

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

WRIT PETITION NO.4900 OF 2015

Rajendra W. Gharse	.. Petitioner
Vs.	
State of Maharashtra & Ors.	.. Respondents

**ALONG WITH
WRIT PETITION NO.4901 OF 2015**

Shubhada R. Gharse	.. Petitioner
Vs.	
State of Maharashtra & Ors.	.. Respondents

Mr.Vishal C. Ghosalkar for the petitioners in both petitions.
Mr.S.D. Rayrikar, AGP for the respondent nos.1 to 3-State.
Mr.Prashant Naik i/by Mr.S.R. Waghmare for the respondent no.4.

CORAM : R.D. DHANUKA, J.
DATE : 12th June 2018

P.C.:

. By these two writ petitions filed under Article 227 of the Constitution of India, the petitioners have impugned two separate recovery certificates and two separate orders passed by the Divisional Joint Registrar rejecting the applications filed by the petitioners.

2. Mr.Ghosalkar, learned counsel for the petitioners invited my attention to some of the annexures to the writ petitions and more particularly the statements filed by the respondent no.4 society before this Court in support of the submission that the figures mentioned in both the statements did not tally. Those statements also did not tally with the outgoing bills annexed to the petition.

3. It is submitted that in view of the disputed question of fact, the recovery certificates could not have been issued in favour of the society and against the petitioners. Learned counsel also invited my attention to various charges debited to the account of the petitioners under various heads. He submits that the society could not have charged those amount to the petitioners and those charges were illegally debited to the account of the petitioners.

3. It is submitted by the learned counsel for the petitioners that the petitioners have already deposited 50% of the alleged arrears under Section 154 (2A) of the Maharashtra Co-operative Societies Act, 1960 before the Divisional Joint Registrar. The petitioners are not liable to pay the said amount to the respondent no.4 society.

4. Mr.Naik, learned counsel for the respondent no.4 society, on the other hand, invited my attention to various bills of outgoing annexed to the affidavit-in-reply and also the statements annexed to the affidavit-in-reply. It is submitted that each and every bill annexed to the affidavit-in-reply would clearly indicate the break-up of the charges levied by the society to the petitioners. It is submitted that all those charges have been levied in accordance with various resolutions passed by the society from time to time which were admittedly never challenged by the petitioners before the Co-operative Court or any other Court of law. He placed reliance on the judgment of this Court in the case of **Vasant Jobanputra Vs. Bank of India Staff Sampada Co-operative Housing Society Limited reported in 2005 (1) Bom.C.R. 86** and in particular paragraphs 5 and 6 in support of the submission that resolutions passed by the society

having been not challenged by the member, such resolutions are binding on the member.

5. It is submitted that all these bills have been served upon the petitioners from time to time. Some of the meetings of the society were even attended by the petitioners. The petitioners were fully aware of the resolutions passed by the respondent no.4 society from time to time and also about the amount charged to the petitioners in the maintenance bills.

6. It is not in dispute that the petitioners have admittedly not challenged any of the resolutions passed by the respondent no.4 society on the basis of which the respondent no.4 has charged various amount in the maintenance bills from time to time. The petitioners have not disputed that such bills were received by the petitioners from the respondent no.4 society. A perusal of those bills annexed to the affidavit-in-reply clearly indicates that the society has charged to the petitioners various amounts under different heads. A perusal of the statements annexed to the affidavit-in-reply indicates that the petitioners had only made part payment in respect of some of the bills. The society was thus entitled to levy interest also in accordance with the resolutions passed by the respondent no.4 society.

7. A perusal of the recovery certificates issued by the authority clearly indicates that all the relevant aspects have been dealt with in great detail. The orders passed on the revision application also indicate that all the bills were considered at length in the impugned orders passed by the Divisional Joint Registrar.

8. This Court in the judgment in the case of ***Vasant Jobanputra Vs. Bank of India Staff Sampada Co-operative Housing Society Limited (supra)*** has held that the resolution of the society has not been challenge and thus the amount specified in that resolution cannot be questioned as unjust. In my view, the said judgment would squarely apply to the facts of this case. I am respectfully bound by the said judgment. The findings rendered by the two authorities being not perverse cannot be interfered with by this Court under Article 227 of the Constitution of India. Both the writ petitions are devoid of merit and are accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.