

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11875 OF 2022.

Shobha Rangrao Gaikwad

.. Petitioner

vs.

Shobha Dilip Jadhav & Ors.

.. Respondents

...

Mr. Chetan Patil, i/b. Mandar G. Bagkar, for the Petitioner.

Mr. Manoj Patil, for Respondent No.1.

Mrs. V. S. Nimbalkar, AGP, for Respondent Nos. 2 & 3.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 31 AUGUST 2023.

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1. By this Petition, the Petitioner challenges order dated 25th May 2022 passed by the Sub Divisional Officer (“SDO”), Ichalkaranji, Kolhapur by which the order passed by the Tehsildar on 5th March 2019 under provisions of Section 5(2) of the Mamlatdars' Courts Act, 1906 has been set aside.

2. Apart from the merits of the matter, Mr. Patil, the learned counsel for the Petitioner would submit that the Petitioner was not given notice of hearing by the SDO. That the Tehsildar’s order, which was in favour of the Petitioner, has been reversed without even hearing the Petitioner. He would further submit that

Petitioner has filed a caveat and his advocate did not receive any notice of hearing.

3. In pursuance of order passed by this Court on 18th February 2023, an official from the office of SDO, Ichalkaranji, Kolhapur is present in the Court along with the relevant records.

4. The learned AGP confirms the position that caveat was indeed filed by the Petitioner. She would further submit that the SDO had addressed notices to the parties for intimation of date of hearing. That the Notice of Petitioner was returned unclaimed.

5. It therefore appears that Petitioner has not been heard by SDO before reversing the order passed by the Tehsildar. Therefore, instead of this Court going into the merits of the issue, it would be appropriate if the SDO hears the revision afresh by grant of an opportunity to Petitioner to present their case.

6. Accordingly order dated 25th May 2022 passed by the SDO, Ichalkaranji, Kolhapur in Revision Application No.108 of 2019 is set aside. The Revision Application No.108 of 2019 restored on the file of the SDO, Ichalkaranji, Kolhapur, who shall proceed to hear the revision application afresh after grant of opportunity of hearing to the parties in the Revision Petition. The Petitioner and the Respondent to appear before the SDO on 11th September 2023. There shall be no necessity of issuing fresh notice

to both parties.

7. The SDO shall decide the revision on its own merits without being influence by any observations made in the order dated 25th May 2022. All contentions of parties are left open.

8. With the above observations, the Writ Petition is disposed.

SANDEEP V. MARNE, J.