

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 17132 OF 2018

Dr.Prashant Shyam Sonare

..... Petitioner

VERSUS

**The Deputy Registrar of
Co-operative Societies & Anr.**

..... Respondents

Ms.Amrita Manchanda, i/b. Mr.Nilesh Patil for the Petitioner.

Mr.S.H.Kankal, A.G.P. - Respondent no. 1.

Mr.Harish Pawar for the Respondent no.2.

CORAM : R.D. DHANUKA, J.

DATE : 5th JULY, 2018

P.C.

The petitioner is a guarantor in respect of the loan granted by the respondent no.2 bank to the principle borrower. It is the case of the petitioner that the order has been passed by the respondent no.1 *ex-parte* against the petitioner without issuing any notice to the petitioner. Statement is accepted.

2. In my view, since the impugned order is passed by the respondent no.1 without effecting any notice upon the petitioner, the impugned recovery order dated 6th November,2017 under section 101 of the Maharashtra Co-operative Societies Act, 1960 is quashed and set aside insofar as petitioner is concerned. It is made clear that insofar as principle borrower is concerned, such recovery certificate has attained

finality in view of the fact that the principle borrower has not challenged the said recovery certificate by filing any appropriate proceedings.

3. An application filed under section 101 of the Maharashtra Co-operative Societies Act, 1960 is restored to file before the respondent no.1. The petitioner is directed to file affidavit in reply within two weeks from today before the learned Deputy Registrar.

4. Learned counsel for the respondent no.2 states that the papers and proceedings in the said application filed by the respondent no.2 would be served upon the petitioner's advocate within one week from today.

5. Affidavit in reply shall be filed within two weeks from the date of service of the papers and proceedings and a copy thereof shall be served upon the petitioner's advocate simultaneously. The petitioner will not seek any adjournment before the learned Deputy Registrar as per the date fixed by the said authority.

6. The learned Deputy Registrar shall decide the said application under section 101 of the Maharashtra Co-operative Societies Act, 1960 insofar as the petitioner is concerned on its own merits and without being influenced by the observations made and the conclusion drawn in the said recovery certificate dated 6th November, 2017 insofar as the petitioner is concerned.

7. The amount already deducted by the respondent no.2 in execution of the recovery certificate dated 6th November,2017 will be subject to the outcome of the application under section 101 of the Maharashtra Co-operative Societies Act, 1960 against the petitioner.

8. The petitioner is directed to appear before the learned Deputy Registrar, Co-operative Societies on 2nd August,2018 at 11.00 a.m.

9. The respondent no.1 shall make an endeavour to dispose of the said application under section 101 of the Maharashtra Co-operative Societies Act, 1960 within three months from the date of first hearing.

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

11. The parties to act on the authenticated copy of this order.

[R.D. DHANUKA, J.]