

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

WRIT PETITION NO. 10119 OF 2018

Sitaram Govind Pandit

...Petitioner.

vs.

Minister for Co-operation,
Govt. of Maharashtra and ors.

...Respondents.

Mr. G.S.Godbole with Ms. Ketki Gadkari for the Petitioner.
Ms.Srivastav, AGP for Respondent Nos. 1 and 4.
Mr. Milind Prabhune i/by S.S. Aradhya for Respondent No.3.

CORAM : C.V. BHADANG, J.
DATED : 9TH DECEMBER, 2019

PC:

1. Heard the learned counsel for the petitioner. The learned counsel for the respective respondents waives service.
2. Rule.
3. Rule made returnable forthwith by consent of the parties.
4. The challenge in this petition is to the order dated 25.2.2018 passed by the first respondent in Appeal No.543 of 2016. By the impugned order the Minister for State (Co-operation) while dismissing an appeal filed by the petitioner purportedly under Section 152 of the Maharashtra Co-operative Societies Act, 1960 ("Act" in short) has thereby confirmed the Recovery Certificate dated 25.5.2016 granted by the Registrar of Co-operative Societies under Section 98 of the Co-op. Societies Act.

5. Mr. Godbole, the learned Senior Counsel for the petitioner in all fairness submits that, the order dated 25.5.2016 shows that the report given by respondent No.1 under Section 88 of the Act on 2.5.2016 has been approved by the Commissioner for Co-operation and Registrar, Maharashtra State and therefore, the impugned order would fall under Section 152(1)(a) of the Act. He therefore submits that the ground which was taken by virtue of amendment that the impugned order dated 2.5.2016 is appellable before the Divisional Joint Registrar is given up.

6. It is submitted that the main ground of challenge is that the Minister of State had not heard the petitioner although it is recorded in the impugned order that the appeal was heard on 3.10.2017, 16.10.2017, 31.10.2017, 7.11.2017 and 4.1.2018. The learned Senior Counsel has pointed out the copies of the Roznamas which are at Page 164 to 169 of the compilation in order to point out that on none of these dates the petitioner and his counsel were present before the Appellate Authority. He therefore, submits that the appeal may be remitted back to the Appellate Authority for deciding it afresh after hearing the petitioner.

7. The learned AGP for the Government of Maharashtra on the basis of the Roznama as referred to above does not dispute that the petitioner was not present on the said dates. She therefore

submits that this court may pass appropriate order as may be deemed just and necessary.

8. The learned counsel for the respondent No.3 has supported the impugned order.

9. I have considered the submissions made. Although the petitioner cannot take advantage of his own absence in the appeal, but the record discloses that the observation by the Appellate authority that appeal was heard on the aforesaid dates is clearly against the record. In such circumstances, in my considered view, it would be appropriate that the Appellate Authority decides the appeal afresh after hearing the petitioner on its own merits and in accordance with law.

10. In the result, petition is partly allowed. The impugned Judgment and order dated 25.2.2018 is hereby set aside. Appeal No.543 of 2016 is restored back to the file of Appellate Authority for deciding it afresh on its own merits and in accordance with law after hearing the parties. Rival contentions of the parties are left open.

11. Parties to appear before the Appellate Authority on 15.1.2020 at 11.00 a.m.

In the circumstances, there shall be no order as to costs.

(C.V. BHADANG, J.)