

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11165 OF 2016**

Mr. Mezban Nadirsha Commissariat

..Petitioner

Vs.

**Tardeo Court Co-operative Housing
Society Ltd & Ors.**

..Respondents

Mr. H. R. Pawar for the Petitioner

**Mr. A. G. Damle Senior Advocate a/w Mrs Bina Jariwala i/bAuroma Law
for the Respondent No.1**

Mr. s. H. Kankal AGP for the Respondent Nos.2 and 3

CORAM : R. M. SAVANT, J.

DATE : 29th NOVEMBER, 2016

P.C.

1 The Writ Jurisdiction of this Court under Articles 226 and 227 of the Constitution of India is invoked against the order dated 16-5-2016 passed by the Deputy Registrar Co-operative Societies, Mumbai-1 by which order, the Revision Application filed by the Respondent No.1 society came to be allowed and the matter as regards issuance of a certificate under Section 101 of the Maharashtra Co-operative Societies Act (hereinafter referred to as the said Act), came to be remanded back to the Deputy Registrar Co-operative Societies Mumbai.

2 The Petitioner is a member of the Respondent No.1 society and is occupying an area of about 1800 sq.ft. which is divided between two flats i.e. Flat No.51 and Flat No.52. The said area of 1800 sq.ft. was given to the

Petitioner in terms of the Development Agreement which was entered into between the Petitioner and the developer who had constructed the building of the society. The Respondent No.1 herein comprises of the occupants of the said building filed an application under Section 101 of the said Act for recovery of maintenance charges for the period ending 31-3-2004. The said application was rejected by the Deputy Registrar Co-operative Societies by order dated 6-7-2005 on the ground that the Respondent No.1 society had not followed the directions as contained in the circular dated 29-11-2000 of the State Government, which directions were that the maintenance charges have to recovered uniformly from all the members. It seems thereafter the Respondent No.1 filed a dispute in the Co-operative Court for recovery of the amount of Rs.24,74,694.75 payable by the Petitioner as on 30-9-2008 together with interest @ 9% p.a. from 1-10-2008 till payment. The said dispute is as yet pending.

3 The Respondent No.1 thereafter filed another application under Section 101 of the said Act for recovery of the amount due from the Petitioner towards maintenance charges for the period 1-4-2011 to 31-3-2014. The said application came to be rejected by the Deputy Registrar Co-operative Societies "D" ward, Mumbai by order dated 9-11-2015. The rejection was principally on the ground that the Respondent No.1 having filed the dispute in the Co-operative Court. It was for the Respondent No.1 to pursue the dispute also for

the amounts claimed vide the instant application filed under section 101 of the said Act. It was also observed that the earlier application filed in the year 2004 was rejected on the ground of non compliance of the directions issued by the State Government under Section 79A of the said Act in the matter of recovering the maintenance charges uniformly from all the members. The Respondent No.1 aggrieved by the said order dated 9-11-2015 took exception to the same by filing a Revision Application before the District Deputy Registrar. The District Deputy Registrar as indicated above by the impugned order dated 16-5-2016 has allowed the Revision Application, however has remanded the matter back to the Deputy Registrar to decide whether the recovery on the basis of the account prepared by the Respondent No.1 was proper. As indicated above it is the said order dated 16-5-2016 which is taken exception to by way of the above Petition.

4 The Learned Counsel appearing for the Petitioner Mr. Pawar would contend that the Petitioner is liable to pay maintenance charges on the basis that he is in occupation of one unit. However, the Respondent No.1 society is recovering the maintenance charges on the basis that the Petitioner is in occupation of two units i.e. Flat No.51 and Flat No.52. The Learned Counsel would contend that once the society having invoked the jurisdiction of the Co-operative Court under Section 91 of the said Act, it was not open for it to apply under Section 101 of the said Act for issuance of a certificate of the

amount which is allegedly due from the Petitioner.

5 Upon this the Learned Senior Counsel appearing for the Respondent No.1 society Mr. Damle would contend that in so far as the maintenance charges, the property tax, the repair fund etc. are concerned, the same are recovered on the basis of the area and not on the basis of the units. It is only some charges which are recovered on the basis of the Petitioner being in occupation of 2 units. It was the submission of the Learned Senior Counsel that whether the Petitioner is liable to pay on the basis of he being in occupation of 2 units and whether the recovery on the basis of the account prepared by the Respondent No.1 was proper or not can be gone into by the Deputy Registrar on the matter being remanded. The Learned Counsel would also contend that it is within the discretion of the society to choose between applying under Section 91 or invoking the jurisdiction under Section 101 of the said Act.

6 Having heard the Learned Counsel for the parties, in my view, there is no merit in the above Petition. As indicated above the matter has been remanded back by the District Deputy Registrar to the Deputy Registrar for a denovo consideration of the application filed by the Respondent No.1 on the touchstone of the directions as contained in the impugned order dated 16-5-2016. The issues that the Learned Counsel for the Petitioner sought to raise

before this Court can obviously be raised by him before the Deputy Registrar on remand. It is well settled that the jurisdiction under Section 101 can be invoked by a Co-operative Societies to recover the amount due towards the maintenance charges from its members on the basis of the statement of account prepared by it. In the instant case, it appears that right from the inception of the society, there is a dispute between the Petitioner and the Respondent No.1 society as result of which, the Respondent No.1 has not paid any amount towards maintenance charges and the outstanding towards the same are huge. Since the avenue by way of invoking Section 101 of the said Act, was open to the society, no fault can be found with the society in invoking the said provision notwithstanding the fact that an dispute under Section 91 is pending. The instant application under Section 101 is for a period different than the one which is the subject matter of the dispute.

7 In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out, the Writ Petition is accordingly dismissed.

8 However, it is clarified that on remand the application would be decided on its own merits and in accordance with law, uninfluenced by the observations made in the instant order.

[R.M.SAVANT, J]