

CIVIL WRIT PETITION NO. 308 OF 2022
WITH
INTERIM APPLICATION NO. 479 OF 2022

BABAN MAHADU VISHE AND ORSPETITIONERS

V/s.

THE DIVISIONAL JOINT REGISTRARRESPONDENTS
CO-OP. SOC. AND ORS

Mr. Sandeep V. Bane a/w Sagar Sonawane for the Petitioners
Mr. S. H. Kankal AGP for Respondents

CORAM : NITIN W. SAMBRE, J.

DATE: JUNE 15, 2022.

P.C.:

- 1) Heard.
- 2) Under Section 152 of the The Maharashtra Co-operative Societies Act, 1960 (Hereinafter referred to as 'the Act' for the sake of brevity) Petitioner's Appeal being Appeal No. 45/2020 is pending adjudication on the file of Divisional Joint Registrar, Konkan Division, Navi Mumbai, in which order passed by Assistant Registrar, Co-

operative Societies, Ulhasnagar dated 22/10/2020 was under challenge. Assistant Registrar in exercise of powers under Section 77A (1a)(b) of the Act appointed an Administrator and directed possession of the entire record be handed over to the said Administrator.

3) It appears that said order was stayed by the Appellate Authority i.e. Divisional Joint Registrar. However, Appeal came to be dismissed for want of prosecution.

4) A submission is made that Appeal was dismissed for want of prosecution as the Petitioner remained absent because of movement restriction imposed during pandemic because of which he was unable to attend the hearing of the Appeal.

5) Respondents were directed to take instructions on the aforesaid issue.

6) I have considered said submissions.

7) Fact remains that Appeal of Petitioner being Appeal No. 45/2020 came to be dismissed as the Petitioner remained absent from 13/01/2021 to 29/09/2021.

8) As such, it is apparent that Appeal of the Petitioner was dismissed without hearing the Petitioner.

9) Petitioner assures that he shall be attending the said Appeal proceedings regularly, provided Appeal be directed to be decided on merits.

10) Mr. Kankal, learned AGP would oppose the aforesaid proposal as according to him, there is alternate remedy of filing Revision.

11) I have appreciated said submissions.

12) Objection of the learned AGP of availability of alternate remedy in my opinion requires to be overruled as the order impugned is passed without hearing the Petitioner.

13) As the order impugned is passed without hearing the petitioner during pandemic, in my opinion, one chance needs to be granted to petitioner. Statement of the Petitioner that he shall be regularly attending hearing of the Appeal is accepted as an undertaking.

14) In that view of the matter, order dated 20/10/2021 passed in Appeal No. 45/2020 preferred under Section 152 of the Act is hereby quashed and set aside with directions that Appeal No. 45/2020

stands restored to the file of Appellate Authority i.e. Divisional Joint Registrar, Konkan Division, Navi Mumbai.

15) Petitioner assures that he shall be appearing before the Authority on 04/07/2022.

16) Appellate Authority shall decide the Appeal of the Petitioner expeditiously. Needless to clarify if the petitioner fails to co-operative in expeditious disposal of appeal, Appellate Authority may proceed in his absence.

17) Petition stands allowed in the above terms.

18) In view of disposal of Petition, Interim Application also stands disposed of.

[NITIN W. SAMBRE, J.]