IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10871 OF 2014

Naresh Kaniyalal Rajwani .. Petitioner

Versus

Chembur Venus Co-operative
Housing Society Ltd. and others .. Respondents

Mr. Abhinav Chandrachud i/by Mr. R. P. Pawar, for the Petitioner.

Mr. Sunil Gangan a/w Mr. Jayesh Mestry i/by RMG Law Associates, for the Respondent No.1.

Mr. S. D. Rayrikar, AGP for the Respondent Nos.2 & 3.

CORAM : R.M. SAVANT, J.
DATE : 11th MARCH 2016

P.C.

1. The writ jurisdiction of this Court is invoked against the order dated 07.05.2014 passed by the Divisional Joint Registrar, Co-operative Societies, by which order, the Revision Application filed by the Petitioner came to be dismissed and resultantly, the order dated 03.05.2013 passed by the Deputy Registrar, Co-operative Societies, M Ward, Mumbai, came to be confirmed.

2. The cause for invoking Section 101 of the Maharashtra Co-operative Societies Act, 1960 (For short "the said Act") against the Petitioner was on account of the non-payment of the maintenance charges as also the contribution towards repairs between the period 01.03.2009 to

01.12.2012 by the Petitioner. The Respondent No.1 society has been issuing bills to the Petitioner for maintenance charges as also the contribution towards major repairs. The application under Section 101 was filed on 16.01.2013 on which day the outstanding amount against Petitioner was Rs.2,35,518/- comprised of both arrears of maintenance charges as well as the contribution towards major repairs. In support of the said application, the Respondent No.1 society had filed the documents which have been referred to in the order dated 03.05.2013 amongst which was the certified statement of account and the resolution dated 02.01.2013 whereby the society had taken a decision to initiate proceedings for recovery. The Petitioner herein filed his reply to the said application and amongst the grounds raised was that the statement of account produced by the Respondent No.1 society was not proper and was a doctored document. This seems to be the principal ground on which the application filed under Section 101 of the said Act was being questioned. The Deputy Registrar of Co-operative Societies took into consideration the statement of account which was produced on behalf of the society and having regard to the same came to a conclusion that the Petitioner was in arrears of the maintenance charges as well as the contribution towards major repairs and accordingly allowed the application by the order dated 03.05.2013 and directed the certificate to be issued in the sum of

Rs.2,35,518/- with interest at 21% per annum.

3. Aggrieved by the said order dated 03.05.2013, the Petitioner filed a Revision Application being No.71 of 2013. The District Deputy Registrar by the impugned order dated 07.05.2014 has dismissed the said Revision Application. The District Deputy Registrar has referred to the fact that the Petitioner had forwarded a cheque for the sum of Rs.60,000/- to the Respondent No.1 society which had bounced and that the Respondent No.1 society had initiated prosecution under Section 138 of the Negotiable Instruments Act against the Petitioner. It was also observed by the Revisionary Authority that the Petitioner is enjoying all the benefits of being a member of the society at the cost of the other members. As indicated above, it is the said order dated 07.05.2014 which is taken exception to by way of the above Petition.

4. The Learned Counsel appearing for the Petitioner Mr. Chandrachud raised two fold contentions. Firstly, that the application filed under Section 101 of the said Act was not supported by any certified statement of account and secondly, that the resolution in respect of contribution of major repairs was not produced. It was the submission of the Learned Counsel that on account of the two grounds the orders passed by the Authorities below are vitiated. It was also the submission of the Learned Counsel that the society is not entitled to levy compound interest.

5. In my view, it is not possible to accept the contentions urged on behalf of the Petitioner. The requirement under Rule 86A(4)(ii) is to produce the certified statement of account. Perusal of the statement of account which was produced before the Deputy Registrar discloses that the said statement of account bears the stamp of the society and has also been signed on behalf of the society. In my view, therefore, there is a compliance of the said provision and it is not necessary that the account has to be certified through a public authority. In so far as the next submission is concerned, it is required to be noted that the bills have been raised from time to time by the society. There is no dispute about the fact that the bills have been served upon the Petitioner. There is nothing on record to indicate that the Petitioner had any time sought copy of the resolution from the society or that he had raised the issue in the general body of the society. In so far as Co-operative Societies are concerned, at the end of the financial year, their accounts have to be audited the said audit is by the Authorities exercising powers under the said Act. In the instant case, the outstanding amount is for the period 01.03.2009 to 01.12.2012 nothing is brought on record to indicate that such a procedure was not followed for the said years. In my view, the entire attempt of the Petitioner seems to be to avoid making payment to the society on one pretext or the other. It is required to be noted that the Petitioner had

forwarded a cheque for Rs.60,000/- towards the outstanding amount which cheque was dis-honoured and which resulted in the Petitioner being prosecuted under Section 138 of the Negotiable Instruments Act by the society which resulted in his conviction. Implicit in the said fact is the fact that the Petitioner has accepted that he is in arrears. The grounds now sought to be made out are therefore an after thought. Hence, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

6. However, it is clarified that the interest at 21% would be in terms of the bye laws of the society and if the bye laws do not provide for compound interest, the society would not be entitled to the same.

[R.M. SAVANT, J]