

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9143 OF 2015

Mr. Ashokkumar M. Jaiswar. ... Petitioner.
Versus
Harvest Co-operative Housing Society & ors. ... Respondents.

Mr. Prashant D. Patil, advocate for petitioner.

Mr. Vikas Warekar i/b. Warekar and Warekar, advocate for
respondent No. 1.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : NOVEMBER 27, 2017**

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned
Counsel for the respondent No. 1.

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 The petitioner herein is a member of the Harvest Co-operative
Housing Society. The members of the society were from minimal

income group. The Petitioner was a member of the Managing Committee of the society during 1981 to 1989.

4 It is the case of the Petitioner that since 1984 there was leakage in his flat. The leakage was found to be from the terrace of the said building. He had requested the society to carry out repairs. The Deputy Registrar of Cooperative Society was also informed about the same. In the year 1993 large repairs were undertaken by the society and therefore, it was the case of the society that they could not carry out repairs at such short intervals. In the meeting which was conducted on 14/6/1996 it was decided that the society would engage Anup and Company, Chemicoats India Builders and Contractors and Damp Leak Proof Engineers and Contractors who were requested to submit their report in respect of the state of the building.

5 On 23/11/1996 few pieces of slab had fallen from the ceiling of the balcony of the Petitioner. The Petitioner being the member of the

society had brought it to the notice of the Society. However, according to the petitioner, no steps were taken for carrying out the repairs.

6 In the meanwhile, the Petitioner had filed the dispute before the Cooperative Court at Mumbai which was registered at Case No. CC-IV/393 of 1999. The dispute was decided on 15/3/2013. The dispute of the disputant was dismissed with costs. Being aggrieved by the said judgment, the Petitioner had filed an appeal before the State Cooperative Appellate Court at Mumbai which was registered as Appeal No. 93 of 2013. The said appeal was dismissed by an order dated 12/3/2015 thereby confirming the Judgment of the Cooperative Court. Hence, this Writ Petition was filed on 13/3/2015.

7 On the last date of hearing of the petition, respective parties were asked to explore possibility of amicable settlement as the

petitioner happens to be the member of the Harvest Cooperative Housing Society.

8 The learned Counsel for the respondent submits that the Petitioner is not residing in the said society since 1998. The said submission stands fortified by the cause title of the petition, which shows that the Petitioner is residing in C.B.D. Belappur, Navi Mumbai. The Petitioner appears to have given an offer to the Society that they would carry out repairs and that he would pay 25% of the expenditure whereas the Society should bear expenditure to the tune of 75%.

9 The learned Counsel for the Petitioner submits that initial repairs on the basis of the complaint in the year 1996 was resolved and that repairs were carried out in year 1999 and it is submitted that the society had carried out repairs externally i.e. from the society however, the damage that was done to the ceiling of the house was not repaired.

10 The learned Counsel for the respondent submits that due to paucity of funds, it would not be possible to carry out internal repairs. In any case, the Petitioner is not residing there for the last 16 years. Internal damages ought to have been repaired by the Petitioner himself. The expenditure that would be incurred on the internal repairs would be trifling. The Petitioner was serving as clearing agent of Custom Department. The learned Counsel for the Petitioner submits that as on today he has retired.

11 Taking into consideration the facts of the case and the findings recorded by both the courts below, this Court is of the opinion that the findings recorded by both the courts cannot be interfered. Both the courts have taken into consideration the factual aspect and it appears that both the courts had also taken into consideration the provisions and bye-laws of the society and did not find any fault with the society.

12 Hence, the Writ Petition being sans merits stands dismissed. Rule is accordingly discharged. Writ Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)