

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.118 of 2014**

Mr. A. C. Simoes
Major of age,
r/o Landscape Park, Block 3
Flat no.344, D.B. Road
Campal, Panaji, Goa. .. Petitioner

Versus

1. The Delux Co-operative Housing Society,
Near Raikar Hospital, Tonca,
Caranzalem, Goa
2. The Assistant Registrar,
Co-operative Societies,
Central zone, Panaji Goa. .. Respondents

Mr. A. D'Silva, Advocate for the petitioner.

Mr. A. D. Bhobe, Advocate for the respondent no.1.

CORAM :- S. B. SHUKRE, J.

Date : 29th February, 2016

ORAL JUDGMENT :

Heard. Rule. Rule, made returnable forthwith. Heard finally by consent.

2. It has been the contention of the learned Counsel for the petitioner that the authorities below have not dealt with the objections specifically taken by the petitioner and objections taken

were of bar of fresh claim in view of the principle of *res judicata* and bar of part of fresh claim in view of the law of limitation. However, as pointed out by the learned Counsel for the respondent no.1, to the present dispute the provisions of Maharashtra Cooperative Societies Act, 1960 being applicable, the plea of bar of limitation would be of no consequence as the petitioner continues to be a member of the respondent-society and in such a case, the period of limitation, as per Section 92 of the Maharashtra Cooperative Societies Act, 1960, begins to run only from the date of cessation of the membership. Similarly, the objection regarding bar of fresh claim by application of principle of *res judicata* would also be of no consequence as the first claim has been dismissed not on merits but, because of non-prosecution of the claim by the respondent-society.

3. In view of the above, I find no substance in this writ petition. Learned Counsel for the petitioner has submitted that the respondent-society has included penal interest also in the amount being claimed from the petitioner as of date. I find no substance in this argument also as the order dated 07/11/2005 passed by the Registrar's nominee is clear in this regard and it does not award any penal interest. It is made clear that whatever amount the respondent-society would be claiming from the

petitioner would be as per the order dated 07/11/2005 so far as it is related to the period covered by this order.

4. In the circumstances, writ petition is dismissed subject to the above observations.

5. Rule is discharged in these terms. No costs.

S. B. SHUKRE, J.

SMA