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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 6824 OF 2019**

M/s. Sohum Expo Display Pvt. Ltd.
through Directors and others

.....Petitioners

V/s.

The C.K.P. Co-Op. Bank Ltd. and others

.....Respondents

Mr. V. S. Kapse i/b Mr. Harish Pawar for the Petitioner
Mr. B. V. Samant for respondent nos. 1 & 2
Mr. S. H. Kankal AGP for the State

CORAM : NITIN W. SAMBRE, J.

DATE : JUNE 18, 2019.

P.C.

Heard learned respective counsel for the parties.

2 The petitioner availed cash credit facility from respondent no. 1-bank after mortgaging certain immovable property. Since the default in repayment was made, respondent-Co-operative bank initiated proceedings under Section 101 of The Maharashtra Co-operative Societies Act, 1960 (Hereinafter referred to as 'the Act' for

sake of brevity) for issuance of recovery certificate. The said recovery certificate came to be issued on 20/05/2014 which is subject matter of challenge before Divisional Joint Registrar pursuant to provisions of Section 154 of the Act.

3 Initially in the Revision, while dealing with an application for condonation of delay and stay, *prima facie* observations were recorded by the said authority that against recovery certificate of Rs. 1,39,79,616/- amount of Rs. 1,60,40,316/- appears to be deposited with respondent no. 1-bank and as such, recorded compliance under sub-section 2A of Section 154 of the Act.

4 Revision thereafter was adjourned from time to time. However, lastly, from the Rozanama as is produced on record it can be noticed that same was fixed on 04/07/2019 vide order dated 18/04/2019 as the said Authority was busy with some administrative work.

5 It appears that the Authority issued notice dated 02/05/2019 intimating the petitioner that the date of hearing which is 04/07/2019 is advanced to 07/05/2019 on the administrative

ground. The Divisional Joint Registrar thereafter proceeded to pass an order of dismissal of Revision Application on 21/05/2019. As such, this petition.

6 Mr. Kapse, the learned counsel for the petitioner would urge that power to advance the date in absence of any exigency particularly mentioned in the notice dated 02/05/2019 is specifically disputed. Even if assuming without admitting that such powers are vested in the said Authority, least that was expected was to ensure service of notice of hearing. The petitioner in categorical terms in paragraph (z) has made submission that neither notice dated 02/05/2019 was received by the petitioner nor any opportunity of hearing was offered. He would then urge that as a consequence of the order impugned, respondent-bank has expedited the recovery proceedings pursuant to a certificate under Section 101 of the Act. He submits that opportunity of fresh hearing be offered to the petitioner by remanding the matter.

7 The learned counsel for respondent no. 1, supported by the learned AGP submits that the petitioner is trying to conduct himself

as per his own convenience before the Authority. According to him, very conduct of the respondent-authority is under cloud as the delay is above 4 years is condoned on the very first day of hearing. According to him, once the notice was issued, it is not within the control of the respondent-authority to execute the service and as such there is deemed service on the petitioner.

8 Considered rival submissions.

9 The record, particularly, Rozanama before the Divisional Joint Registrar who was taking up Revision under Section 154 of the Act, *prima facie* demonstrates that same was scheduled for hearing on 04/07/2019. The said authority issued notice on 02/05/2019 thereby advancing the date of hearing to 07/05/2019. In the Rozanama of 07/05/2019 it is shown that initially counsel for the petitioner was not present, however, later on he attended the proceedings and the said Authority heard both sides.

10 The said Rozanama dated 07/05/2019 contains signature of said Authority so also the representative of the bank, however, the

signature of Advocate Sonam Jain who was recorded to be appearing for the petitioner is conspicuously absent. At most of the places in the Rozanama of other dates, Advocate for the petitioner has signed the Rozanama to establish his presence. The aforesaid fact that the signature of the learned counsel for the petitioner was not obtained on the Rozanama dated 07/05/2019 particularly when the signature of the attendance of representative of respondent no. 1 was obtained, justifies the claim of the petitioner that neither his lawyer nor he was present for want of notice of hearing.

11 In the aforesaid background, since the order impugned is passed by respondent-authority without hearing the petitioner, it will be appropriate in my opinion to allow the petition with following order:

(i) The order impugned dated 21/05/2019 passed by respondent-Divisional Joint Registrar, Co-operative Societies, Mumbai Division Mumbai in Revision No. 110 of 2018 is hereby quashed and set aside.

(ii) The petitioner and the respondent-bank undertakes to appear before the said Authority on 15/07/2019 with their respective notes of arguments.

(iii) The said Authority i.e. respondent no. 4 is directed to decide the said Revision expeditiously and in any case, within period of 10 weeks from the date of appearance of the parties.

(iv) Petition as such allowed in the above terms.

12 Needless to clarify that stay ordered by the said Revisional Authority on 26/03/2018 shall continue to operate till the decision of the Revision.

13 Needless to observe that this Court, since allowed the petition on technicality viz. denial of opportunity of hearing, it is expected of the Revisional Authority to decide the Revision on its own merits without being influenced by the observations made herein above.

[NITIN W. SAMBRE, J.]