

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

**CIVIL APPLICATION NO.2021 OF 2013
IN
WRIT PETITION NO.7728 OF 2011**

**Anil P Naik : Applicant/Petitioner.
Versus
Sandeep Deshmukh and ors. : Respondents.**

**Mr. S M Kamble for the Applicant
Mr. Nitin G Raut a/w Inez Lazar for the Respondent No.5
Mr. C P Yadav, APP for the Respondent/State**

**CORAM : R. M. SAVANT &
SANDEEP K SHINDE, JJ.
DATE : 22nd FEBRUARY 2018**

P.C.

1 The above Civil Application has been filed for recall of the Orders dated 02/04/2013, 10/04/2013, 06/05/2013 and 12/06/2013 passed by the Division Benches of this Court in the above Writ Petition. The sum and substance of the said orders was that the Administrator was directed to take steps to hold elections to the Housing Society in question. It seems that after the said orders came to be passed, the above Civil Application came to be moved for recall of the said orders in view of the fact that a Division Bench of this Court by order dated 26/06/2013 had observed that considering the subject matter of the above Petition, the same would lie before a learned Single Judge. The Writ Petition was accordingly placed before a learned Single Judge of this Court (Smt.Vasanti A Naik, J) on 24/07/2013. On the said day the learned Single Judge having regard to the fact that the State Government had

also filed an Application seeking extension of time to hold elections whereas the above Application filed by the Applicant herein was for recall, the learned Single Judge in the teeth of the four orders as above was of the view that it would be proper if the Civil Applications are placed before the Division Bench in view of the fact that the said four orders of which the recall was sought were passed by the Division Benches of this Court. That is how the above Civil Application filed by the Applicant herein for recall of the said four orders is placed before us today.

2 The learned counsel appearing for the Respondent No.5 Shri Nitin Raut points out that the elections having already been held, the above Civil Application seeking recall of the orders directing for holding of the elections has turned infructuous. Upon this, the learned counsel appearing for the Applicant/original Petitioner Shri S M Kamble would submit that in the election process the Applicant/Petitioner has been disenfranchised on the ground that he is non-member, and therefore, the cause of action for the Applicant/Petitioner still survives.

3 We are unable to accept the contention raised by the learned counsel appearing for the Applicant/Petitioner in view of the fact that the elections have already been held, the above Civil Application filed for recall of the said four orders has turned infructuous. The above Civil Application is

accordingly disposed of as having turned infructuous. However, in so far as the grievance that the Applicant/Petitioner may have as regards his being disenfranchised/declared as non-member, the Applicant/Petitioner would be at liberty to adopt such proceedings as are available and permissible in law. Needless to state that the contention of the parties in that regard are kept open.

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[SANDEEP K SHINDE, J]

[R.M.SAVANT, J]