

W.P.A. 21944 of 2017

**Sri Mahadeb Debnath
Vs.
The State of West Bengal & Ors.**

Mr. Soumyadeep Biswas
...for the petitioner

Mr. Srijan Nayek
Ms. Rituparna Maitra
Mr. Ankit Sureka
Mr. Biplab Das
...for the respondent nos. 2, 3 and 4

Subject matter of challenge in this writ petition is an order dated 23rd June, 2017 passed by the Assistant Registrar, Co-operative Societies, Co-operation Directorate, Nadia Range office being respondent no. 4 whereby certain directions were made for recovery of principal amount and interest from the petitioner who took loan from Sri Chaitanya Co-operative Bank Limited being respondent no. 5.

Learned advocate representing the petitioner questions order dated 23rd June, 2017 of the respondent no. 4 on the ground that opportunity of hearing was not given to the petitioner and impugned order was passed by the respondent no. 4 *ex parte*. It has also been submitted that power of review and/or revision of the order by the State Government as provided under Section 148 of the West Bengal Co-operative Societies Act, 2006 (hereinafter referred to as “said Act of 2006”) is not available so far the order passed under Section 139 of

the said Act of 2006. Therefore, there is no impediment according to the petitioner to entertain the present writ petition where the order of the respondent no. 4 passed under Section 139 has been questioned.

Mr. Srijan Nayek, learned advocate representing the respondent nos. 2 3 and 4 has opposed the writ petition on the ground of availability of alternative remedy under Section 148 of the said Act of 2006. According to the respondents since the impugned order dated 23rd June, 2017 was passed by the respondent no. 4 in terms of Section 139 the same needs to be challenged under Section 148 before the State Government seeking review or revision of the impugned order.

Having heard the learned advocates representing the parties and on perusal of materials available on record it appears that on reference being made on behalf of Sri Chaitanya Co-operative Bank Limited, respondent no. 4 decided such issue under Section 139 of the West Bengal Co-operative Societies Act, 2006 by passing order dated 23rd June, 2017. On perusal of such order dated 23rd June, 2017 it appears that petitioner was not heard by the respondent no. 4 while taking decision on 23rd June, 2017 and in consideration of the contention made on behalf of the respondent no. 5 order was passed albeit, summon was served upon the petitioner as it is recorded in the order dated 23rd June, 2017. However,

fact remains on hearing the respondent no. 5 impugned order was passed on 23rd June, 2017.

In consideration of the provisions as contained under Section 148 of the West Bengal Co-operative Societies Act, 2006 it appears that the impugned order needs to be questioned under Section 148 before the State Government since power has been extended to the State Government under the said provision to review or revise the order passed upon conducting any enquiry held or inspection made under the said Act or the proceedings of the registrar or any person subordinate to him or acting on the authority of the registrar and an order has been passed thereon. On reading Section 148 it does not appear that power of review and revision as it has been extended to the State government cannot be exercised in connection with an order passed under Section 139 of the said Act.

In view of aforesaid discussion and in consideration of efficacious alternative remedy available to the petitioner the writ petition is **disposed of** thereby granting leave to the petitioner to approach the concerned authority under Section 148 seeking review or revision of the order dated 23rd June, 2017 passed by the respondent no. 4. If application is made under Section 148 within 3 (three) weeks from date the same shall be decided by the concerned authority under Section 148

within 16 (sixteen) weeks from the date of filing of the application by the petitioner.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)