

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

WRIT PETITION NO.2718/2022

Rupesh Navratmal Kochar

...Versus...

State of Maharashtra, through its Secretary, Department of Co-operation,
Mantralaya, Mumbai and others

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

Court's or Judge's orders

Shri R.D. Bhuibhar, Advocate for petitioner
Shri N.R. Patil, AGP for respondent nos.1, 2, 4 and 5
Shri M.Y. Wadodkar, Advocate for respondent no.3

CORAM : AVINASH G. GHAROTE, J.

DATE : 14/10/2022

1. Heard Shri Bhuibhar, learned counsel for the petitioner, Shri Patil, learned Assistant Government Pleader for the respondent nos.1, 2, 4 and 5 and Shri Wadodkar, learned counsel for the respondent no.3. The respondent no.6 is served, however, none appears. The order, dated 18/05/2022 in para 3, records the grievance of the petitioner that he was never served with the notice in the proceedings initiated by the Assistant Registrar Co-operative Society for recovery, wherein the impugned order was passed.

2. In order to substantiate that the petitioner was served, Shri Wadodkar, learned counsel for the respondent no.3 invites my attention to the intimation of the postal

authorities on the returned back envelope addressed to the petitioner (pg.55), which indicates that in spite of intimation being given, the envelope was not claimed. That apart, according to him, in the counter-affidavit on the part of the petitioner, it is has been stated that the postal employee did not tender the envelope to the wife of the petitioner. Be that as it may, the impugned order saddles the liability of Rs.1,14,69,155/- upon the petitioner also who is a guarantor in respect of the liability of the respondent no.6, who is the original trader, against whom allegations are of having sold the agricultural produce received from the agriculturists without making payment of the purchase price and other expenses. Since the returned back envelope indicates service by default, it would be appropriate if the petitioner is afforded an opportunity of being heard after placing his submissions on record before the respondent no.4.

3. The position, however, pointed out by Shri Wadodkar, learned counsel for the respondent no.3 is rather disturbing, inasmuch as it indicates that after passing of the order dated 18/05/2022, by which the impugned order was stayed, the petitioner has sold his immovable property by a sale-deed dated 15/07/2022, copy of which is tendered across the bar and marked as "X" for identification. This would indicate a tendency of not only procrastination but also to do away with the immovable property, which could be a security

for the respondent no.3 for recovery of the dues found payable, in view of which, though the impugned order on the ground above is hereby quashed and set aside, the same is subject to the petitioner depositing before the respondent no.4 a sum of Rs.17,50,000/- as a condition precedent, within a period of fifteen days from today. In case the said amount is not deposited within the aforesaid period, the petition shall stand dismissed.

4. It is further made clear that the parties shall appear before the respondent no.4 on 21/10/2022 and mark their presence, on which date, the petitioner shall place his submissions on record. The respondent no.4 shall thereafter decide the matter within a period of 30 days therefrom, as far as possible. It is also directed that during the pendency of the proceedings before the respondent no.4, the petitioner is hereby restrained by an order of injunction from selling all properties owned by him or creating any third party interest thereupon of any nature whatsoever, both movable and immovable. The writ petition is accordingly allowed in the above terms. No order as to costs.

(AVINASH G. GHAROTE, J.)