

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9583 OF 2017

Dr.Pallavi S. Vaidya	...Petitioner
V/s.	
Yashwant B. Bhosale & Ors.	...Respondents

Mr.V.S. Talkute for the Petitioner.

Mr.Balwant Solunke i/b Mr.Ravindra Shinde for the Respondent No.1.

Mr.Abhijit Kadam for the Respondent No.2.

Mr.S.H. Kankal, A.G.P. for the State – Respondent No.4.

CORAM : R.D. DHANUKA, J.
DATE : 25TH JUNE, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 3rd September, 2013 and the judgment dated 16th December, 2015 passed by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur in Revision Application No.40 of 2012.

2. It is an admitted position that the Revision Application No.40 of 2012 was filed by the respondent no.1 against the auction sale notice dated 27th November, 2010 and the auction dated 30th December, 2010. The petitioner who was the successful auction

purchaser was not impleaded as a party respondent and was admittedly not served with any notice and the papers and proceedings of the said revision application. The said order passed by the learned Divisional Joint Registrar is thus in violation of the principles of natural justice and thus deserves to be set aside. It is ordered accordingly.

3. The order dated 16th December, 2015 passed by the learned Divisional Joint Registrar is accordingly quashed and set aside. The Revision Application No.40 of 2012 is restored to file. The respondent no.1 (original applicant) is directed to implead the petitioner as a party respondent in the said revision application and shall serve a copy thereof upon the petitioner within one week from the date of carrying out amendment. The amendment shall be carried out by the respondent no.1 to the said revision application within two weeks from today. It is not in dispute that even in the application for condonation of delay filed by the respondent no.1 herein, the petitioner herein was not impleaded and no notice as well as the papers and proceedings therein were served upon the petitioner. The order passed by the learned Divisional Joint Registrar in the application for condonation of delay is also accordingly set aside. The application for condonation of delay is also restored to file.

4. The respondent no.1 is also directed to implead the

petitioner as a party respondent to the said application for condonation of delay and shall serve a copy thereof upon the petitioner simultaneously within one week from the date of carrying out amendment.

5. The petitioner will have an opportunity to file affidavit in reply to the application for condonation of delay and also to the revision application, if the delay is condoned.

6. The respondent no.1 shall comply with the pre-condition of the deposit under section 154(2A) of the Maharashtra Co-operative Societies Act, if not complied with before his application for condonation of delay is entertained by the learned Divisional Joint Registrar.

7. It is made clear that this Court has not expressed any views on the issue of delay, if any, in filing the revision application and also on merits of the matter.

8. Learned Divisional Joint Registrar shall pass a fresh order after complying with the principles of natural justice and after giving an opportunity of being heard to the petitioner and the contesting respondents. Learned Divisional Joint Registrar shall pass a fresh order without being influenced by the observations made and the conclusion drawn in the impugned order dated 16th December, 2015 expeditiously and not later than four months from the date of the first

hearing.

9. The writ petition is allowed in aforesaid terms. There shall be no order as to costs.

10. All the parties as well as the Authorities to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)