

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

WRIT PETITION NO. 10510 OF 2018

Om Prakash Mittal

.. Petitioner

vs.

State of Maharashtra & Anr.

.. Respondents

...

Mr. Niranjana A. Mogre, for the Petitioner.

Mr. C.D. Mali, AGP for the Respondent-State.

None for Respondent No.2.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 3rd OCTOBER, 2023.

P. C.:

1. Heard the learned counsel for the Petitioner as well as the learned AGP appearing for Respondent No.1. None appears for Respondent No.2. However, considering the nature of order that I am proposing to pass, it is not necessary to defer hearing of the present Petition on account of non appearance on the part of Respondent No.2-Society.

2. It appears that the recovery certificate dated 31st August 2017 is issued by the Deputy Registrar, Co-operative Societies without hearing the Petitioner. The said recovery certificate was in respect of the amount of Rs.2,26,714/-. Later by corrigendum

dated 2nd May 2018, the amount due in the recovery certificate is enhanced from Rs.2,26,714 to Rs.6,16,218/-. This again was done without Petitioner placing his defence on record. It appears that the Petitioner's Application for setting aside the ex-parte recovery certificate has been rejected by the Deputy Registrar by order dated 2nd November 2017. The Divisional Joint Registrar has rejected the Revision Petition on the ground of non compliance of provisions of Section 154(2) (A) of the Maharashtra Co-operative Societies Act, 1960.

3. Learned counsel for the Petitioner has taken me through the affidavit filed by the Society alongwith the statement at Exhibit R8/1 to demonstrate that after deposit of amount of Rs.3,27,700/- by Petitioner on 2nd November 2012, the Society's record show that the Petitioner had paid an excess amount to the Society and that nothing was due.

4. In my view, all these aspects will have to be considered by the Deputy Registrar, Co-operative Societies. For that purpose the order passed by the Divisional Joint Registrar on 3rd May 2018 is required to be set aside.

5. Accordingly, the Writ Petition is partly allowed. The order dated 3rd May 2018 passed by the Divisional Joint Registrar as well as the order passed by the Deputy Registrar on 31st August 2017 together with corrigendum dated 2nd May 2018 are set aside.

The proceedings are remanded and restored before the Deputy Registrar of Co-operative Societies (3) Mumbai, who shall afford an opportunity of hearing to the Petitioner before taking decision in the matter.

6. The parties to appear before the Deputy Registrar on 23rd October, 2023. The Petitioner to serve a copy of this order on the Society and intimate the date fixed for appearance before the Deputy Registrar to it.

7. With the above directions, Writ Petition is disposed of.

Digitally
signed by
GANESH
SUBHASH
LOKHANDE
Date:
2023.10.05
14:49:57
+0530

SANDEEP V. MARNE, J.