

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

WRIT PETITION NO. 667/2020

ANIL S/O SHIVKISANDAS RATHI

VS

THE CHIKHLI URBAN CO-OP. BANK LTD. CHIKHLI TR. BRANCH MANAGER AND ORS.

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

Court's or Judge's Order

Mr. Saumitra Paliwal, Advocate for the petitioner
The respondent no. 1 is served
Mr. A.A. Gupta, Advocate for respondent no. 2
Smt. H.N. Jaipurkar, AGP for respondent no. 3

CORAM : A. S. KILOR, J.

DATED : 21/06/2023

Heard.

2. In the present matter the order dated 19.11.2019 passed under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short the “Act of 1960”) and the Maharashtra Cooperative Societies Rules, 1961 (for short the “Rules of 1961”) and the recovery certificate dated 19.11.2019 issued by the Assistant Registrar, Co-operative Societies, Chikhali, are under challenge.

3. The order dated 19.11.2019 and recovery certificate dated 19.11.2019 are challenged on the ground that the principles of natural justice was not followed and complied with, by not providing the documents sought by the petitioner.

4. In the light of the above referred ground raised by the petitioner, the learned AGP appearing for the respondent no. 3 – Assistant Registrar, Co-operative Societies, who has issued the order and the recovery certificate, was asked to produce the record for perusal. Accordingly, the record is produced.

5. After going to the record, it appears that the petitioner made an application for supply of documents on 25.10.2019. The Roznama dated 25.10.2019 shows such entry in respect filing of the application was taken, however, next date was not given or mentioned in the Roznama.

6. The another entry in Roznama is dated 31.10.2019 which says that the matter was fixed for supplying documents as sought by the petitioner. It further says that, the petitioner was absent and, therefore, the matter was adjourned for 19.11.2019, as a last chance.

7. On 19.11.2019 again, the petitioner was shown as absent and accordingly, the impugned order and the recovery certificate was issued.

8. Thus from the record, it is evident that on 25.10.2019 when the matter was fixed before the respondent no. 3, the petitioner made the application for supply of documents. But no next date was given to the petitioner to appear before the respondent no. 3. The

Roznama entry dated 25.10.2019 does not show any further date given to the parties. Hence, the entry dated 31.10.2019 says that the matter was fixed for supply of the documents to the petitioner and he is absent has no relevance. Similarly, next entry of dated 19.11.2019 recording the absent of the petitioner has also no relevance as the petitioner was never informed that the matter was fixed on 31.10.2019 or 19.11.2019.

9. In these circumstances, I have no hesitation to hold that the principles of natural justice have not been followed before passing the impugned order and the issuance of the recovery certificate under Section 101 of the Act of 1960.

10. Hence, I am of the opinion that the impugned order and recovery certificate need to be quashed and set aside and the matter be remanded back to the respondent no. 3 for taking a decision afresh. Accordingly, I pass the following order:

(I) The writ petition is partly allowed.

(II) The order dated 19.11.2019 and the recovery certificate dated 19.11.2019 issued by the respondent no. 3 are quashed and set aside.

(III) The matter is remanded back to the respondent no. 3 to decide the same afresh after giving sufficient opportunity to both the parties.

(IV) The respondent no. 3 is directed to decide the matter within two months from the date of appearance of the parties.

(V) The parties shall appear before the respondent no. 3 on **04.07.2023 at 11.00 a.m..**

11. Accordingly, the writ petition is disposed of with no order as to costs.

JUDGE