

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3864 OF 2022

Buwasahab Navle Gramin Bigar
Sheti Sahakari Patsanstha Ltd.
Akole, Tq. Akole, Dist. Ahmednagar
Through its Special Recovery Officer,
Shri S. S. Gaikwad,
Age-57 years, Occu-Service,
R/o. At Post Akole, Tq. Akole,
Dist. Ahmednagar

...PETITIONER

VERSUS

1. The State of Maharashtra
Through Divisional Joint Registrar
Co-operative Societies, Nashik Division,
Nashik, Having its office at
3rd Floor, Graha Nirman Bhawan,
Nashik, Dist. Nashik
2. The District Deputy Registrar,
Co-operative societies, Ahmednagar
Having Its office at Ahmednagar
Dist. Ahmednagar
3. The Assistant Registrar,
Co-operative Societies, Akole
Tq. Akole, Dist. Ahmednagar
4. Balasaheb Lahanu Walunj,
Age-58 years, Occu-Agril
5. Bhausahab Badshaha Walunj,
Age-54 years, Occu-Agril,

...RESPONDENTS

6. Bhausahab Narayan Walunj,
Age-52 years, Occu-Agril,
Nos. 4 to 6 R/o. Atg Post Aurangpur,
Tq. Akole, Dist. Ahmednagar
(Nos. 2,3, Orig. R. No.1 & 2
& No.4 Orig. Applicant)

Mr. S. K. Shinde, Advocate for the petitioner

Mr. S. B. Pulkundwar, AGP for the respondent Nos. 1 to 3/State

Mr. A. G. Ambetkar, Advocate for respondent No.4

Mr. Ajay T. Kanwade, Advocate for respondent Nos. 5 and 6

CORAM : KISHORE C. SANT, J.

RESERVED ON : 20th JULY, 2023

PRONOUNCED ON : 03rd OCTOBER, 2023

P C.

1. The petitioner Patsanstha established under the Provisions of Maharashtra Co-operative Societies Act, 1960 and Rules 1961 engaged in the business of providing loan to its members has filed this petition challenging the impugned judgment and order dated 28-02-2022 passed by the Divisional Joint Registrar Co-operative Societies, Nashik Division, Nashik in Revision Application No.5/2020 & 20/2021. By way of impugned order a revision filed by respondent No.4-Borrower is partly allowed and certificate under Section 101 of the Co-

operative Societies Act is set aside directing the learned Assistant Registrar to decide the proceeding under Section 101 afresh.

2. Facts in short are that:

a] The borrower had applied for cash credit loan for his business. The petitioner sanctioned the loan of Rs.1,15,000/- by way of cash credit @ 15% p. a. The loan was disbursed by following procedure. Respondent Nos.5 and 6 stood guarantee to the said loan. However, said loan was not repaid and therefore, notice was issued to the Borrower and the Guarantors. In spite of notice no amount was paid. The Patsanstha therefore filed an application for recovery certificate under Section 101. The learned Assistant Registrar-respondent No.3 by following proper procedure issued recovery certificate for an amount of Rs.1,27,211/- by order dated 06-03-2019.

b] After obtaining the certificate, Recovery Officer filed an

application for recording name of the petitioner in the revenue record creating charge on the land that was mortgaged. Respondent No.4 filed proceeding before respondent No.2 i.e. District Deputy Registrar, Ahmednagar. Respondent No.2 refused to grant stay pending the revision application and therefore, the petition was filed in this court bearing Writ Petition No. 4089/2020. This court directed the respondent-Borrower to deposit an amount of Rs.5,00,000/- in this court. Subsequent, the petition came to be disposed off with liberty to the respondents to approach the revisional forum and the amount deposited in this court was remitted to the revisional authority.

c] The revision thereafter came to be filed. The petitioner appeared in the revision and prayed for dismissal of the revision. The revisional authority-respondent No.1 however, passed impugned order.

3. It is the contention of the petitioner-Patsanstha that while granting recovery certificate the learned Assistant

Registrar had granted certificate only after following due process. No interference was required at the hands of revisional authority. Learned Advocate for the petitioner submits that looking to the conduct of the borrower that he had not repaid even single installment, the revisional authority ought to have dismissed the revision. He, thus, submits that revisional authority has unnecessarily interfered with the recovery certificate without directing the payment to the respondent as pre-requisite condition. The observation of the revisional authority that the learned Assistant Registrar has not conducted proper enquiry is not correct. On one hand the revisional authority has observed that recovery certificate was issued after going through the documents and after hearing the parties. However, later on observed that the learned Registrar has not followed the procedure under Rule 86-e(3).

4. Learned advocate for the respondents vehemently opposed the petition submitting that revisional authority has rightly passed the order. It is submitted that there was clear

violation of procedure as contemplated under Rule 86-e(3). He submits that revisional authority has rightly passed the order observing that recovery certificate issued was ex-parte. No proper notice was served upon the respondents.

5. Learned AGP supports the order passed by the revisional authority. The learned AGP however, points out that the learned Assistant Registrar has jurisdiction to entertain the application under Section 101 and to pass an order thereupon. Though by filing affidavit dated 24-02-2022, there is one more affidavit came to be filed on 25-04-2022 for respondent No.1 stating that respondent No.3 had not followed the procedure as laid down in Rule 86(e)(3) of the MCS, Rules 1961. Affidavit dated 25-04-2022 is filed by respondent No.1 and opposed the petition.

6. Both the parties have placed on record some documents.

7. This court however, finds that respondent No.1 has specifically observed that no procedure under Rule 86(e) (3) is followed. This court finds that necessary question of fact the revisional authority certainly is empowered to cause interference when the order impugned before the said revisional authority suffers from violation of principles of natural justice. There cannot be any dispute that even while issuing recovery certificate the learned Registrar has to follow the principles of natural justice and has to record specific satisfaction. Looking to the facts of this case and documents on record placed by the petitioner, this court finds that from Roznama dated 14-12-2009 that respondent Nos. 4 to 6 were served. They had appeared before the learned Registrar pursuant to the notice received by them from the office of the learned Registrar. From the record it is further seen that the documents such as cash/credit loan were executed by the borrower. Respondent Nos. 5 and 6 also stood guarantee to it and said documents are on record. Notice dated 10-09-2009 was also served upon those respondents. From Roznama dated 14-12-2009 it is seen that respondent Nos. 4 to

6 were present before the learned Registrar. They admitted liability to repay the loan amount. They also accepted that they paid the amount. This court thus finds that there was sufficient material before the learned Assistant Registrar to pass the order.

8. In the revision it is the case of respondent No.4 that he had paid the installments towards repayment of the loan. However, he could not show any sufficient material to show that the loan amount was repaid. His only case is that his father had applied for loan in 2006 & towards that the land was shown as security. The documents executed at that time are misused by the petitioner. However, there is nothing to prove this facts. Further from roznama it is seen that respondent Nos. 5 and 6 have signed roznama even on the date of issuance of recovery certificate. When such was the material produced before the revisional authority, there was no reason to take view that there was violation of Rule 86(e)(3) while deciding revision. There is one observation that the learned Assistant Registrar was expected to decide the recovery proceeding within three months

and the said was not done. However, that hardly can be said to be reason to set aside the recovery certificate. This court finds that the order impugned needs to be quashed and set aside by directing the revisional authority to decide the revision afresh and to pass order. Hence, the following order:-

ORDER

- a] The writ petition stands disposed off.
- b] The impugned judgments and orders dated 28-02-2022 passed by the learned Divisional Joint Registrar, Co-operative Societies, Nashik Division, Nashik in Revision Application No.5/2020 and 20/2021 stand quashed and set aside and remanded back to the learned Revisional Authority.
- c] The learned Revisional Authority to decide the revisions afresh by giving proper opportunity to all the parties within a period of two months from the date of receipt of this order.

[KISHORE C. SANT, J.]