

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7814 OF 2015

Jayesh Badani

..... Petitioner

VERSUS

The State of Maharashtra & Ors.

..... Respondents

Mr.K.V.Tembe, i/b. Mr.D.S.Mahamuni for the Petitioner.

Mr.S.D.Rayrikar, A.G.P. for the Respondent nos. 1 and 2.

Mr.Onkar V.Warange for the Respondent nos. 3 and 4.

CORAM : S.S. SHINDE, J.

DATE : 10th APRIL, 2019

P.C.

Rule. Rule returnable forthwith. With consent of parties heard finally.

2. Learned counsel appearing for the petitioner, at the out set has tendered across the bar the compilation of documents i.e. certified copy of the Roznama maintained by the respondent no.2 in the proceeding of Revision Application No. 398 of 2014. The same is taken on record and marked 'X' for identification.

3. This petition takes an exception to the judgment and order passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai dated 9th March,2015 in Revision Application No. 398 of 2014.

4. Learned counsel appearing for the petitioner submits that respondent no.2 heard the stay application which was filed in the aforesaid revision on 24th November,2014, as it is apparent from the perusal of the Roznama. Learned counsel invites attention of this court to the copy of the reply filed by the respondent bank, and submits that even the respondent bank filed the reply only to the stay application. The sum and substance of the argument of the learned counsel appearing for the petitioner is that the revision was not fixed for final hearing, and the revisional authority was supposed to pronounce the order, on the stay application which was filed by the petitioner before the respondent no.2 in pending revision. Therefore learned counsel submits that the impugned order may be quashed and set aside.

5. On the other hand, learned A.G.P. appearing for the State submits that inspite of sending specific letter to the office of the concerned authority, the copy of the original Roznama is not sent to the office of the Government Pleader so as to produce the same before this court.

6. Learned counsel appearing for the respondent nos. 3 and 4 submits that the reply filed on behalf of the respondent bank before the respondent no.2 was in stay application, which was filed by the petitioner.

7. Upon hearing learned counsel appearing for the parties and perusal of the copy of the Roznama, it is abundantly clear that,

respondent no.2, on 24th November,2014 heard only stay application and the same was closed for orders. It appears that on 27th November,2014, the revision application was taken on board at the request of the respondent bank and again the same was closed for orders. It is not clear, whether the notice of such listing of revision on 27th November,2014 was given to the petitioner or not? If the respondent no.2 wanted to fix the matter on 27th November,2014 for hearing, in that case, it was possible for the respondent no.2 to mention the said date in its order dated 24th November,2014.

8. Upon careful perusal of the order impugned in this petition, it clearly reveals that instead of pronouncing the order on stay application, respondent no.2 dismissed the revision application filed by the petitioner. In that view of the matter and since there was no notice for final hearing of the revision or the said revision was never fixed for final hearing, respondent no.2 authority was not justified in rejecting the revision application finally on merits.

9. For the reasons aforesaid, the impugned order dated 9th March, 2015 passed in Revision Application No. 398 of 2014 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai is quashed and set aside.

10. The Revision Application No. 398 of 2014 is restored to its original file for consideration afresh by the respondent no.2.

11. The parties to appear before the respondent no.2 on 18th April,2019 at 11.00 a.m.

12. If it is possible for the respondent no.2 to hear the revision on merits, respondent no.2 can proceed to hear the revision on merits or shall hear the parties on stay application and pronounce the order forthwith without delay.

13. All contentions on merits raised in the revision application by the petitioner and also by the respondents are kept open to be agitated before the said authority.

14. The parties are directed to maintain *status quo* in respect of the the subject property as available on 24th November,2014, for eight weeks from the date of uploading this order on High Court website.

15. Rule is made absolute in the above terms. Writ petition stands disposed of accordingly.

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

17. Needless to observe that the respondent no.2 shall hear the revision expeditiously and decide the same within two months from the date of appearance i.e. 18th April,2019.

[S.S.SHINDE, J.]