IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4568 OF 2014
WITH
WRIT PETITION ON.4569 OF 2014
WITH
WRIT PETITION NO.4690 OF 2014

Neeraj Agarwal .. Petitioner.
Vs.
Purvi Co-operative Housing
Society Ltd. & Ors. .. Respondents.

Mr. Ajay Panicker i/b Ajay Law Associates for the Petitioner.
Mr. Vishal Kanade with Mr. Virendra Pereira with Ms. Devika Nigade with Mr. Swarup Patil i/b Divya Shah Associates for the Respondents.
Mr. S.D. Rayrikar for the Respondent – State.

CORAM : A.K. MENON, J.

DATED : 6TH OCTOBER, 2015

P.C. :

1. Heard.

2. These three petitions are challenging recovery certificates issued under section 101 of the Maharashtra Co-operative Societies Act for recovery of outgoings and taxes in respect of three residential flats bearing Nos.402, 403A and 403B. All the flats are situated at respondent no.1-society. All the flats are beneficially owned by the petitioners/share holders. The learned counsel for the petitioner has pointed out that on various counts disputes have arisen on account of charges levied by the society and as set out in the reply filed before the competent authority. He has taken into account the reply filed

by the present petitioner before the Deputy Registrar of Co-operative Societies wherein inter alia the petitioner has contended that in respect of municipal taxes, the authorities had issued notices to him for non payment of tax. According to the learned counsel for the petitioner he has paid sum of Rs.3,26,808/- towards municipal taxes in respect of three flats forming the subject matter of petition. These amounts are as follows :

WP No. 4568/2014	1,20,599/-
WP No.4569/2014	1,02,129/-
WP No.4690/2014	1,14,080/-

3. The grievance of the petitioner is that these amounts are not been given credit to and that the society has been charging interest on these amounts. The other grievance made is with regard to calculating outgoings and maintenance charges is in violation of byelaw 69 (a)(vi) and the society has not raised bills in accordance with the said byelaws rather in breach of the same. In the course of arguments I had called upon Mr.Panicker to demonstrate as to how these were incorrect, based on the material which was before the competent authority, however, it appears that save and except the receipts for BMC taxes paid and a copy of a demand draft which was returned unencashed no other documents were filed before the appellate authority. The respondent-society had filed rejoinder before the competent authority in which the society has disputed said contentions and put the petitioner to strict proof. However,

despite such notice, the petitioner had made no efforts to substantiate its claim, save and except to the extent that he had issued demand draft of Rs.1,50,750/- which was sent to the society on or about 27th April, 2006 and which the society did not encash but had returned it to the petitioner only on 31st December, 2007. Similarly, Mr. Panicker stated that a second demand draft of Rs.1,00,000/- was submitted in April 2002. However, the society has denied having ever received the said amount.

4. Mr. Kanade, learned counsel for the society stated that the demand draft was never accepted by the society and was forthwith returned. This fact is not now in dispute. Thus, what leaves us is sum of Municipal tax paid for three flats i.e. Rs.3,26,808/- which is not accounted for by the society since the payment of taxes was made to the BMC directly and receipts were not furnished to the society. As far as demand draft is concerned, it is now evident that it has not encashed by the society because it was tendered in full and final settlement of all claims as of that date. Neverthless in my view it was not open for the society to retain the draft for over a year and in the circumstances Mr. Panicker is correct when he submits that interest charged on the said amount of the demand draft ought not to have been so charged.

5. In the circumstances the present group of petitions can be conveniently disposed of with the following order :

(i) In respect of the BMC taxes amounting to Rs.3,26,808/- paid by the petitioners, the society shall give credit for the said amounts as of the date of payment i.e. 27th June, 2008. No interest will be charged by the society on the amounts of taxes mentioned in paragraph 2 till the date of recovery certificate in each of the petitions.

(ii) As far as the demand draft for Rs.1,50,750/- tendered to the society is concerned, in view of the fact that the society has retained demand draft for the period April 2006 till December 2007, the society shall reverse the interest amount in the said amount of Rs.1,50,750/- debited to the petitioner's account from 1st May, 2006 upto 31st December, 2007.

(iii) Accordingly, the petitioner will be liable to be pay all further amounts after the respondent society gives credit for the amounts of municipal taxes paid as aforesaid and after reversal of the amounts of interest for the aforesaid period.

(iv) After the credit entries as directed in para (i) and (ii) the society shall issue a bill showing amounts payable by the petitioners which the petitioners pay within 30 days of receipt.

(v) Apart from these directions, the petitions do not call for further adjudication. The petitions are disposed of. The recovery certificate stands confirmed subject to above terms.

(vi) There will be no orders as to costs.

(A.K.MENON, J.)