

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.572 OF 2021

M/s. Dandekar Krushi Kendra,
Through its proprietor Digambhar
Nanaji Dandekar, Aged 44 years,
Occ. Business, Office: Tehsil Road,
Babhulgaon, Dist. Yavatmal

.....PETITIONER

...V E R S U S...

- 1) The Assistant Registrar,
Co-operative Societies, Tq. Babhulgaon,
District Yavatmal.
- 2) Yavatmal Urban Co-operative Bank Ltd.
Branch Babhulgaon,
Through Branch Manager,
Office at Tq. Babhulgaon,
District Yavatmal.
- 3) The Special Recovery Officer
Yavatmal Urban Co-operative Bank Ltd.
Office at Tq. Babhulgaon,
District Yavatmal.

...RESPONDENTS

Shri M.V. Samarth, Senior Advocate a/b Shri S.S. Ansari, Advocate for petitioner.
Shri K.L. Dharmadhikari, A.G.P. for respondent No.1.
Shri P.M. Pande, Advocate for respondent Nos.2 and 3.

CORAM:- V. M. DESHPANDE, J.
DATED :- 29th JANUARY, 2021.

ORAL JUDGMENT

Rule. Rule is made returnable forthwith.

(2) Heard Shri M. V. Samarth, learned Senior Counsel for
the petitioner, Shri K.L. Dharmadhikari, learned Assistant

Government Pleader for the respondent No.1 and Shri P. M. Pande, learned counsel for the respondent Nos.2 and 4 on caveat.

(3) By this petition, the petitioner is challenging the order passed by the respondent No.1 on 15.06.2020 giving the recovery certificate under Section 101 of the Co-operative Societies Act, 1960.

(4) This writ petition can be disposed of at the notice stage itself. The proceedings before the respondent No.1 -Assistant Registrar were initiated on the application of respondent No.2. Even according to the petitioner, the notice was issued by the Assistant Registrar to the petitioner on 27.01.2020. The petitioner appeared before the Assistant Registrar on 06.03.2020.

(5) In this admitted position, it has to be observed here that due to COVID-19 crisis a Nationwide Lockdown was clamped on 20.03.2020 three days thereafter i.e. on 23.03.2020 the matter was kept before the Assistant Registrar. However, the petitioner did not remain present before the Assistant Registrar on the said day and therefore, the order was passed that the recovery certificate be given in favour of the respondent No.2 and accordingly on 15.06.2020 the recovery certificate is issued under the signature of respondent No.1.

(6) Thus, it is clear that before passing order on 23.03.2020 the petitioner was not heard. His absence from the Authority was excusable inasmuch as it was but natural not to remain present before the authority, in view of the Nationwide Lockdown. Therefore, in fact the Assistant Registrar ought not to have proceeded with the matter on the very same day and ought to have granted some time.

(7) In that view of the matter, since the order was passed behind back, the order cannot stand to scrutiny of law on the touchstone of principles of natural justice. Consequentially, the writ petition needs to be allowed. Accordingly I pass the following order:-

- i) The order dated 23.03.2020 and recovery certificate consequent thereto on 15.06.2020 given by respondent No.1 is hereby quashed and set aside.
- ii) The petitioner and the respondent No.2 are directed to remain present before the respondent no.1- Assistant Registrar on 18.02.2021.
- iii) The Respondent No.1 is directed to decide the matter afresh by giving opportunity of hearing to the petitioner

as well as the respondent No.2 within a period of 1 ½ month from 18.02.2021.

iv) The respondent No.2 will be at liberty to proceed with the securitisation action as that has nothing to do with the order passed by the Assistant Registrar, Cooperative Societies. Therefore, the prayer made by the petitioner to stay the sale and auction proceeding is rejected.

The writ petition is disposed of. The rule is made absolute in above terms. No order as to costs.

JUDGE

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