

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6572 OF 2016

The Sahebrao Deshmukh Co.op.
Bank Ltd. .. Petitioner
vs.
State of Maharashtra & Ors. .. Respondents

Mr. Vishal Ghosalkar for Petitioner.
Ms M. S. Bane – AGP for State – Respondent Nos. 1 and 2.

CORAM : M. S. SONAK, J.
DATE: 24 AUGUST 2018

ORAL JUDGMENT :

1] On 15th March 2017, this Court made the following order :-

“ Heard learned Counsel for the petitioner.

2. Learned Counsel for the petitioner has filed affidavit of service. Despite service, none appears on behalf of respondents No. 3 & 4.

3. Issue fresh notice to the respondents, returnable after 4 weeks. Notice to indicate that an endeavour would be made to dispose of the Petition finally at the stage of admission. In addition to the Court's notice, the petitioner to serve respondents No. 3 & 4 by advocate's notice and file affidavit of service to that effect before the returnable date.”

2] Mr. Vishal Ghosalkar, the learned counsel for the petitioner states that private service was effected upon respondent nos. 3 to 4, however, the service has been returned with the remark 'unclaimed'. He tenders an affidavit of service, which is taken on record.

3] The registry record indicates that service has been effected upon the respondent nos. 2, 3 and 4 as per the Bailiff's report.

4] Accordingly, Rule. In view of the order dated 15th March 2017, Rule is made returnable forthwith.

5] The challenge in this petition is to the order dated 4th December 2014 by which the Deputy Registrar of Cooperative Societies (respondent no. 2) has declined to entertain the proceedings instituted by the petitioner under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (said Act) on the ground that the petitioner has already invoked remedies under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

6] From the perusal of the impugned order dated 4th December, 2014, it is clear that the Deputy Registrar has made the same almost mechanically. The entire order, comprises of three lines, fails to consider the provisions of the said Act as well as SARFAESI Act. The order fails to take into consideration the ruling of the Hon'ble Supreme Court in the case of ***M. D. Frozen Food Exports Pvt. vs. Hero Fincorp Ltd. in Civil Appeal No. 15147 of 2017***

dated 21st September 2017 which has discussed the scope of Sections 35 and 37 of the SARFAESI Act.

7] The impugned order makes reference to the decision of this Court in writ petition no. 4088 of 2014 which was disposed of on 22nd July 2014. The said decision had merely directed the DRAT to decide the appeal instituted by the petitioners in the said petition on its own merits and without being influenced by the decision of this Court. There is nothing in this Court's decision dated 22nd July 2014, on basis of which, it can be said that the jurisdiction of the Authorities under the said Act can be said to be ousted.

8] Since, there is virtually no discussion in the impugned order, it is only appropriate that the impugned order is set aside and the matter is remanded to the Deputy Registrar for fresh decision on its own merits and in accordance with law. The Deputy Registrar to decide the matter after afford of opportunity of hearing to the petitioner as well as the respondent nos. 3 and 4.

9] The impugned order is accordingly set aside and the matter is remanded to the Deputy Registrar for fresh decision in accordance with law and on its own merits.

10] All contentions of all parties are left open.

11] Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

12] The petitioner to appear before the Deputy Registrar on 10th September 2018 and produce authenticated copy of this order.

13] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka