of the order.

(R.D.DHANUKA, J.)