

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

WRIT PETITION NO. 2534/2021

Sheikh Arif Sheikh Idris

...Versus...

District Deputy Registrar, CO.Op Societies and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. R.D.Karode, Advocate for petitioner
Ms.H.Jaipurkar, AGP for respondent Nos. 1 and 2
Mr. D.R.Khapre, Advocate for Respondent No.3

CORAM : AVINASH G. GHAROTE, J.

DATE : 17/12/2021

Heard Mr. Karode, learned counsel for the petitioner, Mr. Khapre, learned counsel for respondent No.3 and learned AGP for respondent Nos. 1 and 2.

The RRC issued by the Respondent no. 2, dated 14.6.2021, has been challenged in the present petition on the ground of non-compliance with the requirement of Rule 86C of the Maharashtra Co-Operative Societies Rules, 1961. Mr. Karode, learned counsel for the petitioner submits that on 1.2.2021 the matter was adjourned to 18.2.2021, on which date it was not listed at all and without any intimation it was then listed 18.6.2021 on which date in absence of any communication regarding fixing of the date, the petitioner remained absent, as a result of which the RRC came to be issued on 18.6.2021. He further submits that this is clearly a case of

non- affording of opportunity, in view of the above factual position.

Mr. Khapre, learned counsel for Respondent No.3 submits that the petitioner was granted ample opportunity and since the same has not been availed by filing any reply, the issuance of the RRC was justified.

A perusal of Rule 86C(3)(ii) of the said Rules indicates that in absence of the debtor/non-applicant, the Registrar is empowered to proceed ahead and decide the application on merits. The order-sheet indicates that 18.6.2021 was the last date on which date the matter was listed. Learned AGP as well as Mr. Kharpe, learned counsel for respondent No.2 contends that the date is incorrectly recorded and it was actually listed on 18.2.2021. An affidavit in this regard sworn by the Assistant Registrar, Cooperative Societies, before whom the matter was pending, affirms this position. Presuming the same to be correct, however, the last order-sheet indicates that merely on account of default, the RRC has been issued and not otherwise, as against which Rule 86C(3)(ii) of the said Rules, even in absence of the non-applicant requires the matter to be decided on merits by the Registrar. The last order-sheet presuming it to be dated 18.2.2021 does not indicate the compliance of the requirement of Rule 86C(3)(ii) of the said Rules, considering which the RRC issued cannot be sustained. The same is quashed and set

aside. The matter is remanded back to Respondent No.2 for deciding the same afresh.

Parties shall appear before Respondent No.2 on 27.12.2021 and the petitioner shall file his reply as well as documents on the same date. The Respondent No.2 shall decide the proceedings before him within 4 weeks therefrom.

The petition is allowed in above terms. No orders as to costs.

JUDGE

rvjalit