



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

902 WRIT PETITION NO. 4394 OF 2020

Anil s/o Anantrao Ambekar,
Age; 59 years, Occ; Government Service,
Residing presently at Devgiri Apartment,
Bhagya Nagar, Old Jalna.

...Petitioner

VERSUS

1. Devgiri Nagari Sahakari Co-Operative
Credit Society Limited, Jalna,
having its office located at 7,
Shanti Govind Apartment,
Gandhi Chowk, Old Jalna.

2. The State of Maharashtra,
Represented through the
Joint Registrar of Co-Operative
Societies, Marathwada Region,
Aurangabad.

...Respondents

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Advocate for the Petitioner : Mr. Surve Hemant and Mr.Kshitij
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Advocate for Respondent No.1 : Mr.Swapnil Patunkar a/w Awez
Shaikh & Mr. Mahesh Swami i/b J.P.Legal Associates
AGP for Respondent No. 2 State : Ms. M.L. Sangit

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CORAM : S. G. MEHARE, J.

DATE : 14th MARCH, 2024.

PER COURT :

1. The learned counsel for the petitioner submits that
the petitioner has paid the substantial amount of the loan and

the petitioner is searching for the receipts.

2. The learned counsel for the petitioner submits that he is seeking brief time of one day. The Court told him that the petitioner may take his own time to search the receipts, then he submits that he wanted to argue the matter and he started arguing the matter.

3. Heard the learned counsel for the petitioner, learned counsel for respondent No. 1 and learned AGP for respondent No. 2 State.

4. The brief history of the case was that the petitioner allegedly borrowed loan from respondent No. 1 in 2012. The petitioner has a case that the loan amount was never disbursed to him. His loan application was withheld by the bank making various corrections in the loan amount. The petitioner had a small monthly income of Rs. 4500/- and against such small income financial institution would not lend such a huge amount of Rs. 1,00,000/-. He pointed out various grounds for not disbursement of the loan amount and no service of notice of the proceeding before the Assistant Registrar of Co-Operative Societies, Aurangabad, Marathwada Region.

5. Learned counsel for the petitioner vehemently argued that the Assistant Registrar, Co-Operative Societies, Aurangabad also did not grant an opportunity of hearing to the petitioner. He did not consider the unprecedented worldwide lockdown due to Covid-19 Pandemic. The Government and the local Government had issued various circulars and directions restraining free movements of the citizens. There was a long lock down. Even then he sent his junior Mr. Godghale to address respondent No. 1, that his father is no more, and hence time may be granted. Respondent No. 1 considered his submission and listed the matter on 17.03.2022. Thereafter, he never appeared in the matter as the Covid-19 Pandemic was on pick and a complete lock down was declared. However, the authority, without considering these unseen situation and the efforts from the Government to control the spreading of Covid-19 pandemic has passed the impugned order only for the reason that this Court directed him to dispose of the matter within three months. He further argued that, the protection was granted due to all such conditions and the Hon'ble Supreme Court had suspended judicial functions by issuing various directions from time to time. He submits that no notice was

served on him and a fair opportunity was not granted to him before impugned judgment was delivered.

6. The original proceeding under Section 101 of the Act, is ex parte. As per the Court's order 50% of the amount of the recovery certificate has been deposited with respondent No. 1, so the "Co-Operative Credit Society" has already secured 50% of the amount. In these circumstances the matter may be remitted to the concerned authority.

7. The learned AGP for respondent No. 2 State has rendered good assistance to the Court to find out that the notice of the revision application was duly served upon the petitioner and he had put in his appearance, therefore, the case of the petitioner that the revision application was proceeded exparte and without service is not acceptable.

8. After hearing the learned counsels for respective parties, the learned counsel for the contesting respondent No. 1 was right in pointing out that it was a common defence in most of such cases that the notice is not served. Respondent No. 1 is running after the petitioner since 2012 to recover its loan. His each defence is against the facts. Though the routine of the

country was affected due to Covid-19 Pandemic, there were certain relaxations made by the Government to run day to day functions and the life of the common man. So, in such a situation, the petitioner can not take advantage of the Covid-19 Pandemic. He may be correct, however, the facts are otherwise.

9. Considering the facts of the case it reveals that the counsel for the petitioner and the petitioner were restrained from approaching/appearing before respondent No. 1 due to Covid-19 pandemic lock down. Respondent No. 1 was also correct because this Court directed him to decide the matter within three months. Perhaps he might have apprehended of the Contempt of Court, and hence, he might have passed the impugned order. The moral of the story is that an opportunity of hearing was not granted to the petitioner and the matter was decided ex parte against him. Under such situation bearing in mind the rule of natural justice, which includes right to hear has been missed in this case. The settled position of law under such situation is to remit the matter to the Court of Assistant Registrar, Co-Operative Societies, Aurangabad for deciding it afresh. Hence the following order:

ORDER

- a) The petition is allowed.
- b) The impugned judgment and order of the learned Assistant Registrar, Co-Operative Society, Aurangabad passed in Revision Application No. 3 of 2020 dated 07.04.2020 stands quashed and set aside.
- c) The Revision Application is remitted to the Court of Assistant Registrar, Co-Operative Societies, Aurangabad, Marathwada Region for deciding it afresh by granting an opportunity to both sides.
- d) Both parties should appear before the Assistant Registrar, Co-Operative Societies, Aurangabad on 02.04.2024.
- e) The Assistant Registrar, Co-Operative Societies, Aurangabad shall not grant liberal adjournments to either party and decide the application within two months from the date of appearance of both the parties.
- f) No order as to the costs.

(S. G. MEHARE)
JUDGE